

# FEDERAL TRADE COMMISSION DECISIONS



**FINDINGS, ORDERS, AND STIPULATIONS**

**JANUARY 14, 1936, TO JULY 9, 1936**

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MEMBERS OF THE FEDERAL TRADE COMMISSION  
AS OF JULY 9, 1936

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CHARLES H. MARCH, *Chairman*.

Took oath of office February 1, 1929, and August 27, 1935.<sup>1</sup>

GARLAND S. FERGUSON.

Took oath of office November 14, 1927, January 9, 1928,<sup>1</sup> September 26, 1934,<sup>2</sup> and February 9, 1935.<sup>3</sup>

EWIN L. DAVIS.

Took oath of office May 26, 1933.

WILLIAM A. AYRES.

Took oath of office August 23, 1934.

ROBERT E. FREER.

Took oath of office August 26, 1935.

OTIS B. JOHNSON, *Secretary*.

Took oath of office August 7, 1922.

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<sup>1</sup> Second term.

<sup>2</sup> Recess appointment.

<sup>3</sup> Third term.



## ACKNOWLEDGMENT

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



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<sup>9</sup> For final decree of Supreme Court of the District of Columbia, see "Memoranda," 3-542 et seq., or S. & D. 190.

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<sup>12</sup> For interlocutory order, see "Memoranda," 20-745 or S. & D. 722.

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<sup>14</sup> For interlocutory order, see "Memoranda," 20-745 or S. & D. 721.

<sup>15</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 721.

<sup>16</sup> For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus, etc., see "Memoranda" 20-742 or S. & D. 704.

<sup>17</sup> For order of the Supreme Court of the District of Columbia on mandate from Court of Appeals of the District of Columbia, see "Memoranda" 20-742 or S. & D., footnote, 650.

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<sup>20</sup> For interlocutory order, see "Memoranda" 20-744 or S. & D. 718.

<sup>21</sup> For interlocutory order, see "Memoranda" 20-743 or S. & D. 716.

<sup>22</sup> For interlocutory order, see "Memoranda," 20-745 or S. & D. 724.

<sup>23</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

<sup>24</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

<sup>25</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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<sup>26</sup> For Interlocutory order, *see* "Memoranda," 20-744 or S. & D. 719.

<sup>27</sup> For Interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), *see* "Memoranda," 20-743 or S. & D. 715.

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<sup>28</sup> For Interlocutory order, *see* "Memoranda," 20-743 or S. & D. 717.

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<sup>29</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

<sup>30</sup> For interlocutory order, see "Memoranda," 20-742 or S. & D. 715.

<sup>31</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

# FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS AND ORDERS, JANUARY 14, 1936, TO JULY 9, 1936

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IN THE MATTER OF

JAMES McCREERY & COMPANY

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

*Docket 2318. Complaint, Mar. 7, 1935—Order, Jan. 14, 1936*

Where a corporation engaged in the operation of a large department store, advertised and sold as "Toyo Panamas" hats made from rice pulp paper twisted and woven by hand or loom into a product resembling a Panama straw hat, facts being that said products were not genuine Panama straw hats, as understood from word by trade and public, to wit, imported from Central or South America and woven by hand from the leaf of the paja toquilla or jipajapa plant in a saturated condition, or under water in the case of the better quality product, and it was not popularly known that word "toyo" meant paper; with tendency and capacity to mislead and deceive public by causing it to believe that said articles were genuine Panama hats made as hereinbefore set forth, and with effect of diverting trade from competitors dealing in the genuine product and those dealing in the imitation article and truthfully advertising and describing the same, and with capacity so to mislead:

*Held*, That such acts were to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John W. Hildrop* for the Commission.

*Gould & Wilkie*, of New York City, for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having

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reason to believe that James McCreery & Company, a corporation, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, James McCreery & Company is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business in the city of New York, N. Y., and is the owner and operator of a large department store in which it sells among other articles of merchandise a certain hat which it advertises and sells under the name of Toyo Panamas, and which said Toyo Panama hats it ships in interstate commerce from its said store in the city of New York, N. Y., into and through various of the States of the United States of America, and is in competition with divers other individuals, firms, associations and corporations engaged in the sale of imitation Panama hats in interstate commerce as well as those engaged in the sale of genuine Panama hats in interstate commerce.

PAR. 2. The hats sold and shipped in interstate commerce by respondent under the name of Toyo Panama are made from a paper derived from rice pulp after which it is twisted and woven by hand or loom into a product resembling a Panama straw hat; and while the word "Toyo" means paper, this fact is not known to the buying public.

PAR. 3. The word "Panama", as applied to straw hats, has a definite geographical meaning both to the trade and public. A straw hat to be a Panama must be imported from Central or South America, and made from the leaf of the *paja toquilla* or the *jipajapa* plant. Genuine Panama hats are woven by hand in a saturated condition and the better quality Panama hats are woven while under water. There is no paper used in the manufacture of genuine Panama hats and any process, geographical location or material used other than as hereinbefore set out in this paragraph, is foreign to what the trade and the public have come to understand the word "Panama" hat to mean.

PAR. 4. The respondent in the advertising of its said hats for sale in interstate commerce and in the distribution thereof in interstate commerce, omitted any words or phrases qualifying the said Toyo hats so that the buying public would know the same were not genuine Panama but made of paper as aforesaid, but inserted and cause to be inserted in various newspaper published in New York and elsewhere, and especially the New York Journal, a certain advertisement in the following words:

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Saturday Special!

Toyo Panamas \$1.79

A Grand Group of Brimmed Favorites for Summer!

Many Styles in the Group with Different Bands.

All size brims. One day only at \$1.79.

McCreery's—Fifth Ave.—34th St.

PAR. 5. The advertising, designating and describing by respondent as set out in paragraph 4, its said Toyo hats and using in connection therewith the word "Panama" or "Panamas" is misleading and deceptive and has a tendency and a capacity to mislead and deceive the public by causing it to believe that the said Toyo hats so advertised were genuine Panama hats, made of the material and by the process set out herein in paragraph 3; and has a capacity to and does divert trade from the competitors of respondent who are engaged in the sale in interstate commerce of genuine Panama hats and those competitors of respondent engaged in the sale in interstate commerce of imitation Panama hats who truthfully advertise and describe same.

PAR. 6. The above acts and things done by respondent are to the injury and prejudice of the public and of respondent's competitors in commerce within the 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.

## 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 the 7th day of March, 1935, issued and served its complaint in this proceeding upon the respondent, James McCreery & Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Gould & Wilkie, attorneys for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, brief of counsel for the Commission

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in support of the complaint, no brief being filed for respondent, nor did counsel for the respondent appear and argue the proceeding for respondent; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, James McCreery & Company, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business in the city of New York, N. Y., and is the owner and operator of a large department store in which it sells among other articles of merchandise a certain hat which it advertises and sells under the name of Toyo Panamas, and which said Toyo Panama hats it ships in interstate commerce from its said store in the city of New York, N. Y., into and through various of the States of the United States of America, and is in competition with divers other individuals, firms, associations and corporations engaged in the sale of imitation Panama hats in interstate commerce as well as those engaged in the sale of genuine Panama hats in interstate commerce.

PAR. 2. The hats sold and shipped in interstate commerce by respondent under the name of Toyo Panama are made from a paper derived from rice pulp after which it is twisted and woven by hand or loom into a product resembling a Panama straw hat; and while the word "Toyo" means paper, this fact is not known to the buying public.

PAR. 3. The word, "Panama", as applied to straw hats, has a definite geographical meaning both to the trade and public. A straw hat to be a Panama must be imported from Central or South America, and made from the leaf of the paja toquilla or the jipajapa plant. Genuine Panama hats are woven by hand in a saturated condition and the better quality Panama hats are woven while under water. There is no paper used in the manufacture of genuine Panama hats and any process, geographical location or material used other than as hereinbefore set out in this paragraph, is foreign to what the trade and the public have come to understand the word "Panama" hat to mean.

PAR. 4. The respondent in the advertising of its said hats for sale in interstate commerce and in the distribution thereof in interstate commerce, omitted any words or phrases qualifying the said Toyo hats so that the buying public would know the same were not genu-



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## Order

ine Panama but made of paper as aforesaid, but inserted and caused to be inserted in various newspapers published in New York and elsewhere, and especially the New York Journal, a certain advertisement in the following words:

Saturday Special.

Toyo Panamas \$1.79

A Grand Group of Brimmed Favorites for Summer!

Many Styles in the Group with Different Bands.

All size brims. One day only at \$1.79.

McCreery's—Fifth Ave.—34th St.

PAR. 5. The advertising, designating and describing by respondent as set out in paragraph 4, of its said Toyo hats and using in connection therewith the word "Panama" or "Panamas" is misleading and deceptive and has a tendency and a capacity to mislead and deceive the public by causing it to believe that the said Toyo hats so advertised were genuine Panama hats, made of the material and by the process set out herein in paragraph 3; and has a capacity to and does divert trade from the competitors of respondent who are engaged in the sale in interstate commerce of genuine Panama hats and those competitors of respondent engaged in the sale in interstate commerce of imitation Panama hats who truthfully advertise and describe same.

## CONCLUSION

The foregoing acts of the respondent set out and described in the Commission's findings as to the facts are to the injury and prejudice of the public and of respondent's competitors, and constitute 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief of counsel for Commission, no brief being filed by counsel

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for respondent and counsel for respondent not appearing to argue this proceeding on the day it was set for hearing before the Commission, to wit, December 9, 1934, and the Commission having made its findings as to the fact 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 ordered*, That respondent, James McCreery & Company, a corporation, its officers, agents, servants, employees and representatives, in the manufacture, sale and distribution in interstate commerce of its Toyo hats made from the paper derived from rice pulp, do cease and desist from:

(a) Representing or advertising in any manner whatsoever that its said Toyo hats are "Panama" hats.

(b) Using the word "Panama" in describing its said Toyo hats in the sale, offering for sale, or advertising thereof in interstate commerce, and from using the word "Panama" in connection with any other words or phrases in the advertising, sale and offering for sale in interstate commerce of its said Toyo hats.

(c) Selling, offering for sale or advertising any other hats in interstate commerce as "Panama" hats, or using the word "Panama" in connection or in conjunction therewith, unless in truth and in fact such hats so sold, offered for sale, or advertised in interstate commerce are genuine Panama hats woven by hand in a saturated condition and made from the leaf of the paja toquilla or the jipajapa plant.

*It is further ordered*, That the respondent, James McCreery & Company, within 60 days after 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 shall have complied with the order to cease and desist hereinbefore set forth.

## Complaint

IN THE MATTER OF  
CHARLES E. MORRISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2367. Complaint, Apr. 15, 1935—Decision, Jan. 14, 1936*

Where an individual engaged in the sale at retail of fur coats and other fur garments at prices substantially the same as those usually charged for comparable products by retailers, falsely represented through letters and other trade literature and through radio broadcasts, advertisements in periodicals and in other ways, that he was a "reliable wholesale fur house backed by responsibility and confidence", selling to stores from "coast to coast," that his place of business was "the \* \* \* Fur Coat Show Room," a "wholesale show room," and not a store, that he was a "wholesale manufacturing furrier" and offered said fur garments at "strictly wholesale prices", and that fur coats could be purchased from him at one-third to one-half less than at retail stores; with capacity and tendency to mislead and deceive the purchasing public into the belief that his representations were true, and into purchasing said garments from him in such belief, and with result of diverting trade to him from competitors, who do not make such false representations; to the substantial injury of substantial competition in commerce:

*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.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John W. Hildrop* for the Commission.

*Mr. Hilliard L. Bernstein*, of New York City, for respondent.

## COMPLAINT

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, having reason to believe that Charles E. Morris, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Charles E. Morris, is now and for more than two years last past has been engaged under and by his name and under and by the trade name Charles E. Morris Show Room in the city of New York, State of New York, in the business of sell-

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ing fur coats and other fur garments which he has caused and still causes when sold, to be shipped from his place of business in New York City aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in the sale of such fur coats and other fur garments between and among the various States of the United States. In the course and conduct of his said business, respondent is now and for more than two years last past has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale of fur coats and other fur garments between and among the various States of the United States.

PAR. 2. In the sale by the respondent and in the offering for sale by the respondent of fur coats and other fur garments, as set out in paragraph 1 hereof, respondent by means of letters and other trade literature mailed to customers and prospective customers, through the medium of radio broadcasts, advertisements printed in newspapers of interstate circulation, and in other ways, has made and still makes the following statements and representations and other representations of similar tenor, effect and substance, to wit:

(a) That the prices at which the fur garments are sold by him are "strictly wholesale prices" and "practically wholesale prices";

(b) That he is a "reliable Wholesale Fur House, backed by responsibility and confidence", that he sells to stores from "coast to coast", that his place of business is the "Morris Fur Coat Show Room", and "Remember, this is not a store, this is a Wholesale Show Room";

(c) That he is a "Wholesale Manufacturing Furrier" and has a factory showroom;

(d) That fur coats can be purchased from him at from one-third to one-half less than prices charged for the same at retail stores.

PAR. 3. In truth and in fact:

(1) The prices at which respondent sells his fur coats and fur garments are not wholesale prices or practically wholesale prices but are considerably in excess of wholesale prices;

(2) Respondent is not a wholesale fur house;

(3) Respondent does not sell to stores dealing in fur coats and other fur garments;

(4) Respondent's place of business is not a fur coat showroom or a wholesale showroom but a retail establishment for the selling of fur coats and of other fur garments at retail;

(5) Respondent does not operate, own or have any interest in any wholesale fur coat or other wholesale garment establishment;

(6) He is not a wholesale furrier nor a manufacturing furrier, does not have a factory showroom in which fur coats or other fur garments are manufactured or shown for sale;

## Findings

(7) He does not sell the fur coats and other fur garments dealt in by him at prices ranging from one-third to one-half less than retail stores charge for the same by the prices charged by him for the fur coats and other fur garments dealt in by him are the prices at which such fur coats and other fur garments are usually sold by retail dealers at retail.

PAR. 4. The representations made by the respondent as mentioned in paragraph 2 hereof have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true, and to purchase fur coats and other fur garments from respondent in such belief. Thereby trade is diverted to respondent from his competitors who do not make the false representations made by the respondent as hereinbefore set out. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

## 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 15, 1935, issued and served its complaint in this proceeding upon respondent, Charles E. Morris, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Hilliard L. Bernstein, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Charles E. Morris, is now and for more than two years last past has been engaged under and by his name and under and by the trade name of Charles E. Morris Show Room in the city of New York, State of New York, in the business of

## Findings

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selling fur coats and other fur garments which he has caused and still causes when sold, to be shipped from his place of business in New York City aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in the sale of such fur coats and other fur garments between and among the various States of the United States. In the course and conduct of his said business, respondent is now and for more than two years last past has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale of fur coats and other fur garments between and among the various States of the United States.

PAR. 2. In the sale by the respondent and in the offering for sale by the respondent of fur coats and other fur garments, as set out in paragraph 1 hereof, respondent by means of letters and other trade literature mailed to customers and prospective customers, through the medium of radio broadcasts, advertisements printed in newspapers of interstate circulation, and in other ways, has made and still makes the following statements and representations and other representations of similar tenor, effect and substance, to wit:

(a) That the prices at which the fur garments are sold by him are "strictly wholesale prices" and "practically wholesale prices";

(b) That he is a "reliable Wholesale Fur House, backed by responsibility and confidence", that he sells to stores from "coast to coast", that his place of business is the "Morris Fur Coat Show Room", and "Remember, this is not a store, this is a Wholesale Show Room";

(c) That he is a "Wholesale Manufacturing Furrier" and has a factory showroom;

(d) That fur coats can be purchased from him at from one-third to one-half less than prices charged for the same at retail stores.

PAR. 3 In truth and in fact:

(1) The prices at which respondent sells his fur coats and fur garments are not wholesale prices or practically wholesale prices but are considerably in excess of wholesale prices;

(2) Respondent is not a wholesale fur house;

(3) Respondent does not sell to stores dealing in fur coats and other fur garments;

(4) Respondent's place of business is not a fur coat showroom or a wholesale showroom, but a retail establishment for the selling of fur coats and of other fur garments at retail;

(5) Respondent does not operate, own or have any interest in any wholesale fur coat or other wholesale garment establishment;

(6) He is not a wholesale furrier nor a manufacturing furrier, does not have a factory showroom in which fur coats or other fur garments are manufactured or shown for sale;

(7) He does not sell the fur coats and other fur garments dealt in by him at prices ranging from one-third to one-half less than retail stores charge for the same but the prices charged by him for the fur coats and other fur garments dealt in by him are the prices at which such fur coats and other fur garments are usually sold by retail dealers at retail.

PAR. 4. The representations made by the respondent as mentioned in paragraph 2 hereof have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true, and to purchase fur coats and other fur garments from respondent in such belief. Thereby trade is diverted to respondent from his competitors who do not make the false representations made by the respondent as hereinbefore set out. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

#### CONCLUSION

The aforesaid acts and practices of respondent, Charles E. Morris, under the conditions and circumstances set forth in the foregoing findings of fact, are each and all to the prejudice of the public and to the 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 upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral argument having been waived by counsel for the Commission and counsel 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 ordered*, That respondent, Charles E. Morris, in the advertising, sale, and distribution in commerce of his product, to wit, fur coats and other fur garments, cease and desist from:

(1) Advertising and representing, by letters and other trade literature mailed to customers and prospective customers, through the

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medium of radio broadcasts, advertisements printed in newspapers of interstate circulation, or by any other manner, means, methods or devices:

(a) That the prices at which fur garments are sold by respondent are "strictly wholesale prices", or "practically wholesale prices";

(b) That respondent is a "reliable Wholesale Fur House, backed by responsibility and confidence", that he sells to stores from "coast to coast", that his place of business is the "Morris Fur Coat Show Room", and that his said place of business is a "Wholesale Show Room";

(c) That respondent is a wholesale manufacturing furrier, and that he has a factory showroom;

(d) That fur coats and other fur garments can be purchased from respondent at from one-third to one-half less than prices charged for the same at retail stores, or that respondent sells such fur coats and other fur garments at a price or prices materially cheaper than other retail stores sell fur garments of the same grade and value.

*And it is hereby further ordered*, That the said respondent, Charles E. Morris, trading under and by his name and under and by the trade name Charles E. Morris Show Room, shall within 60 days after the service upon him of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which he shall have complied with the order to cease and desist hereinbefore set forth.



## Complaint

IN THE MATTER OF  
C. R. ACFIELD, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2643. Complaint, Dec 5, 1935—Order, Jan. 14, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the offer for sale and sale in interstate commerce and in the District of Columbia of devices or appliances known and designated as "Perfection Toe Spring" and "Bentoe Splint", to cease and desist from directly or indirectly advertising, describing, designating or otherwise representing its said "Toe Spring" is a cure for bunions or will remove the actual cause thereof, or that its said "Splint" is a correction for or will straighten hammer-toe, and from making any other similar statements or representations in any manner whatsoever which may have the tendency or capacity to confuse, mislead or deceive purchasers in any material respect with reference to the results to be expected from the use of said appliances.

*Mr. Marshall Morgan* for the Commission.

## COMPLAINT

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, having reason to believe that C. R. Acfield, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. C. R. Acfield, 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 office and place of business located at 36 West Thirty-fourth Street, New York City. Respondent is now, and for more than two years last past, has been engaged, as hereinafter described, in the business of manufacturing alleged remedies for foot ailments, including the "Perfection Toe Spring" for bunions, and a "Bentoe Splint" for hammer-toe, and selling the same to foot specialists, chiropodists, retail stores, and individuals in various parts of the United States other than the State of New York. Respondent's said products and appliances are manufactured at its place of business in New York City, where they are branded, labeled, and packed by respondent for sale and distribution to the purchasing and consuming public of the United States. In connection with the

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sale and distribution of its said products the respondent transports them or causes them to be transported from its place of business in the State of New York to the purchasers thereof located in a State or States of the United States other than the said State of New York.

In the course and conduct of its business as aforesaid, the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of remedies for foot ailments and offering such products for sale in commerce between and among the various States and within the District of Columbia.

One C. R. Acfield is the president, treasurer, general manager and moving spirit of the respondent corporation, and directs the activities and controls the policies and affairs of such respondent corporation. The said Acfield is the sole employee of the respondent company and manufactures, advertises and sells for respondent the products manufactured by it as embraced in this proceeding.

PAR. 2. A bunion is an inflammatory swelling of the fleshy covering or tissue over the metatarsal joint of the great toe. A bunion may be the result of a congenital defect, involving a bad alignment of the metatarsal bone, or it may also be caused by any binding or restriction of the toe which bends it out of alignment. Any bunion, whether resulting from congenital or environmental defects, results in the growth of a bony structure in the toe which acts as a wedge at the junction between the great toe and the metatarsal bone. This bony structure must be cut away in order to straighten the toe and bring it back to a correct position. At times it is necessary for the surgeon to drive a wedge into the metatarsal bone at its base near the heel in order to bring the toe and bone into a single straight line. In either event, a surgical operation is necessary to remove the cause of the bunion before any hope for a cure thereof may be entertained. Even if a so-called toe spring should be used to pull the toe out and hold it there, when the appliance is removed, the bony growth, which would still act as a wedge, would force the toe back to its bent position.

Hammer-toe is a condition of permanent bending of the mid-phalangeal joint, one of the long bones of the toe.. It is due to a congenital defect, and is not due to a tight or poorly fitting shoe. This defect is characterized by a bony growth at the apex of an inverted V which develops in the toe and holds it bent. If the tendons be cut in an effort to prevent the muscles from holding the toe in a bent position, the tendons will subsequently grow back and unite with the scar tissue. The toe throughout all of this will remain bent, inasmuch as it is not a tendon which is pulling the toe into a bent shape. A surgical appliance or splint would have

no effect in correcting the bent condition since the splint has no effect of changing the structure of the bony wedge that causes the bending.

There is no medication known to recognized medical science that will dissolve bunions or make them disappear, or that will substantially relieve or reduce them after the first or incipient state has been passed, nor is there any known surgical or other appliance that will cure a bunion or hammer-toe or serve as a successful remedy therefor. A padded metal splint and the medicinal treatment in connection therewith can have no other virtue or effect than that of serving as a mechanical device for relieving the pressure or friction of the shoe upon the affected part and temporarily relieving the pain. In each instance the cause, as stated, must be removed surgically. Any other measures are at best purely palliative.

PAR. 3. In the course and conduct of its business respondent has offered its products for sale and has sold and transported, or caused the same to be transported, in commerce among the several States of the United States to the consuming public, through the medium of advertisements inserted and carried in magazines and daily papers of general circulation, and by means of letters, circulars, leaflets, pamphlets and other advertising matter distributed through the United States mail, and has caused various false, deceptive, and misleading statements to be inserted and to appear in said advertisements, letters, circulars, leaflets, and pamphlets so distributed by it. The statements contained in said advertisements, letters, circulars, leaflets, and pamphlets are addressed to and have been distributed among foot specialists, chiropodists, retail dealers, and individuals who have been induced to purchase the products offered for sale and sold by respondent under the erroneous belief that said false, deceptive, and misleading statements were and are true. Said products are and have been shipped in response to orders received by respondent through the mail and transported or caused to be transported by it in commerce among the several States of the United States.

PAR. 4. Respondent, C. R. Acfield, Inc., in further connection with the sale and distribution of its aforesaid products, has represented in advertisements in general circulation, and in letters, circulars, leaflets, pamphlets, and folders distributed by it in interstate commerce that its said "Perfection Toe Spring" will banish a bunion, will remove the actual cause of a bunion, is a cure for bunions; and that its "Bentoe Splint" is a remedy for and will relieve and correct hammer-toe.

Respondent's so-called "Perfection Toe Spring" is termed a surgical appliance, is patented, and consists of a padded metal splint

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affixed to the inside of the foot, running from the tip of the great toe along the side thereof back to a point about equal to the center of the instep. This padded metal splint is fastened against the side of the instep by an adjustable canvas strap and another adjustable strap is passed around the great toe, pulling that member out against the padded metal splint. The metal splint is hollowed out where it rests against the outside of the great toe at its principal joint. The appliance sold by respondent as a remedy or cure for hammer-toe consists of a patented padded metal splint which is run under the bottom of the foot from the middle of the instep to the tip of the bent toe. The splint is fastened to the foot under the instep by an adjustable canvas strap and the deformed or afflicted toe is strapped to and on top of the outer end of the splint by another adjustable canvas strap.

PAR. 5. Among the representations made by respondent in its advertising, by means of letters, circulars, pamphlets, and folders, as aforesaid, in connection with the sale and distribution in commerce of its aforementioned products were and are the following:

The treatment with the Perfection Toe Spring, which is a common-sense surgical appliance, is a complete one.

I have worn the Perfection Toe Spring about six months and my bunion is cured.

The Perfection Toe Spring will straighten the great toe and by doing so remove the ACTUAL cause of the enlarged joint or bunion.

The Perfection Toe Spring REMOVES THE ACTUAL CAUSE of the BUNION or enlarged joint.

ACFIELD'S PROTECTION TOE SPRING  
reg. U. S. Pat. Off.

A common-sense surgical appliance for the cure of BUNIONS.

A REAL CURE FOR BUNIONS and enlarged joints that actually REMOVES THE CAUSE of the trouble.

The Bentoe Splint used at night straightens hammer-toes.

The Perfection Toe Spring will actually straighten the great toe and remove the cause of enlarged joint or bunion, \* \* \*.

Very often the great toe, by being out of its correct position, has force the second toe over or under it, and in some cases has doubled it up and caused a "hammer-toe". The great toe has caused the mischief and is the one to correct; the Perfection Toe Spring will effectually do this, \* \* \*.

I have long since discontinued the use of your toe spring, for the simple reason that the bunion I spoke of has entirely disappeared under your treatment, \* \* \*.

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## Complaint

I have worn the Perfection Toe Spring for about six months and my bunion is cured. \* \* \*

ACFIELD'S  
PERFECTION TOE SPRING  
cures Bunions and  
Enlarged Great Toe Joints  
by STRAIGHTENING  
the  
Great  
Toe.

PAR. 6. In truth and in fact said representations and statements made or circulated with respect to respondent's products were and are false, deceptive, and misleading in the following among other particulars:

- (1) The treatment with the Perfection Toe Spring is not a complete one.
- (2) The wearing of the Perfection Toe Spring for six months or for any other period will not cure a bunion.
- (3) The Perfection Toe Spring will not remove the actual cause of the enlarged joint or bunion by straightening the great toe.
- (4) The Perfection Toe Spring will not remove the actual cause of the bunion.
- (5) Acfield's Perfection Toe Spring is not a common-sense surgical treatment for the cure of bunions, nor is it a real cure for bunions and enlarged joints.
- (6) The Perfection Toe Spring has not cured a genuine bunion in six months or any other period of time.
- (7) The Bentoe Splint does not straighten or correct hammer-toe by straightening the great toe or otherwise.

PAR. 7. Respondent has further in the course and conduct of its business issued and distributed in interstate commerce statements, circulars and other literature containing testimonials in which statements are made by various persons to the effect that they were or had been suffering from bunions and hammer-toes and had been completely relieved and cured by the use of respondent's Perfection Toe Spring and Bentoe Splint, respectively, when in truth and in fact respondent was and is without actual first-hand knowledge as to the foot ailment or disorder from which said persons were or had been actually suffering.

A. C. Acfield, president, treasurer, and the moving spirit for the respondent corporation, in its company management and in the manufacture, advertisement, and sale of the products it sells, is not a doctor of medicine, nor a surgeon, and has never held himself out as having taken any educational course designed to enable him to treat foot ailments; his knowledge of foot ailments and the treatment thereof has been acquired merely through the sale of respondent's appliances; he has no X-ray apparatus to obtain photographs of the bones of the afflicted toes of patients to learn therefrom whether said

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patients are actually suffering from bunion or hammer-toe, and he does not come in contact with or examine or interview patients regarding their foot symptoms or ailments.

PAR. 8. The truth and facts are that respondent's product, "Perfection Toe Spring", advertised and represented by it as a remedy and cure for bunions, and respondent's product, "Bentoe Splint", advertised and represented by it as a remedy and cure for hammer-toe, do not possess such beneficial or curative qualities and characteristics as to be truthfully represented, respectively, as a cure for bunion and hammer-toe, there being no known appliance which can be successfully used to effect a cure in the case of bunion or hammer-toe, it being possible to remove such foot deformities only through the medium of surgery, as stated.

PAR. 9. The above and foregoing false and misleading representations of respondent appearing in respondent's advertisements, circulars, bulletins, letters, and pamphlets in connection with the offering for sale and sale of respondent's products have and have had the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public in regard to the character of respondent's products and as to the uses to which they may properly be put, and have misled and deceived such purchasing public into the erroneous belief that respondent's products known and termed as "Perfection Toe Spring" and "Bentoe Splint" are remedies for and will relieve or remove the cause of and cure bunions and hammer-toes, respectively, and have tended to induce and have induced the purchasers of respondent's so-called "Perfection Toe Spring" and "Bentoe Splint" to believe that the false and extravagant claims made for such products were and are true in fact. The aforesaid practices of respondent are further to the detriment and injury of manufacturers and sellers of products similar to those manufactured and sold by respondent, and have and have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce products of the nature of those sold by respondent, but who fairly and truthfully advertise and represent such products.

PAR. 10. The above alleged false, misleading and deceptive acts, practices and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful 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

The respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer attached to the said motion; and the Commission having duly considered the said motion—

*It is hereby ordered*, That the said motion be, and the same is hereby granted; that the said answer be, and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

*It is hereby ordered*, That the respondent, C. R. Acfield, Inc., its officers, directors, representatives, agents, servants and employees in connection with the offering for sale and sale in interstate commerce and in the District of Columbia of devices or appliances known and designated as "Perfection Toe Spring" and "Bentoe Splint", do cease and desist from directly or indirectly advertising, describing, designating or otherwise representing:

(1) That respondent's so-called "Perfection Toe Spring" is a cure for bunions or will remove the actual cause of bunions or enlarged joints;

(2) That respondent's "Bentoe Splint" is a correction for or will straighten hammer-toe;

(3) From making any other similar statements or representations in any manner whatsoever which may have the tendency or capacity to confuse, mislead or deceive purchasers in any material respect with reference to the results to be expected from the use of said appliances.

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

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## IN THE MATTER OF

C. E. SISSELL AND L. L. SISSELL, DOING BUSINESS AS  
SISSELL BROTHERSCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2543. Complaint, Sept. 3, 1935—Order, Jan. 14, 1936*

Consent order requiring respondent individuals to cease and desist from representing, either directly or indirectly, in connection with the offer for sale, or sale in interstate commerce of metal burial vaults, in purported certificates of warranty or guaranty, in advertising or in any other manner, that such vaults will resist rust or corrosion or that they are made of rust resisting material or that they are water or vermin proof at the time of interment thereof or that they will endure as such under burial or other conditions for a period of fifty years or for any fixed or stated period of time.

*Mr. E. J. Hornibrook* for the Commission.

## COMPLAINT

Acting in the public interest and 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 C. E. Sissell and L. L. Sissell, copartners, doing business under the name and style of Sissell Brothers, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondents, C. E. Sissell and L. L. Sissell are copartners doing business under the name and style of Sissell Brothers at 4322 East 3rd Street, Los Angeles, Calif. They are now, and for several years last past, have been engaged at the said city of Los Angeles in the business of manufacturing and selling metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof, many of whom reside outside the State of California, and when orders are received therefor, they are filled by respondents by shipping the same from the said city of Los Angeles, State of California, into and through other States of the United States to the respective places of business or residences of such purchasers.

PAR. 2. In the course and conduct of the said business, respondents are in substantial competition with other individuals, co-partnerships



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## Complainut

and corporations engaged in the sale and distribution of metal, stone, concrete, cement and other grave vaults in commerce between and among the various States of the United States.

PAR. 3. Respondents sell and ship said grave vaults as aforesaid to jobbers, funeral directors and undertakers, the last two of which sell the same to ultimate purchasers thereof for use in the burial of the dead. Respondents sell said vaults through traveling salesmen, advertisements in trade magazines and through circulars sent to the trade.

PAR. 4. Respondents issue with each of said vaults for delivery to ultimate purchasers thereof and they are so delivered a written purported warranty which provides as follows:

GUARANTEE  
SISSELL BROTHERS  
Los Angeles, California.

Guarantees this  
COMBINATION STEEL VAULT  
is made from Genuine  
COP-R-LOY

A Special Alloy of Copper and Steel

An especially prepared metal under a special analysis, for underground burial. To resist rust and corrosion, and is absolutely water and vermin proof.

SISSELL BROTHERS, further GUARANTEE the COMBINATION STEEL VAULT against Rust and Corrosion for a period of Fifty (50) years from the date of interment.

This is to Certify that \_\_\_\_\_ have this  
\_\_\_\_\_ day of \_\_\_\_\_ 193\_\_\_\_,  
interred a Combination Steel Vault, Stock No. Nine, containing  
the remains of \_\_\_\_\_  
\_\_\_\_\_ in \_\_\_\_\_ Cemetery.

\_\_\_\_\_  
Funeral Director.

Date Buried \_\_\_\_\_ 19\_\_\_\_  
Buried in \_\_\_\_\_ Cemetery.  
Address \_\_\_\_\_  
Name of Deceased \_\_\_\_\_  
Guarantee Issued to \_\_\_\_\_  
Address \_\_\_\_\_  
Funeral Director \_\_\_\_\_  
Address \_\_\_\_\_

Please detach this coupon and mail to Sissell Brothers, 4322 East Third Street, Los Angeles, California, for our records.

NOTE.—Any complaint may be referred to the Funeral Director or to us direct and restitution will be made under this guarantee.

PAR. 5. The statements and representations described in the preceding paragraph are false and misleading in that they import and imply that said grave vaults will resist rust and corrosion, will

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remain absolutely water and vermin proof for a period of 50 years from the date of interment; while in truth and in fact, said grave vaults will not resist rust and corrosion and will not remain absolutely water and vermin proof for a period of 50 years, and, in many instances, said vaults are not absolutely water and vermin proof at the time of interment thereof, and, in many instances, when closed as directed, they will not protect the casket and its contents against entrance of water and vermin from external sources for a period of 50 years; that said vaults will often become impaired by rust and corrosion in many soils in the United States in much less than 50 years; in many soils in the United States respondents' vaults will rust, corrode and pit so as to let water and vermin into them in a period of much less than 50 years; in many soils they will corrode, pit and rust in much less than 50 years so as to cave in and collapse and permit water and vermin to enter therein. Either air or water entering respondents' vaults, when buried underground promote and cause disintegration of the coffin and body encased therein. Water often enters the graves of the dead and in such cases the mechanism provided by respondents for sealing their vaults will not at all times prevent the entrance of water into same.

PAR. 6. The terms "resisting rust and corrosion" and "absolutely water and vermin proof", as used by respondents in said purported warranty, mean to the ultimate purchasers thereof, a water proof, vermin proof, rust resisting and corrosion resisting vault which will endure as such under burial conditions for a period of 50 years. The respondents' said vaults are not water proof or vermin proof or rust and corrosion proof in fact or as the terms are understood by ultimate purchasers thereof. Water or air or vermin may seep into or enter into said vaults through the joints, holes, fasteners, or flanges thereof or through pit holes due to rust or corrosion or due to collapse or bending of the vaults. The exhumation of bodies after burial is so rare as to make these said warranties worthless to a vast majority of purchasers of these vaults for the reason that no opportunity is afforded them in which to ascertain whether such vaults have resisted rust and corrosion and are absolutely water and vermin proof. These said purported warranties are not warranties, but are merely sales persuaders under the terms of which respondents rarely, if ever, will be called upon to make good this guarantee as to such vaults in instances where the same are defective. It is false and misleading for respondents to call them warranties or to issue them at all.

PAR. 7. Each and all of the said false and misleading statements and representations used by respondents as set out in paragraph 4 hereof have and have had the capacity and tendency to induce the

public to purchase and use respondents' said grave vaults in the belief that they are true, and have and have had the tendency and capacity to divert trade to respondents from said competitors and otherwise to injure them.

PAR. 8. The acts and practices of the respondents above set forth are all to the prejudice of the public and to respondents' said 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 powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

The respondents having filed a consent answer in this matter in which they consent, agree and state that they desire to waive hearings on the charges set forth in the complaint herein and not to contest this proceeding, and refrain from contesting the same and consent, agree and state that the Federal Trade Commission without trial, without evidence and without findings as to the facts, or other intervening procedure, may make, enter, issue and serve upon them an order to cease and desist from the violations of the law alleged in the complaint,

*Now, therefore,* This proceeding having come on to be heard by the Federal Trade Commission on the complaint of the Commission, and the said consent answer of respondents, and the Commission being fully advised in the premises,

*It is ordered,* That respondents, C. E. Sissell and L. L. Sissell, co-partners doing business under the name and style of Sissell Brothers, or as individuals or otherwise, cease and desist:

From representing, either directly or indirectly, in connection with offering for sale or selling in interstate commerce of metal burial vaults, in purported certificates of warranty or guaranty, in advertising or in any other manner, that such vaults will resist rust or corrosion or that they are made of rust resisting material or that they are water or vermin proof at the time of interment thereof or that they will endure as such under burial or other conditions for a period of fifty years or for any fixed or stated period of time.

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

IN THE MATTER OF  
JACOB STEIN, TRADING AS CLIMAX RUBBER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3  
OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

*Docket 2303. Complaint, Feb. 20, 1935—Order, Jan. 16, 1936*

Where an individual engaged in offer for sale and sale of certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets; Falsely represented - on labels and in printed advertisements thereof and otherwise, that said products were made of rubber with antiseptic and anti-acid properties and powers which actually killed bacteria and neutralized perspiration and other body wastes, completely deodorizing all odors;

With tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said representations were true and to induce the public, because of such erroneous belief, to purchase said products, and with result of furnishing dealers therein with the means of misleading and deceiving the public and inducing purchase of said articles in such erroneous belief and with tendency and capacity to divert trade from competitors to himself and to dealers in his said products:

*Held*, That such practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John W. Hildrop* for the Commission.

*Mr. Nathaniel Phillips*, of New York City, for respondent.

COMPLAINT <sup>1</sup>

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, having reason to believe that Jacob Stein, an individual, trading under the name and style of Climax Rubber Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act", and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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<sup>1</sup> Published as amended Dec. 4, 1935.

## Complaint

*Count I*

PARAGRAPH 1. Respondent, Jacob Stein, is an individual trading and doing business under the name and style of Climax Rubber Company, with his office and principal place of business in the city of Brooklyn in the State of New York. Respondent has been and is engaged in offering for sale and selling to dealers therein and to other persons located at various places in the several States of the United States certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets. Respondent, when said products are sold, causes the same to be transported from his said place of business in the city of Brooklyn, N. Y., to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such products between and among the States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent is in competition with other persons, firms, associations or corporations who are likewise engaged in offering for sale and selling the same, like, or competitive products in commerce between and among the several States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his said business as described in paragraph 1 hereof, and in connection with and aid of so offering for sale and selling his said products, and as an inducement to the purchase thereof, advertises said products above specifically mentioned upon labels thereon, in printed advertisements and otherwise as being made of rubber that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, said rubber and said articles made therefrom do not have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other wastes, completely deodorizing all odors. Said rubber and said articles made therefrom do not have any antiseptic or anti-acid qualities of value, nor have they qualities and powers to neutralize acid perspiration.

PAR. 3. The use by respondent of said method and the false and misleading statements and representations so made by respondent have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said statements and representations are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent furnish to dealers in respondent's said products the means of misleading and

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deceiving the purchasing public into the erroneous belief that said statements are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent have the tendency and capacity to divert trade from the aforesaid competitors of respondent to the respondent and to dealers in respondent's said products.

PAR. 4. 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.

*Count II*

PARAGRAPH 1. Respondent, Jacob Stein, is an individual trading and doing business under the name and style of Climax Rubber Company, with his office and principal place of business in the city of Brooklyn in the State of New York. Respondent has been and is engaged in offering for sale and selling to dealers therein and to other persons located at various places in the several States of the United States certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets. Respondent, when said products are sold, causes the same to be transported from his said place of business in the city of Brooklyn, N. Y., to the purchasers thereof located at points in the State of New York and at points in various other States of the United States and causes said products when so sold to be transported from his principal place of business in the city of Brooklyn, N. Y., to the purchasers thereof in the State of New York and to other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such products in the State of New York and between and among the States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent is in competition with other persons, firms, associations or corporations who are likewise engaged in offering for sale and selling the same, like, or competitive products in commerce between and among the several States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his said business as described in paragraph 1 hereof, and in connection with and in aid of so offering for sale and selling his said products, and as an

inducement to the purchase thereof, advertises said products above specifically mentioned upon labels thereon, in printed advertisements and otherwise as being made of rubber that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, said rubber and said articles made therefrom do not have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. Said rubber and said articles made therefrom do not have any antiseptic or anti-acid qualities of value, nor have they qualities and powers to neutralize acid perspiration.

PAR. 3. The use by respondent of said method and the false and misleading statements and representations so made by respondent have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said statements and representations are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent furnish to dealers in respondent's said products the means of misleading and deceiving the purchasing public into the erroneous belief that said statements are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent have the tendency and capacity to divert trade from the aforesaid competitors of respondent to the respondent and to dealers in respondent's said products.

PAR. 4. Under and pursuant to the provisions of Section 2 of said National Industrial Recovery Act, the President of the United States on the 16th day of June 1933, by his executive order in writing appointed Hugh S. Johnson to be the Administrator for Industrial Recovery under Title I of said Act.

Under and pursuant to the provisions of said National Industrial Recovery Act, the Sanitary and Waterproof Specialties and Manufacturing Association, a trade association, as a representative of the Sanitary and Waterproof Specialties Manufacturing Industry, submitted to the President of the United States an application for the approval of a Code of Fair Competition for the Sanitary and Waterproof Specialties Manufacturing Industry.

Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and proceedings were had, that on the 17th day of March 1934, said Johnson, as such administrator, submitted a certain Code

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of Fair Competition for the Sanitary and Waterproof Specialties Manufacturing Industry to the President of the United States, together with his written report containing an analysis of said code of fair competition, and with his recommendations and findings with respect thereto, wherein said administrator found that the said code of fair competition complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act. The concluding paragraphs of said report are in the following words, to wit:

(c) The Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is an industrial association truly representative of the aforesaid industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

For these reasons the Code has been approved.

Respectfully,

HUGH S. JOHNSON,  
*Administrator.*

MARCH 17, 1934.

Thereafter, and on the 17th day of March 1934, said Hugh S. Johnson, acting on behalf of the President of the United States, made and entered a written order wherein and whereby he adopted and approved the report, recommendations and findings of said administrator, and ordered that said code of fair competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said code became, and still are, the standard of fair competition for the Sanitary and Waterproof Specialties Manufacturing Industry, and became and still are binding upon every member thereof.

Respondent is a member of said industry and its products hereinabove specifically described are products of said industry and are under and within the scope of said code of fair competition for said industry.

PAR. 5. Article VII, Sections 18 and 20 of said code of fair competition are respectively in the following words, to wit:

18. No member of the industry shall publish advertising (whether printed, radio, display or of any other nature), which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any goods (including but without limitation its use, trade mark, grade, quality,



quantity, origin, size, substance, character, nature, finish, material, content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

20. No member of the Industry shall brand or mark or pack any goods in any manner which is intended to or does deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, finish, material content or preparation of such goods.

Notwithstanding said provisions of said Article VII, Sections 18 and 20 of said code, upon labels placed thereon and in printed advertisements in aid of offering for sale and selling the same, and in other ways, respondent represents that said products above described, to wit: Infant bibs, baby pants, and crib sheets, are made of a certain rubber product that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, as hereinabove specifically alleged, said rubber product and said articles made therefrom do not have said properties or powers or any antiseptic or anti-acid properties or powers of any value, and do not kill bacteria or neutralize perspiration or other body wastes or deodorize odors.

PAR. 6. The above alleged methods, acts and practices of the respondent are, and have been in violation of the standard of fair competition to the Sanitary and Waterproof Specialties Manufacturing Industry and particularly in violation of Article VI, Section 3, of the code for that industry. Such violation of such standard in the aforesaid transactions in interstate commerce and in other transactions which affect interstate commerce in the manner set forth herein, are in violation of Section 3 of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the intent and meaning of said Federal Trade Commission Act, as amended.

#### 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 the 20th day of February 1935, issued and served its complaint in this proceeding upon Climax Rubber Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent, Jacob Stein, filed his answer thereto, in which answer he alleged, among other things, that Climax Rubber Company, proceeded against herein as a corporation, was not a corporation, but that he, the said

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Jacob Stein, was an individual trading under the name and style of Climax Rubber Company; and thereafter, to wit, on the 4th day of December 1935, the Federal Trade Commission made and entered an order in this proceeding, amending its complaint by making Jacob Stein, an individual trading under the name and style of Climax Rubber Company, the respondent herein instead of Climax Rubber Company, a corporation. After the filing of answer by respondent, Jacob Stein, as an individual trading under the name and style of Climax Rubber Company, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hildrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Nathaniel Phillips, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual trading under the name and style of Climax Rubber Company, with his office and principal place of business in the city of Brooklyn, in the State of New York. Respondent has been and is engaged in offering for sale and selling to dealers therein and to other persons located at various places in the several States of the United States certain sanitary and waterproof specialties, including infant bibs, baby pants and crib sheets. Respondent, when said products are sold, causes the same to be transported from his said place of business in the city of Brooklyn, N. Y., to purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such products between and among the States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent is in competition with other persons, firms, associations and corporations who are likewise engaged in offering for sale and selling the same, like, or competitive products in commerce between and among the several States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his said business as described in paragraph 1 hereof, and in connection with and in aid of so offering for sale and selling his said products, and as an inducement to the purchase thereof, advertises said products above specifically mentioned upon labels thereon, in printed advertisements and otherwise, as being made of rubber that has antiseptic and anti-acid properties and powers, which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors. In truth and in fact, said rubber and said articles made therefrom do not have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors.

PAR. 3. The use by respondent of said method and the false and misleading statements and representations so made by respondent have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said statements and representations are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent furnish to dealers in respondent's said products the means of misleading and deceiving the purchasing public into the erroneous belief that said statements are true, and to induce the public in and because of such erroneous belief to purchase respondent's said products. Said false and misleading representations so made by respondent have the tendency and capacity to divert trade from the aforesaid competitors of respondent to the respondent and to dealers in respondent's said products.

#### CONCLUSION

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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before Edward M. Averill, an examiner of the Commissioner theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by John W. Hildrop, counsel for the Commission, and by Nathaniel Phillips, counsel for the respondent, and

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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 ordered*, That the respondent, his agents, servants and employees, in the advertising, sale and distribution in interstate commerce of his commodities, including infant bibs, baby pants and crib sheets, and other sanitary and waterproof specialties, cease and desist from:

Advertising and representing, by labels, printed advertisements, circulars, hand bills, circular letters, advertisements in newspapers and magazines, through radio broadcasts, and by any other method, manner or device:

(a) That respondent's said commodities have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors.

(b) That respondent's said commodities actually kill bacteria.

(c) That respondent's said commodities neutralize perspiration and other body wastes, completely deodorizing all odors.

(d) That the products of respondent have any antiseptic or anti-acid qualities or powers sufficient to entirely kill bacteria, neutralize perspiration and other body wastes and to completely deodorize all other odors.

*It is further ordered*, That Count II of the complaint be, and the same is hereby dismissed.

*And it is hereby further ordered*, That the said respondent, Jacob Stein, an individual trading under the name and style of Climax Rubber Company, shall within 60 days after the service upon him of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which he shall have complied with the order to cease and desist hereinbefore set forth.

## Syllabus

IN THE MATTER OF  
WILLIAMS BROS. TAILORING CORP.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2311. Complaint, Mar. 4, 1935—Decision, Jan. 16, 1936*

Where a corporation engaged in the manufacture of men's clothing and in the sale thereof through local agents whom it obtained through advertisements in periodicals and newspapers and supplied with kits consisting of sales instructions, style book, testimonials, sample swatches, order blanks, tape measures, and other things, and with whom, as with its customers solicited by them, it had no personal contact—

- (a) Set forth upon said order blanks detailed instructions for various measurements, for use, purportedly, in ordering clothes made to individual measurements of purchaser, published in trade literature furnished salesmen such statements as "dependably tailored, \* \* \* direct from a famous New York tailoring house, \* \* \* all orders \* \* \* accurately filled, \* \* \* designed, cut and built by expert craftsmen, hand tailored at important points", "that look of quality that only custom tailored garments can give", and "from maker to wearer direct", and in a book supplied agents for purchaser's examination, set forth the words "custom tailored" and such statements as "fashions correctly designed for men and young men", "the very newest models", "the up-to-the-minute style in your \* \* \* suit is needled into it to last for the life of the garment", and the unqualified declaration that the suits were made to the measure of individual, etc.;

The facts being that said clothes were not, for the most part, made to individual measure or custom tailored, but it was its practice to finish 75 per cent of its said garments, except for bottoms of pants and sleeves, and after receipt of orders, to select and alter such ready-made garments according to measurements received, and only 25 per cent, involving unusual or abnormal sizes or higher prices, were made to special orders according to the individual measurements;

- (b) Set forth upon said order blanks upon the same side as called for customer's measurements and signature, its so-called "iron-clad guarantee", stating that garments were made in latest style, were designed, cut and built by expert union craftsmen in modern daylight shops, and all orders were accurately filled; and in a conspicuous place in advertising literature, to be shown by agents to prospective purchasers but not retained by them, stated that, in order "that we may merit your confidence we back your purchase with a \$25,000 guarantee bond binding us to give you a garment that will entirely please you in fabric, fashion, fit and wearing quality or return the money we received";

The facts being that on the reverse of the aforesaid order blank, not mentioned to or seen by customer before signing the order, was a condition denying right to refund for clothes' failure to fit until it had been given a second trial and failed to give satisfaction a second time, and agents and customers found it difficult or impossible to secure satisfactory alterations of

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garments which failed to conform to measurements or selections as to pattern or fabric, or to secure either refund of money paid or satisfactory new garments;

With capacity and tendency to mislead and deceive the purchasing public into the belief that said representations were true and into the purchase of garments from it in reliance on such erroneous belief, and to divert trade to it from competitors who sell garments truthfully represented, advertised and described:

*Held*, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition. .

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. James M. Brinson* for the Commission.

*Mr. Meyer D. Siegel*, of New York City, for respondent.

## COMPLAINT

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 having reason to believe that Williams Bros. Tailoring Corp., hereinafter designated respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Williams Bros. Tailoring Corp., has been since 1927, and now is, a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located in the city of Troy and State aforesaid.

It has been for several years last past, and now is, engaged in the manufacture of men's clothes of the type commonly known as ready made clothes, and in their sale and distribution in commerce among and between the State of New York and the various other States of the United States and the District of Columbia. It has caused and causes its said clothes when sold to be transported, usually in the mails of the United States, from its said place of business, into and through the various States of the United States and the District of Columbia, other than the State of New York, to purchasers at their respective points of location.

In the course and conduct of such business respondent has been and is in competition with individuals, partnerships and corporations offering for sale and selling men's clothes in interstate commerce.

PAR. 2. Respondent has conducted its business under various trade names, among which were Avenue Tailoring Company, Mastercraft Tailors, Empire State Tailors, Metro Tailors, and Olympic Tailors, until 1930, since which time its business has been conducted under the corporate name, Williams Bros. Tailoring Corp.

In the course and conduct of such business it has offered for sale and sold its men's clothes by means of salesmen or agents employed by it in the various States of the United States, to secure orders from purchasers and prospective purchasers by direct solicitation. Orders so obtained have been and are forwarded to respondent at its place of business in Troy, N. Y. Respondent has supplied and continues to supply its salesmen or agents with swatch books, style books, order blanks, and other equipment necessary or useful to them in seeking orders for its clothes, and it has been and is the practice of its salesmen or agents to use such equipment for said purpose. The order blanks so furnished its salesmen or agents, and which have been and are used by them, bear or contain detailed instructions for measurements of men, and otherwise purport to be for use in connection with ordering tailor made clothes, tailored clothes, or clothes made in accordance with individual measurements of the purchasers. It has been and is the practice of salesmen or agents of respondents to display such order blanks to purchasers and prospective purchasers, which blanks also carry the corporate title of respondent, to wit, Williams Bros. Tailoring Corp.

In the course and conduct of its said business respondent, its salesmen and agents, as inducements for the purchase of respondent's men's clothes, have made false representations and statements to the effect that clothes furnished by respondent in response to orders received from purchasers and prospective purchasers were, would be and are tailored, or tailor made, that is to say, made according to the individual measurements of purchasers after receipt of their orders from and out of the cloth or fabric selected by purchasers and specified in their orders. Respondent has prepared, caused to be distributed and distributes, among and through its salesmen or agents, printed matter which implies or imports that clothes sold by respondent have been, are and will be tailor made, or tailored, or made according to the individual measurements of purchasers after receipt of their orders. Among the expressions and phrases referring to the products of respondent in such printed matter are the following: "Dependably tailored, perfectly styled" \* \* \* "Direct from a famous New York tailoring house," "Hand Tailoring", "All orders are accurately filled; all garments are designed, cut and built by ex-

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pert craftsmen", and "Hand tailoring at important points" \* \* \* "Assures a snug fit and easy drape", and "That look of quality that only custom tailored garments can give," Swatch cards distributed by respondent or its salesmen or agents bear the slogan "From Maker Direct to Wearer."

Respondent has in connection with the offering for sale and sale of its clothes in the regular course and conduct of its business described and referred to its products, or some of them, as "Finest all virgin wool worsteds", "The cream of the looms in De Luxe virgin wool worsteds", "Hard worsted suits", and "All wool worsted line." It has been its practice to distribute swatch cards bearing a pictorial representation of a sheep's head, around which have been and are inscribed the words "Pure Wool Fabric." It has been and is the practice of respondent also, in connection with offering for sale and selling its clothes, to represent that it furnishes "Complete satisfaction, or 100 per cent guarantee."

In truth and in fact suits sold and distributed by respondent in commerce among and between the State of New York and the various other States of the United States and the District of Columbia have not been, were not, and are not tailored, or tailor made, or made according to individual measurements of the purchaser, or made to order, but have been, were, and are suits or clothes of the so-called stock kind or type commonly known and described as ready made clothes.

It has been and is the practice of respondent to select from clothes already made garments which appear in a general way to come near the measurements given in the orders and thereupon to deliver them to purchasers without regard for or reference to measurements specified in the orders received.

Respondent has also delivered to purchasers ordering clothes from it suits which have not been, were not, and are not made from or out of cloth corresponding with the sample exhibited by its agents or salesmen and selected by the purchasers, but have been made from and out of cloth or fabric cheaper than, or inferior to, that so selected by the purchaser, and also different in color and style from the requirements or specifications of the orders received.

In truth and in fact the clothes offered for sale and sold by respondent and so represented as wool or worsted have not been and are not, in numerous instances, made from or out of wool entirely but have been and are composed to a substantial extent of a material or materials other than wool, and in numerous instances respondent has failed either to fill orders as received or in accordance with specifications of the orders, or to alter clothes failing to fit the purchaser, or to refund



the money paid by purchasers, or to furnish complete or any satisfaction to them, or to support or fulfill its guarantee either to the extent of 100 per cent or at all.

PAR. 3. There are individuals, partnerships and corporations offering for sale and selling in commerce among and between the various States of the United States men's clothes of various kinds in competition with respondent.

PAR. 4. The above and foregoing practices of respondent have had, and have, and each of them has had, and has, the capacity and tendency to mislead and deceive the public into the belief that clothes ordered from respondent would be tailor made, or tailored, or made according to the individual measurements of purchasers after receipt of orders, from and out of cloth or fabric selected by purchasers, and in numerous instances out of woolen cloth or worsted and that purchasers would be satisfied by respondent or their money refunded, and into the purchase of such clothes in reliance on such erroneous belief.

The aforesaid practices of respondent have had, and have, and each of them has had, and has, the capacity and tendency to divert trade from competitors offering for sale and selling men's clothes in interstate commerce by truthful representations.

PAR. 5. The above and foregoing acts and 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 interstate commerce in violation of the provisions of Section 5 of an Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

#### 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 the 4th day of March, A. D. 1935, issued and served its complaint in this proceeding upon respondent, Williams Bros. Tailoring Corp., a corporation, charging it with the use of unfair methods of competition in violation of the provisions of said Act.

After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by James M. Brinson, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission, theretofore duly designated by it and in defense of the

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allegations of the complaint by Meyer D. Siegel, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Williams Bros. Tailoring Corp., has been since 1927 and now is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located in the city of New York and State of New York, while its plant for the manufacture of said product hereinafter described is located at Troy in said State.

Respondent has been for several years last past, and now is, engaged in the manufacture of men's clothes, and in their sale and distribution in commerce among and between the State of New York and the various other States of the United States and in the District of Columbia. It has caused and causes its said clothes, when sold, to be transported, usually in the mails of the United States, from its said place of business into and through the various States of the United States and the District of Columbia, to purchasers at their respective points of location.

In the course and conduct of such business respondent has been and is in competition with individuals, partnerships and corporations offering for sale and selling men's clothes in interstate commerce.

PAR. 2. It has been and is the practice of respondent to offer for sale and sell its men's clothes by means of or through local agents in the various States of the United States. Respondent obtains such agents through advertisements in magazines or newspapers. Anyone answering the advertisements of respondent for agents must furnish the information required in a form of application which is furnished him by respondent. After examination of this application respondent thereupon consults a confidential black list of unsatisfactory and dishonest salesmen supplied by the National Association of Direct Selling Companies, of which respondent is a member. If the name of the applicant for the position of an agent of respondent is not found in such list, such applicant thereupon is appointed an agent

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by respondent, provided it is satisfied with the information the applicant has supplied on the blank form of application furnished him by respondent. All transactions of respondent in connection with the sale of its clothes and all communications with its agents and customers are conducted through the mail. There is no personal contact between the customer of respondent and respondent, or between respondent and its said local agents.

In the course and conduct of its business respondent furnishes and delivers to each of its local agents or canvassers at a substantial cost to the respondent, a salesman's kit or salesman's case containing the following material:

- a. Booklet entitled "Sales Instruction for representatives of Williams Bros. Tailoring Corp.";
- b. Style book consisting of a 13-page fashion plate book of the current modes and style garments, each plate and style being appropriately numbered for the purpose of identification;
- c. A booklet of testimonials captioned "Your Questions Answered";
- d. Folder containing advertising matter, giving specifications as to the quality of material used and character of recommendation;
- e. Sample swatches of materials, each appropriately numbered and labeled, setting forth the type, quality of merchandise, and whether wool, worsted, hard worsted, or otherwise;
- f. Card containing samples and swatches of linings;
- g. Order blanks appended to which is a receipt and contract for the customer;
- h. Pad of blanks for agents' correspondence with office;
- i. Tape measure and transparent gauge for measurements;
- j. Self-addressed cards and envelopes to facilitate correspondence of agents.

It has been and is the practice of the agents of respondent to use such equipment in soliciting purchasers for the clothes manufactured and sold by respondent.

The order blanks which respondent furnishes its agents and which it has been the practice of such agents to employ in soliciting purchasers of the product of respondent, contain detailed instructions for measurements of men and purport to be for use in connection with ordering clothes made in accordance with the individual measurements of the purchasers. They contain representations of various sections of the male form appearing to be in process of measurement. The form furnished by respondent for such purpose requires a statement thereon by the agent as to whether or not the purchaser is erect with full chest and flat back; or has regular chest and back; or regular chest and head forward; or is stooping with flat chest, with prominent blades; or is thick-set with regular back and chest; or is corpulent, full back and flat chest; or is corpulent, flat back and full chest. It requires information as to whether the purchaser has regular or stooping shoulders or high shoulders and

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short neck; or medium high shoulders and short neck. Information is also required on the blank as to whether the customer is tall, regular, or short, and as to whether the customer chooses the tight fit, medium fit or loose fit; as to whether he prefers cuffs on the pants or belt loops or suspenders. This order blank also requires the signature of the purchaser, who thereby at least is enabled to notice the above mentioned pictorial representations and to observe immediately above his signature the statement by respondent that the customer is entitled to the protection of respondent's falsely so-called iron-clad guarantee as hereinafter explained.

On the said receipt itself of the order or such blank which respondent gives the customer or purchaser appears a guarantee and among other things guaranteed is that garments are made in latest style; that all orders are accurately filled; that all garments are designed, cut and built by expert union craftsmen in modern daylight shops. But as hereafter appears, the receipt which is given the purchaser only after he has signed the order and paid the required deposit, contains on its face certain conditions and instructions not to be found on its back where the signature of the customer is attached and not mentioned before the order is signed or given. Among such conditions or instructions is a denial of any right on the part of purchaser to a refund because the clothes failed to fit, until respondent has been given a second trial and a second failure to fit follows the first failure. Yet at a conspicuous place in its advertising literature which agents of respondent are instructed to show and which they do show the prospective purchaser, but not to retain like the receipt detached from the order blank, appears the following:

However, so that we may merit your confidence we back your purchase with a \$25,000 guarantee bond binding us to give you a garment that will entirely please you in fabric, fashion, fit and wearing quality or return the money we received.

There is no reference in such advertising matter to any restriction or any condition. There is no reference to the fact that respondent has required or will require a second trial when the first trial is unsatisfactory, in order to entitle the purchasers or consumers to a refund of their money.

There is no request by respondent or its agents that, before receiving the receipt detached from the order, the language on the face of the receipt should be read, and as a matter of fact the time for reading such language before signing the order is circumscribed and limited.

The agents by whom respondent introduces and sells its products usually number about one hundred. Each of the agents representing respondent has, among the equipment in the salesman's kit which is

furnished him, literature of various kinds containing representations of which the following may be taken as typical: "Dependably tailored, perfectly tailored" \* \* \* "direct from a famous New York Tailoring House" \* \* \* "hand tailoring" \* \* \* "all orders are accurately filled, all garments are designed, cut and built by expert craftsmen, hand tailored at important points" \* \* \* "assures a snug fit and easy drape", \* \* \* "that look of quality that only custom tailored garments can give", and "from maker to wearer direct."

There is on the first page of the book furnished agents the statement "Fashions correctly designed for men and young men", also an invitation from respondent to examine "the very newest models which all men conversant with tailoring fashions will immediately recognize as being correct." There is a clear and significant instruction for the purchaser to examine with care such book. In this book there appears the unadulterated declaration that its suits are manufactured according to the measurement of the individual, which is the significance and meaning of the words "custom tailored" the words actually employed by respondent on the first page of such book. There also appears in the publication of respondent distributed among purchasers and prospective purchasers the statement "the up-to-the-minute style in your Williams Brothers suit is needled into it to last for the life of the garment, the style, shape and drape of your Williams Brothers suit will not merely be pressed with an iron but will be actually tailored into each seam. You can expect your Williams Brothers suit to hold its style, shape and perfect drape from the very first day you put it on and to last many months." This representation is formulated and designed to convey the impression to the purchaser and prospective purchaser that Williams Brothers suits or clothes have needled into them for the life of the suits or clothes a something which carries with it a capacity which enables them to hold their style, shape and perfect drape from the first day you put them on to the last, many months later.

In truth and in fact the men's clothes manufactured and sold by respondent have not for the most part been made according to the individual measurements of the purchaser, have not been tailored, have not been custom tailored. It has been the practice of respondent to make special orders according to the measurements of the individuals in the case of unusual or abnormal sizes or in cases where a higher price has been made for such garment in accordance with the rules and the advertisements of respondent. These instances of garments especially made according to the individual measurements, or in other orders for custom tailored clothes have been about twenty-five per cent of the amount of garments manufactured and sold by respondent.

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On the whole, the business of respondent has been conducted upon an entirely different basis and seventy-five per cent of the garments manufactured and sold by respondent have not been custom tailored or tailored or made according to the measurements of the individual. The suits manufactured by respondent and used by it in the course and conduct of its usual business have not been made according to measurements of the purchasers or hand made or custom tailored. It has been and is the practice of the respondent when orders are received to cause an examination to be made of the clothes already manufactured by it and to determine from such examination which of the garments, if any, most closely corresponds with the measurements of the order or orders received.

These clothes are not semi-finished because there remains nothing to be done for their completion to render them ready-made clothes except the alteration of the pants at the bottom and of the sleeves at the bottom, all of which are left unfinished in order to enable respondents upon receipt of the orders to adjust them in accordance therewith. These suits after receipt of the orders therefor are subjected to alteration to a greater or lesser extent; sometimes the alterations occur about the neck or shoulder, sometimes in other parts of the suit, but in every instance this seventy-five percentage of the business of respondent consists of the sale of suits practically ready-made and altered to conform to measurements received from respondent.

They are not made according to measurements because at the time they are made the measurements have not been taken. They are not hand tailored or custom tailored because respondent has no method by which to anticipate the measurements of the individuals for whom they are made. They are manufactured for individuals en masse according to certain standard measurements. Even if some particular suit should comply absolutely with the measurements received it would not in such case be made to order or tailor made or custom tailor made, it would simply be a ready-made suit whose measurements corresponded with the measurements of the purchaser.

It is admitted that agents of respondent used this literature furnished by respondent and in which respondent used the representations relative to custom tailored clothes and to its guarantees. In the trial of this case respondent failed to produce any agents who failed to follow the instructions and representations in the literature furnished them by respondent, that is to say, respondent failed to show or produce any agent who failed to misrepresent the products of respondent just as respondent misrepresented them and just as respondent authorized its agents to misrepresent them in its adver-

tising literature. Indeed, there were no agents produced by respondent to testify as to the methods and practices of respondent except the agents introduced as witnesses by the Commission.

One of them, Joseph A. Ouellette testified that while acting as agent for the respondent he sold twenty-one suits and that only two of them were fits, that he had a local tailor make alterations for which he paid twenty dollars and was only able to procure two dollars and fifty cents of this amount from respondent. He testified that he sent the first suit back to respondent for alterations but after waiting six weeks or two months for its return he had further alterations made by local tailors and that he told the customers the suits would be made according to their measurements and that he guaranteed the fit, but that the suits received from respondent by his customers were a disgrace to him.

Another witness, H. E. Carrick, testified that he sold the clothing of respondent for a year, that he measured the customers and he left the impression on their minds that the suits would be made to measure but he did not so state, but that if any of the customers asked him he would say that the suits were to be an altered proposition; that he sold five or six suits and received no complaints concerning them except in one instance where the coat was too short, otherwise the suit was all right.

W. R. Hightower testified that he acted as agent of respondent in 1932 and 1933; and that he was instructed by respondent that the suits were made to measure and guaranteed to fit, that he so represented to his customers. He sold fourteen to sixteen suits and because they were all unsatisfactory he quit. That he saw only two of the suits sold by him, that they did not fit, that he received complaints from all of his other customers that they told him the suits received were not made from the materials selected by them, that he checked the two suits he sold with the measurements taken by him and he found that they did not correspond with his measurements and he advised the respondent that they did not fit, and received no reply.

W. T. Matthews testified that he acted as agent for respondent in February 1933, that he sold six or eight suits, that he had been in the clothing business since 1909 and had experience in taking measurements for clothes and the measurements taken were strictly in accordance with the order blank furnished by respondent, that he told the customers that the suits would be made to measure and he guaranteed a proper fit, that he sold one suit to a farmer's boy which did not fit but the customer was easily pleased and kept it. He sold a suit to his son which did not fit and his son sold the suit, and that he saw a customer try on one of the suits that he sold him and it did not fit at all and he compared the suit with the measurements taken by him

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and found a substantial variation. The suit was returned and the one sent in exchange was also unsatisfactory. That a suit sold to one customer did not fit and the customer paid five dollars and seventy-five cents to have the suit altered, and that he sold one suit which was not delivered stating that it had not been received, and the respondent stating that it had not received the order, so he refunded the deposit.

Peter Dalke testified that he acted as respondent's agent in 1932 and 1933, that he sold nine suits, that he measured the customers and guaranteed the fit, that four of the suits he sold were satisfactory except that in one case the trousers were not exactly the right length, that one of the suits sold was made of a cloth different from and inferior to the sample selected and did not fit, that he compared that suit with his measurements and there was a vast difference, that he complained a number of times to the respondent concerning this suit and wrote the postal authorities, and after nearly a year another suit was sent in exchange. This was a pretty good fit. That one suit which was sold by him fit very well, that one customer complained that his suit did not fit but that witness did not see it, that the cloth in one suit was different from that ordered and the suit did not fit, another was sent in its place and was made of the cloth selected but the coat was too small and the customer said that rather than send it back he would have it fixed by a tailor. That another suit sold by him did not fit and he found they did not correspond with his measurements but the customer accepted it.

PAR. 3. There are now and for several years last past have been individuals, partnerships and corporations offering for sale and selling in interstate commerce in competition with respondent men's clothing or men's garments truthfully represented, advertised or described.

PAR. 4. The above and foregoing representations of respondent as described in paragraph 2 hereof have had and have and each of them has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that they were and are true and into the purchase of clothes or garments from respondent in reliance upon such erroneous belief.

Such representations have also had and have the capacity and tendency to divert to respondent trade from competitors described in paragraph 3 hereof.

## CONCLUSION

The above and foregoing acts and practices of respondent as described in paragraph 2 have been and are and each of them has been and is, all to the prejudice of the public and of respondent's competitors, and they have been and are unfair methods of competi-



tion 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 respondent, testimony and evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, and in opposition thereto, briefs filed herein and oral arguments by James M. Brinson, counsel for the Commission, and by Meyer D. Siegel, counsel 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 ordered*, That the respondent, Williams Bros. Tailoring Corp., its officers, agents, employees and representatives, in connection with offering for sale or selling men's clothes in interstate commerce, cease and desist, directly or indirectly, from:

(1) Representing that the men's clothes offered for sale or sold by it have been or are made to order according to the individual measurements of the purchaser, that is, have been or are custom tailored, unless and until it has become and is the established policy and practice of respondent that all clothes represented as custom tailored or made according to the individual measurements of purchasers have been and are so made after receipt of orders therefor.

(2) Failing to refund promptly to purchasers of its clothes money received therefor when notified or by any other means informed that the clothes sold by it have not been and are not custom tailored clothes made according to the measurements of the individual purchaser after receipt of the order therefor, or when informed that said clothes do not please the customer in fabric, fashion, fit or wearing quality after respondent has so represented or guaranteed.

*It is further ordered*, That the respondent shall within 30 days after 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 complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF  
W. J. THOMPSON, INC.

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

*Docket 2570. Complaint, Oct. 7, 1935—Order, Jan. 17, 1936*

Consent order requiring respondent, its officers, etc., in connection with the offer or sale of any publication in interstate commerce to cease and desist from—

- (a) Representing, directly or otherwise, that a person solving a problem presented in an advertisement and sending said solution to it will, without being required to do any other thing, be given a prize or reward, when such is not the case, or that the mere mailing of the correct solution of the problem presented in an advertisement of a puzzle prize contest will be sufficient to win the first, or any other, prize therein, when such is not the case;
- (b) Representing, etc., that it will give to the winner of any puzzle prize contest an extra award for promptness and, inferentially or otherwise, that such extra award is a separate and distinct one when in fact included within that advertised as the prize to be awarded, or issuing any writing to a person interested in any such contest which purports to be a certificate or other evidence of recipient's right to a prize or states on the face thereof "First Prize Certificate", at any time prior to the actual awarding of first prize, or representing that a contestant in any such contest has achieved a more advanced position toward success therein than is the fact;
- (c) Using in any such puzzle prize form of contest any progressive plan to secure subscriptions to its publications unless every step or stage of the plan is clearly set forth in the initial or contact advertisement or first mailing to the prospect before any money or service is accepted, showing exactly what will be required of the prospect or what compensation or reward will be given for each act or payment required in contending for a prize, award, premium, gift, or reward; or
- (d) Publishing the rules of any puzzle prize contest in other than clear and readable type.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. T. H. Kennedy* for the Commission.

*Black, Varian & Simon*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions 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, the Federal Trade Commission, having reason to believe that W. J. Thompson, Inc., a corporation, hereinafter referred to as respondent,

has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, W. J. Thompson, Inc., is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of New York, and now has its principal place of business at New York City, N. Y.

Respondent has been for more than a year last past and now is engaged in the business of publishing and selling a magazine of general circulation designated "The Gentlewoman." Respondent causes said magazine when so sold and when offering it for sale, to be transported from the State of New York or other State of publication into other States of the United States to purchasers or prospective purchasers thereof situated in said other States. In the course and conduct of said business respondent has been and is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation in interstate commerce of the same and similar articles of commerce.

PAR. 2. It has been and is the practice of respondent in the course and conduct of its business as aforesaid, to conduct a so-called "At Home Travel Game", the purpose of which is the securing of subscribers for and the promoting and augmenting the sale of its magazine in interstate commerce. The particular feature of said "At Home Travel Game" has been and is a puzzle prize form of advertising, and other contests. It has caused such form of advertising to appear in various magazines, including its own, "The Gentlewoman", and newspapers of general circulation in the United States, said publication being at the time of said advertising engaged in interstate commerce. Respondent has mailed letters and advertising literature in the furtherance of its said "At Home Travel Game" to various persons throughout the United States.

In such advertisements, letters, and advertising literature, respondent has made and continues to make, false and misleading statements and representations in reference to its prize contests and the results of participating therein, in its advertisements, letters, literature and otherwise, or has omitted to state essential facts necessary to prevent the reader from obtaining a false impression of the contest, to the following effect, to wit: In its initial or contact advertisement respondent represents that the sum of \$3,500 is to be given away in 35 cash prizes, ranging from \$1,500, the amount of the first prize, down to \$15.00 for each of the last 21 prizes; that in said contact

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advertisement the impression is given that the method of determining the winner is by counting the number of points on a map included in said contact advertisement that contestant can touch in drawing a continuous line thereon. However, in truth and in fact, success of contestant in completing the line on said map in said contact advertisement does not result in contestant's receiving a prize, but merely in contestant's receiving a certificate awarding him "200 points" out of a necessary 300.

The contestant also receives a "qualification blank" entitling contestant to 65 more points, provided contestant secures \$5.00 worth of subscriptions to respondent's magazine. Contestant is permitted to retain \$1.00 of the \$5.00 as commission. The said certificate for 200 points and qualification blank are of no value to contestant until and unless he secures \$5.00 worth of subscriptions and forwards them to respondent.

As another step in the progress of respondent's game, the contestant is informed that he may participate in what is called a two-prize contest, by which he would have a chance to win an extra \$1,000, making \$2,500 in all, provided he sends in still another \$5.00 worth of subscriptions and remits \$4.00 in payment of the same.

In all the advertising matter it is stated that \$500 extra will be given for promptness, but in fact this \$500 is included in the \$1,500 first prize, although not clearly indicated in said advertising matter.

In respondent's initial or contact advertisement, respondent has failed to set forth the substance of the rules governing said contest.

A reader reasonably infers from reading said initial or contact advertisement that a mere mailing of a correct solution of the puzzle submitted in said contact advertisement will be sufficient to win a prize, when in truth and in fact said solution of said contact advertisement does not entitle a contestant to win any prize at all.

The respondent has failed to award units of credit toward winning a prize in said contest in a fair and equitable manner, in that the credits do not represent a proportionate expenditure of money or personal service required to win any other number of points or units in any other step or stage of the contest.

Respondent has used and does use a progressive plan to secure subscriptions for its magazine, as a result of contacts established through its said initial or contact advertisement, without stating in said contact advertisement the steps and stages of the plan, and thereby obtains the services of many readers and contestants which it would not have obtained if all of the stages of its said plan were clearly set forth in said initial or contact advertisement.

## Complaint

The following extracts from advertisements or literature sent to or read by the readers of respondent's magazine vividly illustrate respondent's methods in regard to the complained of acts:

**YOUR OPPORTUNITY TO WIN \$1,500.00 INCLUDING \$500.00 EXTRA FOR PROMPTNESS.**

\$3,500.00 in CASH PRIZES will be awarded in this fascinating At Home Travel Game.

Opportunities like this one come seldom; Neglected they are always regretted. Here is offered an opportunity of a lifetime—an opportunity for you to lay the foundation for future happiness and independence—an opportunity to win \$1,500.00 CASH, including \$500.00 CASH extra for promptness. Absolutely \$1,500.00 CASH! That seems like a large sum of money to win, and it is—but even so this is the reward that positively will be given to the First Prize Winner in this \$3,500.00 Prize Travel Game.

You will find this travel Game interesting and enjoyable. It is your opportunity to Play, Learn and Win a share in more than \$3,500.00 CASH PRIZES to be awarded to Thirty-Five Winners.

## CASH PRIZES

1st PRIZE----- \$1,000 CASH

2nd PRIZE----- \$1,000 CASH

3rd PRIZE----- \$250.00 CASH

4th PRIZE----- 150.00 CASH

5th PRIZE----- 100.00 CASH

6th PRIZE----- 75.00 CASH

7th PRIZE----- 50.00 CASH

8th PRIZE----- 20.00 CASH

9th PRIZE----- 20.00 CASH

10th PRIZE----- 20.00 CASH

11th PRIZE----- 20.00 CASH

12th PRIZE----- 20.00 CASH

13th PRIZE----- 20.00 CASH

14th PRIZE----- 20.00 CASH

15th PRIZE----- 15.00

16th PRIZE----- 15.00

17th PRIZE----- 15.00

18th PRIZE----- 15.00

19th PRIZE----- 15.00

20th PRIZE----- 15.00

21st PRIZE----- 15.00

22nd PRIZE----- 15.00

23rd PRIZE----- 15.00

24th PRIZE----- 15.00

25th PRIZE----- 15.00

26th PRIZE----- 15.00

27th PRIZE----- 15.00

28th PRIZE----- 15.00

29th PRIZE----- 15.00

30th PRIZE----- 15.00

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31st PRIZE	-----	\$15.00
32nd PRIZE	-----	15.00
33rd PRIZE	-----	15.00
34th PRIZE	-----	15.00
35th PRIZE	-----	15.00

TOTAL ALL PRIZES \$3,500.00

Prize Manager, V. H.  
154 West 14th St.,  
New York City, N. Y.

I have marked my path showing I have visited ----- "N" Places. If correct let me know at once how I may gain the remaining 100 points to win First Prize.

Name-----

Address-----

HOW MANY NAMES OF CITIES IN WHICH THE LETTER "N" APPEARS LIKE NEW YORK, NEW ORLEANS, PORTLAND, ETC., CAN YOU CONNECT WITHOUT CROSSING YOUR PATH ? ? ?

Above is a Map on which a number of Cities are shown. Without any trouble you can find New York, Nashville, Naples, all of which contain the Letter "N" in the spelling of the names. The others are just as easy to find but the idea is to see who can draw a continuous line from "dot" to "dot" and connect the MOST "N" cities, making sure that your line between "dots" is straight.

Start from New York and finish your Path at New York, including it but once in your count. Go in any direction with your Path, up or down, anyway you like, but do not cross your Path at any point. Players must submit their Maps, giving total number of "N" cities reached and Path marked with pen or pencil in a straight line from "dot" to "dot."

A First Prize of \$1,500.00 including \$500.00 Extra for Promptness will be awarded! In all more than \$3,500.00 in CASH may be won in this Travel Game. Closing date for entries November 30th, 1934.

There will be Thirty-five Winners. The First Prize, the Golden Opportunity is \$1,000.00 cash (plus \$500.00 Extra for promptness) a total of \$1,500.00. You should act quickly—remember the \$500.00 extra for promptness.

If there is a tie for any prize in the final award, the full amount of the prize tied for will be paid to each player so tied. Anyone who in any contest has won as much as \$100.00 in Cash or Merchandise is not eligible to participate in this Travel Game.

#### A FEW THINGS YOU CAN DO WITH \$1,500.00 CASH

FIFTEEN HUNDRED DOLLARS is the back-bone of success. With this large sum of money a person can forge ahead. It paves many avenues to a bright future.

For example:

- \* TRAVEL TAKE AN OCEAN TRIP.
- \* PAYMENT ON A NEW HOME NEW FURNISHINGS FOR YOUR HOME.
- \* \$1,500.00 WILL START A BUSINESS OF YOUR OWN,
- \* \$1,500.00 WILL PAY FOR AN EDUCATION FOR YOURSELF OR CHILDREN.
- \* \$1,500.00 WILL BUY A FINE NEW AUTOMOBILE.
- \* \$1,500.00 WILL BUY GORGEOUS FURS AND NEW CLOTHES. GET YOUR SHARE OF MORE THAN \$3,500.00 CASH PRIZES.

## Complaint

300 POINTS will positively win first prize. I will give you 200 points for sending in the correct answer to this Travel Game Map. Promptly on receipt of your correct answer I will tell you how you may gain the remaining 100 points to win \$1,500.00 in CASH including \$500.00 extra for promptness. Mail your Map answers to:

M. McPHILLIPS, Prize Manager, Room V, 154 West 14th St., New York, N. Y.

Following response to this advertisement a certificate for 200 points is issued to the party responding:

A "Qualification Blank" for 65 more points for sending in \$5.00 worth of subscriptions to the Gentlewoman Magazine;

A sheet upon which the "Rules and Instructions" are printed, showing how 300 points may win \$1,500.00;

"This is just a straight out and out Prize offer to help advertise our business", and urging the party to earn 65 more points; and

"You are now well on your way toward getting the 300 points that will win the First Prize of \$1,500"; and

"Notice the date stamped on the Qualifying blank and be sure to mail it together with your subscriptions *not Later Than the Date Shown Therein* if you wish to get 65 more points, making your total 265 points toward First Prize."

Rule 6. "If there is a tie for the final 35 points or any lesser number of points, there will be, up to the total number of prizes offered, as many prizes reserved as there are Players tied before any Prizes are awarded for an Answer earning a lesser number of points. That is, if two or more Players should tie for the final 35 points by submitting the same total of E=Places reached in their continuous Path, the first two or more Prizes will be reserved for them and will be awarded in the order of the best answers of such Players to a third and final Map. Should ties then still exist the one who has reached the largest number of Places and whose Path measures the greatest number of inches will be declared the winner of the final 35 points and First Prize. The second best answer will then earn 34 points and Second Prize, etc. Then should ties still exist, identical prizes will be awarded."

PAR. 3. In truth and in fact the advertisements and literature are either wholly false, grossly exaggerated, or characterized by withholding and concealing facts that should be disclosed.

The contact advertisement fails to notify the reader that he will not receive \$1,500 including \$500 or any other prize for promptness if he is successful in marking the map included in said advertisement, and there is nothing to show that the reader must obtain subscriptions to respondent's magazine.

The scheme herein described and indulged in by the respondent results in obtaining a mailing list for the promotion of respondent's business, whereas the reader of the initial advertisement is led to believe that the respondent's purpose is to award the reader a prize for successfully connecting points on a map appearing in respondent's initial advertisement.

This is a selling campaign and not an advertising campaign, as prospect is first led to believe.

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There is no advantage in responding to the initial advertisement or requirements of the rules later learned by the contestant quickly to qualify for the promptness prize, inasmuch as the time limit is extended for laggards.

PAR. 4. The practices of respondent described herein and each of them has had and they now have and each of them has the capacity and tendency to mislead and deceive the public into participation in the contest conducted by the respondent, and into rendering services to the respondent in the erroneous belief of and reliance on the aforesaid representations of the respondent.

Such practices of respondent have also had and now have the capacity and tendency to divert subscriptions to it from competitors who have been and now are selling publications in interstate commerce by fair and truthful representations and methods.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent 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

The respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

*It is hereby ordered,* That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint and the Commission being fully advised in the premises.



## Order

*It is hereby further ordered*, That respondent, W. J. Thompson, Inc., a corporation, its officers, agents, representatives and employees, in connection with the offering for sale or sale of any publication in interstate commerce do cease and desist from:

(a) Representing directly or otherwise that a person solving a problem presented in an advertisement and sending said solution to respondent will without being required to do any other thing be given a prize, award or reward when such representation is not true.

(b) Representing directly; or otherwise that respondent will give to the winner of any puzzle prize contest an extra award for "promptness" and inferentially or otherwise that said extra award is a separate and distinct award, when in fact said so-called extra award is included within the award advertised as the prize to be awarded.

(c) Representing directly or otherwise that the mere mailing of a correct solution of the problem presented in an advertisement of a puzzle prize contest will be sufficient to win the first or any other prize in said contest, when in truth and in fact said representation is untrue.

(d) The issuance of any writing to a person interested in any puzzle prize form of contest which purports to be a certificate or other evidence of recipient's right to a prize, or which states on the face of said writing "First Prize Certificate", at any time prior to the actual awarding of first prize.

(e) Publishing the rules of any puzzle prize contest in other than clear and readable type.

(f) Representing that a contestant in a puzzle prize contest has achieved a more advanced position toward success in said contest than he has in fact achieved.

(g) In any puzzle prize form of contest using any progressive plan to secure subscriptions to its publications unless every step or stage of the plan is clearly set forth in the initial or contact advertisement or first mailing to the prospect before any money or service is accepted, showing exactly what will be required of the prospect or what compensation or reward will be given for each act or payment required in contending for a prize, award, premium, gift, or reward.

*It is further ordered*, That the said respondent within 60 days from the date of 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  
ACME COTTON PRODUCTS COMPANY, INC.

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

*Docket 2605. Complaint, Oct. 31, 1935—Order, Jan. 20, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the distribution, offer and sale of surgical supplies and absorbent cotton products in commerce between and among the several States and in the District of Columbia, to forthwith cease and desist from—

- (a) Using the words "Very Highest Grade Procurable", or words of similar import, in describing or designating the grade or grades of cotton used in the manufacture or processing of the various surgical supplies and absorbent cotton products sold by it until and unless the cotton so used in such manufacture or processing of said products is in truth and in fact the very highest grade of cotton procurable on the open market; or
- (b) Using the words "Sterilized", "Aseptic" or "Purified", or words of similar import in describing or designating such supplies and absorbent cotton products sold by it, or representing through use of such words or any other words of similar import or in any manner that such supplies and cotton products made and sold by it are bacteria-free when sold and placed in the channels of trade by it, until and unless said supplies and products are in fact bacteria-free when sold by it for public use and consumption and placed in the aforesaid channels.

*Mr. J. T. Welch* for the Commission.

*Mr. William L. Carns*, of New York City, for respondent.

COMPLAINT

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 having reason to believe that Acme Cotton Products Co., Inc., a corporation, hereinafter designated as respondent, is now, and has been, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondent, Acme Cotton Products Co., Inc., is now, and has been for a period of more than two years, a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 245 Fifth Avenue in the city of New York in said State, and is now, and has been at all times mentioned herein, engaged in the

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business of manufacturing and selling surgical supplies, including packaged absorbent cotton.

PAR. 2. Said respondent, being engaged in the business of manufacturing, distributing and selling said surgical supplies, including packaged absorbent cotton, causes said products, when sold to wholesale jobbers, retail drug stores and members of the medical profession located in various cities in the several States of the United States, to be transported from its principal place of business in the State of New York, or its manufacturing plant in the State of Connecticut, to the purchasers thereof located in States of the United States other than the State of origin of the shipment and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said packaged absorbent cotton manufactured and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other individuals, partnerships and corporations engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, distribution and sale of surgical supplies, including packaged absorbent cotton.

PAR. 4. Respondent, in the course and conduct of its business, as detailed in paragraphs 1, 2, and 3 hereof, has offered for sale, and sold, in commerce, as hereinabove set out, certain of its products, to wit, packaged absorbent cotton, in paper or cardboard containers, by way of advertisement and inducement to purchase, there being printed on all four sides of said containers the following:

Acme  
Sterilized Surgical Aseptic  
Absorbent Cotton  
Very Highest Grade Procurable  
Manufactured by Acme Cotton Products  
Co., Inc.  
New York

The respondent is now, and has been prominently displaying certain printed matter containing the words "sterilized", "purified" and "aseptic" on the outside of various other paper or cardboard containers used by it in packaging, displaying for sale and selling certain of its packaged absorbent cotton products to dealers for resale.

Further, on the container first hereinabove described, as well as on the other containers herein mentioned, the respondent causes to

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be printed on the ends of said containers, together with other words, the word "sterilized".

PAR. 5. The words "sterilized", "aseptic" and "purified", as used by the respondent in designating or describing its absorbent cotton products, mean to the purchasers thereof, including both the trade and the purchasing public, that the absorbent cotton contained in said containers so labeled is, at the time of final packaging by the manufacturer and sale to the purchaser thereof, bacteria-free. The use, by the respondent, of the words "Very highest grade procurable" serves as a representation to dealers and ultimate purchasers that the said absorbent cotton products contained in said containers are manufactured from the very highest grade of cotton procurable.

In truth and in fact, the aforesaid labeling or branding of respondent's packaged absorbent cotton products as "sterilized", "aseptic" or "purified" is false and misleading, as said absorbent cotton is not, and was not, free of bacteria at the time of the final packaging by the manufacturer and the sale to the purchaser thereof so as to be properly and correctly labeled, designated and described as "sterilized". The aforesaid labeling of said packaged absorbent cotton products as "Very highest grade procurable" is false and misleading because, in truth and in fact, said products are not, and were not, manufactured from the very highest grade of cotton procurable.

PAR. 6. Over a period of many years surgical supplies, including packaged absorbent cotton, that are manufactured or produced and packaged in such a way as to be bacteria-free at the time of the final packaging by the manufacturer and the sale to the purchaser thereof have been labeled with the words "sterilized" or "aseptic" and have enjoyed a wide-spread popularity and demand among the consuming public, many of whom have been led to believe, and do believe and consider, that said packaged absorbent cotton products, manufactured or produced and packaged so as to be in a bacteria-free condition at the time of final packaging by the manufacturer and the sale to the purchaser thereof, are superior in quality and other desirable characteristics to similar packaged absorbent cotton products manufactured and packaged by other processes, and to purchase substantial quantities of said packaged absorbent cotton products so manufactured and packaged in preference to packaged absorbent cotton products manufactured, produced and packaged in any other manner.

PAR. 7. The false and misleading advertising and representations hereinbefore set out, on the part of the respondent, place in the hands of aforesaid wholesale and retail jobbers and druggists an

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instrument and a means whereby said dealers and jobbers may commit a fraud upon a substantial portion of the consuming public, by enabling such dealers to represent and offer for sale, and sell, the said packaged absorbent cotton products produced by respondent as being manufactured and packaged in such a way as to be in fact bacteria-free at the time of the final packaging by the manufacturer and the sale to the purchaser thereof.

PAR. 8. There are among the competitors of the respondent many who manufacture and sell packaged absorbent cotton products that are in fact bacteria-free, or "sterilized" or "aseptic" at the time of the final packaging by the manufacturer and the sale to the purchaser thereof, and who rightfully and truthfully represent such to be the case. There are among the competitors of the respondent many who manufacture and sell absorbent cotton products that are manufactured from the very highest grade of cotton procurable and who rightfully and truthfully represent their products as being manufactured from such grade of cotton. There are many others among the competitors of the respondent who manufacture and sell absorbent cotton products that are not bacteria-free and that are not made from the very highest grade of cotton procurable, and who do not in any manner represent such cotton products to be "sterilized", "aseptic" or bacteria-free or to be manufactured from the very highest grade of cotton procurable.

PAR. 9. The effect of the foregoing false and misleading advertisements and representations on the part of the respondent is to mislead a substantial number of wholesale and retail jobbers and druggists, as well as a substantial portion of the consuming public, in the several States, by inducing them to believe that: (1) the absorbent cotton products manufactured, packaged and sold by the respondent are bacteria-free at the time of the final packaging by the manufacturer and the sale to the purchaser thereof, and (2) the absorbent cotton products sold by the respondent are produced from the very highest grade of cotton procurable; and to induce them to purchase substantial quantities of the respondent's said products in said beliefs.

The acts and practices of the respondent, as herein set out have a tendency and a capacity to, and do, divert a substantial volume of trade from competitors of the respondent engaged in similar businesses with the result that substantial quantities of the products manufactured, distributed and sold by the respondent are sold to said dealers and purchasers and to the consuming public on account of said beliefs induced by said false and misleading representations. As a consequence thereof, a substantial injury has been done by the

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respondent to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 10. The above foregoing acts, practices and representations have been, and 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 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 matter coming on to be heard by the Commission upon the complaint filed herein on October 31, 1935, and the answer to said complaint filed on January 15, 1936, by Acme Cotton Products Company, Inc., a corporation, respondent herein, in which answer the respondent states that it waives hearing on the charges set forth in the complaint herein; that it refrains from contesting the proceeding and that it consents that the Commission, without a trial, without evidence and without findings as to the facts or other intervening procedure, may make, enter, issue and serve upon said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises:

*It is hereby ordered*, That the respondent, Acme Cotton Products Company, Inc., its officers, agents, representatives, and employees, in connection with the distribution, offering for sale, and sale of surgical supplies and absorbent cotton products, in commerce between and among the several States of the United States, and in the District of Columbia, do forthwith cease and desist from:

(1) Using the words "Very Highest Grade Procurable", or words of similar import, in describing or designating the grade or grades of cotton used in the manufacture or processing of the various surgical supplies and absorbent cotton products sold by the respondent until and unless the cotton so used in the manufacture or processing of said surgical supplies and absorbent cotton products is in truth and in fact the very highest grade of cotton procurable on the open market.

(2) Using the words "Sterilized", "Aseptic", or "Purified", or words of similar import, in describing or designating the surgical supplies and absorbent cotton products sold by it until and unless said surgical supplies and absorbent cotton products are in fact bacteria-free at the time said products are sold by the respondent for use and consumption by the public.

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(3) Representing, by the use of the words "Sterilized", "Aseptic", and "Purified", or by any other word or words of similar import, or in any manner whatever, that the surgical supplies and absorbent cotton products manufactured and sold by it are bacteria-free at the time said products are sold and placed in the channels of trade by the respondent until and unless said surgical supplies and absorbent cotton products are in fact bacteria-free at said time.

*It is further ordered*, That the respondent shall within 90 days after the service 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.

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## IN THE MATTER OF

## LEGAY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2377. Complaint, Apr. 25, 1935—Order, Jan. 22, 1936*

Where a corporation, engaged in the sale and distribution in commerce of a depilatory—

Represented upon the labels thereof and in folders accompanying the same and in periodical advertisements thereof, that its said product was a "harmless" and "effective hair remover" and banished facial hair shadows and removed unsightly hair without roughening skin texture, and that consistent use thereof would permanently eradicate hair;

Facts being its action was only temporary, and composition thereof was such that unless used with care it might burn the skin of the user and it would not remove hair, even temporarily, without roughening the skin texture, and noticeably so in the case of a user with a sensitive skin;

With capacity and tendency to mislead and deceive the purchasing public and induce their purchase of said product in reliance upon the truth of such false and misleading statements and representations and to divert trade unfairly to it from competitors who truthfully advertise their products, to the substantial injury of substantial competition in interstate commerce:

*Held*, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John W. Hildrop* for the Commission.

## COMPLAINT

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 having reason to believe that LeGay, Inc., a corporation, hereinafter referred to as respondent has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, LeGay, Inc., 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 at Chicago in the State of Illinois. It is now and for more



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than one year last past has been engaged in the sale and distribution in commerce, between and among various States of the United States of America, of a depilatory under the trade name of "LeGay Hair Remover"; causing said product when sold to be shipped from its place of business in the State of Illinois to purchasers thereof located in a State or States of the United States of America other than the State of Illinois. In the course and conduct of its business respondent has been at all times herein mentioned in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of depilatories between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling its said depilatory between and among the various States of the United States, has adopted, has used and still uses a label for its product upon which label the following words appear:

LEGAY  
Harmless Fragrant  
Effective  
HAIR REMOVER

Accompanying such label, in a pocket at the back thereof, has been and is inserted a small folder containing instructions for the use of said product, of which the following is a part:

LEGAY HAIR REMOVER

is a requisite to skin loveliness \* \* \* *banishes facial hair shadows*, removes unsightly hair on arms, legs and under arms without roughening skin texture

EFFECTIVE—HARMLESS—FRAGRANT

LeGay is pleasant to use, without offensive odors even when applied. *Regular applications are essential to good grooming.*

And respondent in offering for sale and in selling its said product between and among the various States of the United States has caused and still causes the following and other statements of similar tenor, import and substance to appear in periodicals having a wide interstate circulation:

Consistent use of LeGay's Perfect Hair Remover will permanently eradicate hair.

If used consistently will gradually and permanently eradicate unsightly hair.

If LeGay's Perfect Hair Remover is applied twice a week for twenty-five weeks, used as directed, and results are not permanent,

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the manufacturers will supply free of charge, enough powder for further treatments.

FRAGRANT

HARMLESS

EFFECTIVE

HAIR REMOVER

\* \* \* banishes facial hair shadows \* \* \* pleasant to use  
without offensive odors even when applied \* \* \* Removes hair  
without roughening skin texture \* \* \*

When in truth and in fact respondent's said product will not permanently remove hair, is not harmless, nor is it an effective hair remover; it will not banish facial shadows and/or remove hair without roughening the skin texture; nor will its use permanently eradicate hair.

PAR. 3. Each and all of the false and misleading statements and representations of respondent as hereinbefore set out had and have the capacity and tendency to mislead and deceive the purchasing public into the beliefs that they are true and to induce them to purchase the said product in such beliefs; and said false and misleading statements and representations hereinbefore referred to likewise have the tendency and capacity to and do unfairly divert trade to respondent from individuals, corporations, associations, and firms who are competitors of respondent and who truthfully advertise their products. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 4. The acts and practices set forth herein are all to the prejudice of the public and of 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 25, 1935, issued and served its complaint in this proceeding upon respondent, LeGay, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, to which the respondent filed no answer or other pleading, testimony and evidence, in support of the allegations of said complaint, were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner

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of the Commission theretofore duly designated by it; the respondent not appearing by and through its officers nor by counsel, and introducing no testimony and offering no evidence in defense of the allegations of the complaint; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, brief of counsel for the Commission in support of the complaint, no brief being filed by the respondent; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

**FINDINGS AS TO THE FACTS**

PARAGRAPH 1. Respondent, LeGay, Inc., 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 at Chicago in the State of Illinois. It is now and for more than one year last past has been engaged in the sale and distribution in commerce, between and among various States of the United States of America, of a depilatory under the trade name of "LeGay Hair Remover"; causing said product when sold to be shipped from its place of business in the State of Illinois to purchasers thereof located in a State or States of the United States of America other than the State of Illinois. In the course and conduct of its business respondent has been at all times herein mentioned in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of depilatories between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling the said depilatory between and among the various States of the United States, has adopted, has used and still uses a label for its product upon which label the following words appear:

**LEGAY**  
Harmless Fragrant  
Effective  
**HAIR REMOVER**

Accompanying such label, in a pocket at the back thereof, has been and is inserted a small folder containing instructions for the use of said product, of which the following is a part:

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**LeGAY HAIR REMOVER** is a requisite to skin loveliness \* \* \* *banishes facial hair shadows*, removes unsightly hair on arms, legs and under arms without roughening skin texture **EFFECTIVE—HARMLESS—FRAGRANT** LeGay is pleasant to use, without offensive odors even when applied. *Regular applications are essential to good grooming.*

And respondent in offering for sale and in selling its said product between and among the various States of the United States has caused and still causes the following and other statements of similar tenor, import and substance to appear in periodicals having a wide interstate circulation:

Consistent use of LeGay's Perfect Hair Remover will permanently eradicate hair.

If used consistently will gradually and permanently eradicate unsightly hair.

If LeGay's Perfect Hair Remover is applied twice a week for twenty-five weeks, used as directed, and results are not permanent, the manufacturers will supply free of charge, enough powder for further treatments.

**FRAGRANT  
HARMLESS  
EFFECTIVE  
HAIR REMOVER**

\* \* \* *banishes facial hair shadows* \* \* \* *pleasant to use*  
without offensive odors even when applied. \* \* \* *Removes*  
*hair without roughening skin texture* \* \* \*.

When in truth and in fact respondent's said product will not permanently remove hair, is not harmless, nor is it an effective hair remover; it will not banish facial shadows or remove hair without roughening the skin texture; nor will its use permanently eradicate hair. The depilatory manufactured, sold, and distributed in interstate commerce by respondent is composed of starch, 52%; calcium carbonate, 35%; strontium sulphide, 11.4%; perfume, .6%; and buffer, .1%. The strontium sulphide is the active ingredient therein, it being one of the alkaline sulphides. The said active ingredient in respondent's depilatory, strontium sulphide, has the power of dissolving horn-like substances such as hair, and as the human hair has exactly the same structure as the outer skin, the said respondent's depilatory, unless used with great care and caution, may burn the skin of the person so using it. While the use of respondent's depilatory will temporarily remove hair from human bodies, it will not do so permanently, and the hair so removed will soon be followed by another growth of hair. The said depilatory of respondent will not remove hair even temporarily without roughening the skin texture, and in the event the skin of the person so using said depilatory

is sensitive, the use of respondent's depilatory would produce such a roughening of the skin that it would be obvious.

PAR. 3. Each and all of the false and misleading statements and representations of respondent as hereinbefore set out had and have the capacity and tendency to mislead and deceive the purchasing public into the belief that they are true and to induce them to purchase the said product in such belief; and said false and misleading statements and representations hereinbefore referred to likewise have the tendency and capacity to and do unfairly divert trade to respondent from individuals, corporations, associations and firms who are competitors of respondent and who truthfully advertise their products. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

#### CONCLUSION

The acts and practices set forth herein are all to the prejudice of the public and of 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 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, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, brief of counsel for the Commission, 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 ordered*, That the respondent, LeGay, Inc., a corporation, its agents, servants, and employees, in the advertising, sale and distribution in interstate commerce of its product, to wit, a depilatory known and designated by respondent as "LeGay Hair Remover", cease and desist:

From advertising or representing by labels, circulars, folders, newspapers, magazines, or other publications, by radio broadcasts, or by any other manner, method or means:

(a) That its said depilatory, known and designated as "LeGay Hair Remover", permanently removes hair from the human body.

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- (b) That said "LeGay Hair Remover" is harmless.
- (c) That said "LeGay Hair Remover" is an effective hair remover.
- (d) That said "LeGay Hair Remover" will banish facial shadows, or remove hair without roughening the skin.

*And it is hereby further ordered,* That the said respondent, LeGay, Inc., a corporation, shall within 60 days after the service upon it of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which it shall have complied with the order to cease and desist hereinbefore set forth.

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## IN THE MATTER OF

DAVID LEVINE, LEWIS LEVINE AND BENJAMIN LEVINE,  
TRADING AS COLOMBO EXTRACT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2349. Complaint, Mar. 29, 1935—Decision, Jan. 23, 1936*

Where a firm, engaged in the manufacture and sale of flavoring extracts—

- (a) Represented in and by advertisements, labels, stationery, and in other ways, that they imported and exported the extracts made and sold by them, and that said products were imported into the United States from foreign countries, facts being said various statements were false and said products were made in New York City of ingredients purchased by them in said city, and in various other cities of the United States;
- (b) Set forth on the labels on the bottles containing their said extracts the Italian words "Soli rappresentanti in America per la preparazione dei famosi genuini estratti", notwithstanding the fact that they were not "sole representatives in America for the preparations of such famous genuine extracts", made in Italy or any other foreign country and neither exported nor imported, as aforesaid, any of the goods dealt in by them;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that their said flavoring extracts were imported, and that they were importers thereof and thereby to induce the purchasing public, some of whom prefer imported extracts over the domestic products, and some of whom prefer to buy such products from the importers and exporters thereof, to buy its said extracts from them in such belief; and

With result of diverting trade to them from competitors, among whom there are those who make such products of domestic ingredients without representing the same as imported or themselves as importers or exporters, and those who import their extracts from various foreign countries and export the same from the United States and truthfully represent themselves as importers and exporters and their said products as imported from various foreign countries; to the substantial injury of substantial competition in interstate commerce:

*Held*, That such acts and practices were all to the injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. Edward L. Smith* and *Mr. John W. Hilldrop* for the Commission.

*Mr. Milton H. Goldstricker*, of New York City, for respondents.

## COMPLAINT

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 Fed-

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eral Trade Commission having reason to believe that David Levine, Lewis Levine and Benjamin Levine, doing business as Colombo Extract Company, a partnership, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, David Levine, Lewis Levine, and Benjamin Levine, are a partnership doing business under the trade name, Colombo Extract Company, with their principal office and place of business in New York City in said State. They are now and for more than two years last past have been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. They now cause and for more than two years last past have caused such flavoring extracts, when sold by them, to be transported from their place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondents in said flavoring extracts. In the course and conduct of their business said respondents are now and have been for more than two years last past in substantial competition in commerce between and among various States of the United States, with corporations, individuals, firms, and other partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR. 2. In the course and conduct of their business respondents, in soliciting the sale of their flavoring extracts and in selling the same between and among the various States of the United States, have represented for more than two years last past and still represent in and by their advertisements, labels, stationery, and in other ways that they import and export the flavoring extracts which they manufacture and sell and that such extracts sold by the respondents are imported into the United States from foreign countries, when in truth and in fact said respondents are neither importers nor exporters of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by them are manufactured by them in the city of New York aforesaid from ingredients purchased by the said respondents in the said city of New York and various other cities of the United States.

PAR. 3. There are among the competitors of the respondents and have been for more than two years last past, manufacturers of



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flavoring extracts in the United States who manufacture such extracts from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors persons, firms, partnerships, and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondents as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that the flavoring extracts sold and offered for sale by the respondents are imported into the United States from foreign countries, that the respondents are in fact importers of such flavoring extracts and exporters thereof and thereby to induce the purchasing public to purchase flavoring extracts from respondents in such belief. Thereby trade is diverted to respondents from their competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondents to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of the respondents are all to the injury and prejudice of the public and competitors of respondents 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.

## 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 the 29th day of March 1935, issued and served its complaint in this proceeding upon respondents, David Levine, Lewis Levine, and Benjamin Levine, trading as Colombo Extract Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Milton H. Goldstricker, attorney for the respondents; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto (oral arguments being waived); and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, David Levine, Lewis Levine, and Benjamin Levine, are a partnership doing business under the trade name, Colombo Extract Company, with their principal office and place of business in New York City in said State. They are now and for more than two years last past have been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. They now cause and for more than two years last past have caused such flavoring extracts, when sold by them, to be transported from their place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondents in said flavoring extracts. In the course and conduct of their business said respondents are now and have been for more than two years last past in substantial competition in commerce between and among various States of the United States, with corporations, individuals, firms and other partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR. 2. In the course and conduct of their business respondents, in soliciting the sale of their flavoring extracts and in selling the same between and among the various States of the United States, have represented for more than two years last past and still represent in and by their advertisements, labels, stationery and in other ways that they import and export the flavoring extracts which they

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manufacture and sell and that such extracts sold by the respondents are imported into the United States from foreign countries, when in truth and in fact said respondents are neither importers nor exporters of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by them are manufactured by them in the city of New York aforesaid from ingredients purchased by the said respondents in the said city of New York and in various other cities of the United States. On the bottles containing the flavoring extracts of respondents, which respondents sell and distribute in interstate commerce, labels are fixed containing the following words in Italian, to wit: "Soli rappresentanti in America per la preparazione dei famose genuini estratti", the English translation of which is as follows: "Sole representative in America of the famous preparations of this extract." On the letterheads, statements and invoices of respondents there appear the words "Importers and Exporters." The foregoing advertisements, statements and representations by respondents are false and misleading. In truth and in fact, respondents are not the sole representative in America of any famous or other preparation or preparations made in Italy or any foreign country, and neither export nor import any of the goods, wares or merchandise by them advertised, sold and distributed in interstate commerce.

PAR. 3. There are among the competitors of the respondents and have been for more than two years last past, manufacturers of flavoring extracts in the United States who manufacture such extracts from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors persons, firms and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondents as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that the flavoring extracts sold and offered for sale by the respondents are imported into the United States from foreign countries, that the respondents are in fact importers of such

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flavoring extracts and exporters thereof, and thereby to induce the purchasing public to purchase flavoring extracts from respondents in such beliefs. Thereby trade is diverted to respondents from their competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondents to substantial competition in interstate commerce.

## CONCLUSION .

The above alleged acts and practices of the respondents are all to the injury and prejudice of the public and competitors of respondents 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 respondents, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by John W. Hilldrop, counsel for the Commission, and Milton H. Goldstricker, attorney for the respondents (oral argument being waived), 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 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 respondents, David Levine, Lewis Levine, and Benjamin Levine, trading as Colombo Extract Company, their agents, servants and employees, in the advertising, sale, and distribution in interstate commerce of their commodity, to wit, flavoring extracts, cease and desist from:

(1) Advertising and representing by labels on bottles and other containers, letterheads, invoices, in newspapers, journals, periodicals, through radio broadcasts, or by any other method, means or device:

(a) That they import or export the flavoring extracts which they manufacture and sell in interstate commerce as aforesaid; that such extracts or the ingredients composing the same are by respondents imported into the United States from foreign countries; that respondents are either importers or exporters; or that respondents are the sole representatives in America for their said commodity.

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(b) That any of the aforesaid flavoring extracts or other merchandise which respondent manufactures, advertises, sells and distributes in interstate commerce, or any of the ingredients composing same, are manufactured in any foreign country or imported into the United States until and unless the said products are so manufactured or imported.

(2) Using on the labels placed on their bottles or other containers in which respondents' flavoring extracts are shipped and distributed in interstate commerce the words, "Soli representanti in America per la preparazione dei famosie genuini estratti", or words in any language which state, import or imply that respondents are the sole representatives in America of the famous preparations of the extract contained, labelled and advertised in said bottles or containers.

*And it is hereby further ordered,* That the said respondents, David Levine, Lewis Levine, and Benjamin Levine, trading as Colombo Extract Company, shall within 60 days after the service upon them of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which they shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF  
ARCO SHIRT CORPORATION

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

*Docket 2591. Complaint, Oct. 21, 1935—Order, Jan. 23, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the sale or offer for sale in interstate commerce of shirts, to cease and desist from use of the word "Manufacturers" in its advertisements, letterheads, invoices, business cards, catalogs, bulletins or any other advertising matter distributed in interstate commerce, and from use of the word "Manufacturer" in any way which may have the tendency or capacity to confuse, mislead or deceive purchasers or prospective purchasers into the belief that it owns, operates and controls a factory or factories, wherein its products are made, when such is not the fact.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. John Darsey* for the Commission.

*Mr. Daniel J. Levowitz*, of New York City, for respondent.

COMPLAINT

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, having reason to believe that the Arco Shirt Corporation, a corporation, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business at 486 Broadway, in the city of New York, State of New York. It is engaged in the sale and distribution of men's shirts, and causes said garments when sold to be transported from its said principal place of business in the State of New York into and through other States of the United States to said vendees at their respective places of business.

In the course and conduct of its said business respondent is in competition with other corporations, individuals, partnerships, and firms engaged in the sale of similar garments between and among various States of the United States,

PAR. 2. In the course and conduct of its said business respondent has caused and causes representations, assertions and advertisements to be made to its customers and prospective customers by its salesmen and agents, and has caused and causes said representations, assertions and advertisements to be set forth on its business stationery, billheads, invoices, catalogs, labels, and other trade literature, to the effect that it controls and operates mills or factories and is the manufacturer of said garments in which it deals. Typical of such representations, assertions and advertisements is that appearing in the letterhead of the business stationery of said respondent, which is as follows:

ARCO SHIRT CORPORATION  
Manufacturers of  
High Grade Shirts  
486 Broadway

PAR. 3. The use by respondent of said representations, assertions and advertisements in the manner set out in paragraph 2 hereof has the capacity and tendency to and does mislead and deceive many of respondent's said customers and prospective customers into the erroneous belief that respondent is a business concern which controls and operates a mill or mills or factory in which aforesaid garments sold by respondent are manufactured, and that persons dealing with respondent are buying said garments directly from the mills and from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in service, delivery and adjustment of account that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls, nor operates any mill or factory whatsoever and does not manufacture said garments sold by it, but on the contrary only purchases the materials from which its shirts are made and cut out according to its own patterns, and delivers the cut material, with buttons and thread, to a contractor, who, through the use of his machines and labor, manufactures the shirts and delivers them to respondent, who then resells the same at a profit over and above the cost to respondent of said garments.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the garments in which they deal and resell the same at a profit to themselves over and above the cost of said garments to said competitors, and who in no wise represent that they manufacture said

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garments. The above alleged acts and practices of respondent as set out in paragraphs 2 and 3 hereof tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 5. For several years last past respondent has engaged in the practices under the circumstances and conditions, and with the results all hereinbefore set out.

PAR. 6. 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 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 respondent herein having filed its answer to the complaint in this proceeding and having subsequently moved on the record to be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer which has been filed with the Commission; and the Commission having duly considered the said motion.

*It is hereby ordered*, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue, and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

*It is hereby further ordered*, That the respondent, the Arco Shirt Corporation, its officers, representatives, agents, servants and employees in connection with the sale or the offering for sale, by said Arco Shirt Corporation of shirts in interstate commerce, forthwith cease and desist from the use of the word "Manufacturers" in its advertisements, letterheads, invoices, business cards, catalogs, bulletins, or any other advertising matter distributed in interstate commerce; and from the use of the word "Manufacturer" in any way



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which may have the tendency or capacity to confuse, mislead, or deceive purchasers or prospective purchasers into the belief that said corporation owns, operates, and controls a factory or factories, wherein its products are made or manufactured, when such is not the fact.

*It is hereby further ordered,* That the said respondent shall within 60 days from the day of the date of the service upon it of this order, file with this Commission its report in writing stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF  
INTERNATIONAL SHEFFIELD WORKS, INC.

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

*Docket 2573. Complaint, Oct. 8, 1935—Order, Jan. 25, 1936*

Consent order requiring respondent, its officers, etc., in connection with the offer for sale or sale in interstate commerce of silverware or silver-plated ware, to cease and desist from—

- (a) Using a trade or corporate name which includes the word "Sheffield" unless and until it actually manufactures and sells silverware or silver-plated ware produced by the copper-rolled plate process known as "Sheffield";
- (b) Making representations in any manner whatsoever, or from directly or indirectly suggesting, that the silverware or silver-plated ware sold by it is "Sheffield", unless such ware has been manufactured by, or in accordance with, the copper-rolled plate process which originated in Sheffield, England, and which has been and still is associated with the name "Sheffield" in that industry; or
- (c) Making representations through advertisements, etc., or in any manner whatsoever, or from directly or indirectly suggesting, that the silverware or silver-plated ware sold by it is "Sheffield" unless the silverware so offered has been made in accordance with the copper-rolled plate process which originated in Sheffield, England, and shows the place of origin.

*Mr. John L. Hornor* for the Commission.

*Proper & Gottlieb*, of New York City, for respondent.

COMPLAINT

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, having reason to believe that International Sheffield Works, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress and in violation of Section 5 of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation, organized and doing business by virtue of the laws of the State of New York, having its principal office and place of business in the city of New York; and is now and for more than five years last past has been engaged in the

business of manufacturing silver-plated hollow-ware, and in the sale and distribution thereof to jobbers of these products and to retail jewelry stores located throughout the United States, and causes said products when sold to be transported from its principal place of business in the city of New York, State of New York, or from its place of origin in other States, to purchasers thereof in Ohio, Tennessee, Illinois, Kentucky, and other States of the United States and in the District of Columbia, at their respective places of business, and there is now, and has been for more than five years last past, a course of trade and commerce by said respondent in such silver-plated hollow-ware, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of silver-plated hollow-ware and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. Competitors of respondent, and the respondent use, in the manufacture of their products, the electroplating process, which process involves the submersion of the base metal form in a chemical solution or bath and, by the electrolysis of silver salts, causes a coating of silver to adhere to this base metal form. The plated silver thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form and the decoration, the amount and fineness of the silver deposited upon it and left upon it after the finishing process, and the protection of the surfaces exposed to wear and abrasion. There is no fixed standard for the composition of the base metal, nor for the fineness or quality of silver to be applied generally or to wearing of surfaces, so that the purchasing public is obliged to depend upon the reputation of the maker of such plated silverware, or the reputation of the trade name or brand attached thereto, or the representation of the maker or seller thereof, in purchasing said silverware, since the quality of the ware cannot be determined except by laboratory tests.

PAR. 3. About the year 1742 there was originated in Sheffield, England, a process for the production of silver-plated ware, which process involved the welding of a silver plate to one or both sides of a sheet or bar of copper so as to form one thoroughly coherent mass which was rolled to the desired gauge and subsequently worked into the desired form. The ware produced by this process was properly known as "copper-rolled plate" though this name was not used as a trade name or designation. The copper-rolled plate of Sheffield, England, acquired a very considerable reputation for excellence in

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quality, workmanship and design, and though the name "Sheffield" was not generally impressed upon or affixed to the ware itself, which was identified by the maker's registered marks, the copper-rolled plate came to be generally known and is still known as "Sheffield". While the cheaper electroplating process displaced the "Sheffield" copper-rolled plate which practically went out of production, there have been and still are, from time to time, importations of the "Sheffield" copper-rolled plate into the United States, and there is a considerable trade in "Sheffield" copper-rolled plate in this country at prices which reflect not only its value as silverplated ware, but its artistic and historic value as well. The name "Sheffield" as applied to silverware at the present time implies a quality and a value peculiar to the "Sheffield" copper-rolled plate itself as well as to the process itself, and the use of the term "Sheffield" is a representation thereof.

PAR. 4. In the course and conduct of its said business, respondent for more than five years last past, has been using as its corporate name "International Sheffield Works, Inc.", and has caused said corporate name, containing the word "Sheffield", to be featured on its letterheads and invoices distributed in interstate commerce and on its labels affixed to the cartons in which said products were packed and shipped in interstate commerce; and it has caused its silverplated hollow-ware to be stamped with its hallmark "I. S. W."; when in truth and in fact said products sold by the respondent were not made or manufactured in accordance with the process used in the manufacture of Sheffield silver or Sheffield plate nor were said products made or manufactured in Sheffield, England, in accordance with such process.

PAR. 5. The said representations made by respondent in the use of the word "Sheffield" in its corporate name "International Sheffield Works, Inc." and the use of its hallmark "I. S. W." on such products as set forth in paragraph 4 hereof have, and have had, the capacity and tendency to deceive the purchasing public and induce purchasers to buy the products of respondent in and on account of the belief that said representations are true and that the respondent's product is "Sheffield", thus diverting trade to respondent from competitors of respondent engaged in the sale in interstate commerce of such products as are sold and distributed by respondent, which said competitors truthfully and honestly advertise and represent their products.

PAR. 6. The above acts and things done by respondent as aforesaid have tended to induce, and have induced, the purchase of respondent's products by various jobbers and retail dealers of silver-plated hollow-ware and have tended to divert trade, and have diverted

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trade, from competitors of respondent, and have thereby injured such competitors of respondent.

PAR. 7. The aforementioned methods, acts and practices of the respondent are all to the prejudice of the public and of the respondent's competitors as hereinabove alleged. Said methods, acts and practices constitute an unfair method 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 matter coming on to be heard by the Commission upon the complaint filed the 8th day of October 1935, and the answer to said complaint filed December 16, 1935, by International Sheffield Works, Inc., respondent herein, in which answer the said respondent states that it waives hearing in the charges set forth in the complaint herein; that it refrains from contesting the proceeding, and that it consents that the Commission, without trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue, and serve upon the said respondent an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises;

*It is hereby ordered*, That the respondent, International Sheffield Works, Inc., its officers, directors, agents, representatives, and employees, in connection with the offering for sale or selling in interstate commerce of silverware, of silver-plated ware, do hereby cease and desist:

1. From the use of a trade or corporate name which includes the word "Sheffield" unless and until the respondent actually manufactures and sells silverware or silver-plated ware produced by the copper-rolled plate process which has been and still is generally known as "Sheffield";

2. From making representations through advertising, letterheads or other stationery, or in any manner whatsoever, or from directly or indirectly suggesting that the silverware or silver-plated ware sold by it is "Sheffield", unless the silverware or silver-plated ware so offered has been manufactured by the copper-rolled plate process which originated in Sheffield, England, and which has been and still is associated with the name "Sheffield" in that industry; and

3. From making representations through advertisements, letterheads or other stationery, or in any manner whatsoever, or from

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directly or indirectly suggesting that the silverware or silver-plated ware sold by it is "Sheffield" unless the silverware so offered has been manufactured in accordance with the copper-rolled plate process which originated in Sheffield, England, and shows the place of origin.

*It is further ordered,* That respondent, within 60 days from the notice hereof, file with the Commission a report in writing, setting out in detail the manner and form in which it has complied with the order of the Commission herein set forth.

## Complaint

IN THE MATTER OF  
PRATT FOOD COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2582. Complaint, Oct. 15, 1935—Order, Jan. 25, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the offer for sale or sale in interstate commerce and in the District of Columbia of its "Super-iodized B. P. Dairy Feed", to cease and desist from—

- (a) Representing that said product decreases the amount of feed necessary, builds up resistance to disease, is highly effective in the control and elimination of contagious abortion and is valuable in treating simple anemias, rheumatism, fevers, and many other troubles, or is one of the best all-around tonics known, or makes more milk and butterfat;
- (b) Representing that super-iodized milk is a purer, richer and more nutritious product than any other milk to which iodine has not been added, and that its said feed increases the vitamin A and D content or value of the milk which aid growth, health, and disease resistance;
- (c) Representing that the National Tuberculosis Association deems the matter of organic iodine so important that it has requested the laboratory that discovered how a super-iodized milk might be produced to present it to the attention of the hospitals and sanitariums having tuberculosis wards, and that this was done because organic iodine, such as in super-iodized milk, was found to be a valuable collateral treatment for tuberculosis;
- (d) Representing that many hospitals, sanitariums, and similar institutions are paying a premium for it, and certain dairy herds, owned by such institutions, are being given iodized feed to produce this milk and that its said iodized dairy feed makes it possible for any dairyman to produce this iodized better milk;
- (e) Representing that hundreds of lives have already been saved by iodine-rich milk and it produces a milk more beneficial in the feeding of tubercular patients and combats germs in the blood stream, and that in the child's blood and lymph streams the iodine battles germs, building up resistance to many ills.

*Mr. R. L. Kennedy* for the Commission.

## COMPLAINT

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, having reason to believe that Pratt Food Company, a corporation, hereinafter referred to as the respondent, has been using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission

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that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business in the city of Philadelphia in said State and with mills at Philadelphia, Pa., Hammond, Ind., Guelph, Ontario, and Buffalo, N. Y. It is now and for more than two years last past has been engaged in the compounding, manufacture and sale of dairy feed, particularly a product described and sold as Pratt's "Super-iodized B. P. Dairy Feed", and in the distribution thereof, in commerce between and among the various States of the United States and the District of Columbia, and has caused said product, when sold, to be shipped from its places of business in Philadelphia, Pa., Hammond, Ind., Buffalo, N. Y., and Guelph, Ontario, Canada, to purchasers thereof, some located in said States and Ontario, Canada, and others located in various other States of the United States and the District of Columbia.

PAR. 2. Respondent's "Super-iodized B. P. Dairy Feed" consists of beet pulp, oat middlings, gluten feed, linseed meal, cottonseed meal, bran and hominy feed. Its mineral ingredients include calcium carbonate, calcium phosphate and salt. The mixture is processed by adding to said ingredients one gallon of a 5% organic iodine solution to every ten (10) tons of feed. The chemical process is secret. It is similar to other beet pulp dairy feed on the market, but differs therefrom by reason of the addition of 5% organic iodine solution.

PAR. 3. In the course and conduct of respondent's business it is now, and, for more than two years last past, has been in substantial competition with other individuals, partnerships and corporations engaged in the compounding, manufacture, sale and distribution of dairy feeds between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business, above described, the respondent, in soliciting the sale of, and in selling, in interstate commerce, its dairy feed, compounded, manufactured, and advertised by it as Pratt's "Super-iodized B. P. Dairy Feed", in and by advertisements, circulars, and pamphlets, circulated generally throughout the United States, has made many extravagant, deceptive, misleading, and false statements regarding the therapeutic value, efficacy, and effects of its "Super-iodized B. P. Dairy Feed", more particularly as follows, viz:



## Complaint

- I. That respondents "Super-Iodized B. P. Dairy Feed"
    - a. Decreases the amount of feed necessary.
    - b. Builds up resistance to disease.
    - c. Is highly effective in the control and elimination of contagious abortion, sometimes termed Bang's disease.
    - d. Is valuable in treating simple anemias, rheumatism, fevers, and many other troubles; in fact it is one of the best all-around tonics known.
    - e. Makes more milk and butterfat.
  - II. a. Super-Iodized milk is a purer, richer and more nutritious milk.
  - b. Respondents Super-Iodized B. P. Dairy Feed increases the Vitamin A and D content or value of the milk which aid growth, health and disease resistance.
  - c. The National Tuberculosis Association deems this matter of organic iodine so important that it has requested the laboratory that discovered how super-Iodized milk might be produced to present it to the attention of the hospitals and sanitariums having tuberculosis wards. This was done because organic iodine, such as in super-Iodized milk, was found to be a valuable collateral treatment for tuberculosis.
  - d. Many hospitals, sanitariums, and similar institutions are paying a nice premium for it, and certain dairy herds, owned by such institutions, are being given iodized feed to produce this milk. Now Pratts B. P. Iodized dairy feed makes it possible for any dairyman to produce this iodized better milk.
  - e. Hundreds of lives have already been saved by iodine rich milk.
- That respondent's super-Iodized dairy feed
- f. Produces a milk more beneficial in the feeding of tubercular patients,
  - g. Combats germs in the blood stream, and that
  - h. In the child's blood and lymph streams, the iodine battles germs, building up resistance to many ills.

and by divers and sundry other statements, in said advertisements contained, respondent has falsely stated, imported and implied that its Super-Iodized B. P. Dairy Feed benefits cows using it, and users of the milk produced by cows eating said feed.

PAR. 5. In truth and in fact respondents Super-Iodized B. P. Dairy Feed,

- I. a. Does not decrease the amount of feed necessary.
- b. Does not build up resistance to disease, except as to disease due to iodine deficiency.
- c. Is not effective in the control or elimination of contagious abortion, sometimes termed Bang's disease.
- d. Is not valuable in treating simple anemias, rheumatism, fevers, or other troubles, except those resulting from iodine deficiency. Neither is it one of the best all-around tonics known, nor is it an all-around tonic.
- e. Does not make more milk or butterfat.
- II. a. Super-Iodized milk is not a purer, richer or more nutritious milk.
- b. Respondent's super-Iodized B. P. Dairy Feed does not increase the vitamin A and D content or value of milk.
- c. The National Tuberculosis Association did not make the request hereinabove in paragraph 4, II (c), set forth,

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- d. Respondent's claim hereinabove set forth in paragraph 4, II (d) is exaggerated, misleading, and false.
  - e. The statement that hundreds of lives have already been saved by iodine rich milk is exaggerated and misleading.
- Respondent's Super-iodized B. P. Dairy Feed
- f. Does not produce a milk more beneficial in feeding tubercular patients.
  - g. Does not combat germs in the blood stream.
  - h. Does not act as a germicide.

PAR. 6. The foregoing extravagant, deceptive, misleading and false statements of respondents, and each of them, have the tendency and capacity (a) to mislead and deceive and have misled and deceived purchasers of respondent's "Super-iodized B. P. Dairy Feed", by causing them to believe that its use beneficially affects, as hereinabove stated, cows using said feed, and persons using the milk of such cows, thereby inducing the purchase of respondent's super-iodized dairy feed in reliance upon such erroneous belief; (b) unfairly to divert, and have unfairly diverted, trade to respondent from, and otherwise substantially prejudiced respondent's competitors to the substantial injury of said competitors, who sell, in interstate commerce, dairy feed similar to the dairy feed which, as hereinabove set forth respondent advertises and sells, by inducing the purchasing public to purchase respondent's dairy feed in preference to similar dairy feeds of respondent's competitors.

For the reasons aforesaid substantial injury has been done by respondent to substantial competitors in interstate commerce.

PAR. 7. The aforesaid false, extravagant, deceptive and misleading representations and advertisements of the respondent are all to the injury and 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 respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof answer annexed to the said motion; and the Commission having duly considered the said motion—

*It is hereby ordered*, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

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And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

*It is hereby further ordered*, That the respondent, Pratt Food Company, a corporation, its officers, directors, representatives, agents and employees, in connection with the offering for sale or sale in interstate commerce and in the District of Columbia, of its "Super-iodized B. P. Dairy Feed", do cease and desist:

- (1) From claiming that respondent's "Super-iodized B. P. Dairy Feed"
  - a. decreases the amount of feed necessary;
  - b. builds up resistance to disease;
  - c. is highly effective in the control and elimination of contagious abortion; sometimes termed Bang's disease;
  - d. is valuable in treating simple anemias, rheumatism, fevers, and many other troubles; or that in fact it is one of the best all-around tonics known; or that it
  - e. makes more milk and butterfat.
- (2) From claiming that
  - a. super-iodized milk is a purer, richer and more nutritious milk than any other milk to which iodine has not been added;
  - b. respondent's Super-iodized B. P. Dairy Feed increases the Vitamin A and D content or value of the milk which aid growth, health and disease resistance;
  - c. the National Tuberculosis Association deems this matter of organic iodine so important that it has requested the laboratory that discovered how a super-iodized milk might be produced to present it to the attention of the hospitals and sanitariums having tuberculosis wards, and that this was done because organic iodine, such as in super-iodized milk, was found to be a valuable collateral treatment for tuberculosis;
  - d. many hospitals, sanitariums, and similar institutions are paying a nice premium for it, and certain dairy herds, owned by such institutions, are being given iodized feed to produce this milk, and that Pratts B. P. iodized dairy feed makes it possible for any dairyman to produce this iodized better milk;
  - e. hundred of lives have already been saved by iodine rich milk;
  - f. it produces a milk more beneficial in the feeding of tubercular patients;
  - g. it combats germs in the blood stream, and that
  - h. in the child's blood and lymph streams, the iodine battles germs, building up resistance to many ills.

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and from making, in advertisements of any character, claims for its Super-iodized B. P. Dairy Feed, like, or similar in substance to, the claims hereinabove specified.

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

## Complaint

IN THE MATTER OF  
CAL-ASPIRIN CORPORATIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2616. Complaint, Nov. 7, 1935—Order, Jan. 25, 1936*

Consent order requiring respondent, its officers, etc., in connection with the sale or offer for sale in interstate commerce of its "Cal-Aspirin" preparation, forthwith to cease and desist from representing, in advertising matter, circular letters, by means of radio broadcasting, or otherwise, that said product "reduces kidney toxicity" and, as compared with "ordinary aspirin", is less toxic, better tolerated, and generally is quicker and more effective and safer.

*Mr. Morton Nesmith* for the Commission.

*Mr. Edward S. Rogers*, of New York City, for respondent.

## COMPLAINT

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, having reason to believe that Cal-Aspirin Corporation, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Cal-Aspirin Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 160 East Illinois Street in the city of Chicago, State of Illinois. It is now, and has been for several years last past, engaged in the manufacture and sale of medical and pharmaceutical products. It is now, and has been the owner of a patented formula for the production of a remedy or compound which it causes to be manufactured, and which it sells and distributes under the trade name or brand of "Cal-Aspirin." The respondent causes said compound and its other products to be transported from its principal place of business into and through other States of the United States other than the State of Illinois, to the purchasers thereof at their respective points of location.

In the course and conduct of its business as aforesaid, respondent is now, and for several years last past has been in substantial com-

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petition with other corporations, firms and individuals engaged in the manufacture, sale and distribution of pharmaceutical preparations, including aspirin and similar products, and the sale thereof between and among the various States of the United States and the District of Columbia, causing such preparations, when sold by them, to be transported to purchasers thereof in States other than the States in which such preparations are manufactured or prepared.

PAR. 2. The Cal-Aspirin Company, a corporation, was organized under and by virtue of the laws of the State of Delaware on August 14, 1933, and thereafter on March 24, 1934, the name of said company was changed to the Cal-Aspirin Corporation, respondent herein. Thereafter, on to wit February 21, 1934, a contract was entered into by and between two of the holders of  $\frac{2}{3}$  of the common stock issued by the respondent and General Mills, Inc., a corporation, wherein said General Mills, Inc., obtained an option to acquire the entire capital stock of the respondent. In said contract General Mills, Inc., was to direct respondent's activities over a specified period of time, namely, to June 30, 1934, at which time it could acquire the  $\frac{1}{3}$  interest of one of the incorporators. Thereafter the option would remain in full force and effect until June 30, 1935, with General Mills, Inc., directing the affairs of the respondent at which time it could acquire the entire capital stock of the respondent. On June 30, 1934, General Mills, Inc., by exercising its option purchased  $\frac{1}{3}$  of the capital stock of one of the incorporators. General Mills, Inc., did operate respondent company from February 21, 1934, to June 30, 1935, and although it still maintains a directing hand in the affairs of the respondent it has not yet exercised its option to acquire all of the stock of the corporation.

Aspirin is made of a drug technically known as acetyl salicylic acid. Cal-Aspirin is composed of two parts of acetyl salicylic acid and one part of calcium gluconate.

The respondent causes the product known as "Cal-Aspirin" to be compounded or manufactured for it by the Standard Pharmaceutical Company at 846 West Jackson Boulevard, Chicago, Ill.

PAR. 3. In the course and conduct of its business as aforesaid the respondent, in soliciting the sale of and selling "Cal-Aspirin" and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than one year last past has caused advertisements to be issued, published and circulated to and among the general public of the United States in newspapers, magazines, and other publications and in other forms of printed matter, and by radio broadcasting and in other ways.

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In said ways and by said means respondent makes and has made to the general public many unfair, exaggerated, false, and misleading statements with reference to the therapeutic value of said product and its effect upon the users thereof, a portion of which are as follows:

- (1) "Cal-Aspirin is less toxic and better tolerated than ordinary aspirin";
- (2) "Cal-Aspirin reduces kidney toxicity";
- (3) "Cal-Aspirin greatly reduces gastric mucosa irritation";
- (4) "Cal-Aspirin is a more prompt and efficient analgesic and antipyretic";
- (5) "Cal-Aspirin is quicker acting than ordinary aspirin";
- (6) "Cal-Aspirin's effects last longer than those of ordinary aspirin";
- (7) "Cal-Aspirin has a greater margin of safety and can be used in larger doses than ordinary aspirin";
- (8) "Cal-Aspirin has relieved pain in many cases where ordinary aspirin fails";
- (9) "Cal-Aspirin is safer than ordinary aspirin";
- (10) "Cal-Aspirin is more effective than ordinary aspirin."

The statements above set forth have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's Cal-Aspirin into the belief:

- (1) That ordinary aspirin in average doses will have a toxic effect on one's system and that Cal-Aspirin reduces this toxicity;
- (2) That ordinary aspirin has a toxic effect on the kidneys when taken in the average dose and that Cal-Aspirin reduces this toxicity;
- (3) That ordinary aspirin taken in the average doses produces gastric mucosa irritation and that Cal-Aspirin reduces such irritation;
- (4) That Cal-Aspirin in ordinary doses more quickly and efficiently alleviates pain and fever than ordinary aspirin taken in usual doses;
- (5) That Cal-Aspirin more quickly and efficiently alleviates pain than ordinary aspirin in ordinary doses;
- (6) That the effects from Cal-Aspirin in relief from pain and fever when taken in ordinary doses are longer lived than those produced by the taking of usual doses of ordinary aspirin;
- (7) That ordinary aspirin in average doses will have a toxic effect on one's system and that Cal-Aspirin reduces this toxicity;
- (8) That Cal-Aspirin taken in ordinary doses will produce relief to many where ordinary aspirin affords no relief;
- (9) That Cal-Aspirin in ordinary doses is more effective and efficient than ordinary aspirin taken in usual doses.

PAR. 4. In and by the ways and means hereinbefore alleged, respondent's representations are in disparagement of its competitors.

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Said representations have the capacity to, and are calculated to mislead and deceive the purchasing public into the beliefs that "Cal-Aspirin" is less toxic and better tolerated than ordinary aspirin; reduces kidney toxicity; greatly reduces gastric mucosa irritation; is a more prompt and efficient analgesic and antipyretic; is quicker acting than ordinary aspirin; that its effects last longer than those of ordinary aspirin; has a greater margin of safety and can be used in larger doses than ordinary aspirin; has relieved pain in many cases where ordinary aspirin fails; is safer than ordinary aspirin; and is more effective than ordinary aspirin; and to purchase said "Cal-Aspirin" in such beliefs, whereas in truth and in fact "Cal-Aspirin" is not less toxic and better tolerated than ordinary aspirin; does not greatly reduce gastric mucosa irritation; is not a more prompt and efficient analgesic and antipyretic; is not quicker acting than ordinary aspirin; its effects do not last longer than those of ordinary aspirin; has not a greater margin of safety and cannot be used in larger doses than ordinary aspirin; has not relieved pain in many cases where ordinary aspirin fails; is not safer than ordinary aspirin; and is not more effective than ordinary aspirin. Said representations by respondent have the capacity and tendency to unfairly divert trade from, or otherwise injure and prejudice, respondent's competitors in interstate commerce.

PAR. 5. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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

The respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

*It is hereby ordered,* That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint



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in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue, and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

*It is hereby further ordered*, That the respondent, Cal-Aspirin Corporation, its officers, agents and employees, forthwith cease and desist from representing in advertising matter, circular letters, by means of radio broadcasting, or otherwise, in or in connection with selling or offering for sale in interstate commerce its preparation known as "Cal-Aspirin";

(1) that "Cal-Aspirin is less toxic and better tolerated than ordinary aspirin"; (2) that "Cal-Aspirin reduces kidney toxicity"; (3) that "Cal-Aspirin greatly reduces gastric mucosa irritation"; (4) that "Cal-Aspirin is a more prompt and efficient analgesic and antipyretic"; (5) that "Cal-Aspirin is quicker acting than ordinary aspirin"; (6) "Cal-Aspirin's effects last longer than those of ordinary aspirin"; (7) that "Cal-Aspirin has a greater margin of safety and can be used in larger doses than ordinary aspirin"; (8) that "Cal-Aspirin has relieved pain in many cases where ordinary aspirin fails"; (9) that "Cal-Aspirin is safer than ordinary aspirin"; and (10) that "Cal-Aspirin is more effective than ordinary aspirin."

*It is further ordered*, That the said respondent within 60 days from and after the date of 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.

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IN THE MATTER OF  
H. T. POINDEXTER & SONS MERCHANDISE COMPANY

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

*Docket 2659. Complaint, Dec. 16, 1935—Order, Jan. 25, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the sale, offer for sale, or distribution in interstate commerce and in the District of Columbia, of cotton print goods, to cease and desist from representing, directly or indirectly, that the cotton print goods which it offers for sale or sells are "tub fast", or that such goods will not fade when washed in the normal course of use of such goods, unless and until such goods are in fact dyed with a "tub fast" dye, and the same will not fade when washed as aforesaid.

*Mr. William H. Griffin* for the Commission.

*Mr. William G. Holt* and *Mr. John Marshall*, of Washington, D. C., for respondent.

COMPLAINT

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, having reason to believe that H. T. Poindexter & Sons Merchandise Company, a corporation, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business in Kansas City in said State. Respondent is now and for a number of years last past has been engaged in the business of wholesaling and jobbing dry goods, and makes a specialty of selling yard goods and various lines of dry goods to small retail dealers located in small cities and villages. The principal portion of said business of respondent is in commerce between and among the various States of the United States.

In the course of its said business respondent has at all times herein mentioned utilized, and does now utilize, traveling salesmen and also a catalog and other kinds of advertising matter which it submits through the mails direct to the prospective customer. Respondent causes its said products when so sold to be transported from its said

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place of business in Kansas City, Mo., or other State of origin, into and through other States of the United States to purchasers of said products.

In the course and conduct of its said business respondent is in competition with individuals, partnerships, and other corporations engaged in the sale and distribution of similar products in commerce between and among various States of the United States.

PAR. 2. In connection with and in the conduct of its said business, respondent caused advertising matter, specifically postal cards, to be distributed in interstate commerce among its customers and prospective customers situated in States other than the State of origin of such distribution, in which said advertisements certain of its products, specifically certain cotton print goods of 36-inch width, 10- to 20-yard lengths, priced at  $7\frac{1}{2}\text{¢}$  per yard, were represented to be, and designated and referred to as being, "tub fast", that is to say, that said goods would not fade when washed in the normal course of use of such goods; when in truth and in fact such cotton print goods were not dyed with a "tub fast" dye and were not "tub fast" as that term is understood by and is generally accepted to mean in the cotton print goods trade and among the purchasing public, and when said print goods would and did fade when washed.

PAR. 3. By means of said designations and descriptions of its said product as set forth in paragraph 2 hereof, respondent was enabled to make ready and quick sales and turnovers of said product by committing and practicing deception and fraud upon the purchasing public by its representation that said product was "tub fast" as described in said paragraph 2.

The aforesaid false representations and deceptions made by respondent as above alleged have had the capacity and tendency to cause the purchasing public to purchase said product which was not "tub fast" as above described, in the belief that said product so purchased was "tub fast" as above described.

PAR. 4. There were and are among the competitors of said respondent many who have dealt in and sold and who deal in and sell similar products to the products herein mentioned which were and are "tub fast" as above described, and who have rightfully and truthfully represented and who rightfully and truthfully represent their said products to be "tub fast" as above described, and the above alleged acts and practices of said respondent have tended to and do tend to divert and have diverted and do divert business from and have tended, and do tend, otherwise to prejudice and injure said competitors; and there were and are among the competitors of said respondent many who have dealt in and sold and who deal in and sell similar

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products to those herein mentioned which were not and are not "tub fast", as above described, and who have not represented and who do not represent their said products to be "tub fast", as above described, and the above alleged acts and practices of said respondent have tended to and do tend to divert and have diverted and do divert business from, and have tended and do tend otherwise to prejudice and injure said competitors.

PAR. 5. The above alleged acts and practices of respondent have been and are all to the prejudice of the public and competitors of said respondent and constitute an unfair method 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 matter coming on to be heard by the Commission upon the complaint filed herein on December 16, 1935, and the answer to said complaint filed January 21, 1936, by H. T. Poindexter & Sons Merchandise Company, a corporation, respondent herein, in which answer the said respondent states that it waives hearing on the charges set forth in the complaint herein; that it refrains from contesting the proceeding; and that it consents that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises;

*It is hereby ordered*, That the respondent H. T. Poindexter & Sons Merchandise Company, a corporation, its officers, directors, agents, representatives, servants, and employees, in connection with the sale, offering for sale or distribution in interstate commerce and in the District of Columbia of cotton print goods, cease and desist from representing, directly or indirectly, that the cotton print goods which it offers for sale or sells are "tub fast", or that such goods will not fade when washed in the normal course of use of such goods, unless and until such goods are in fact dyed with a "tub fast" dye, and the same will not fade when washed as aforesaid.

*It is further ordered*, That 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 with the order to cease and desist hereinabove set forth.

## Complaint

## IN THE MATTER OF

## UNIVERSAL EXTRACT COMPANY, INC.

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

*Docket 2348. Complaint, Mar. 29, 1935—Decision, Jan. 28, 1936*

Where a corporation engaged in the manufacture and sale of flavoring extracts—  
Set forth upon the labels thereof the Italian words "Soli representanti in  
America per la preparazione dei famosi genuini estratti", and upon its  
letterheads, statements and invoices the words "Importers and Exporters",  
and represented through advertisements, labels and otherwise, that it  
imported and exported the flavoring extracts made and sold by it, and  
that such products, thus dealt in by it, were imported into the United  
States from foreign countries, the facts being it was not sole representative  
in America of any famous or other preparations made in Italy or any  
other foreign country, and neither exported nor imported any of the  
products thus advertised and dealt in by it;

With tendency and capacity to mislead and deceive purchasers and prospective  
purchasers into believing that said extracts were imported as above set  
forth and that it was an importer and exporter of such products, and  
thereby to induce the purchasing public, a portion of which prefers the  
imported extracts over and above the domestic and to buy such products  
from importers and exporters thereof, to purchase its said products from  
it in such beliefs, and thus divert trade to it from its competitors, among  
whom there are those engaged in the manufacture in the United States of  
such products from ingredients purchased therein, without representing  
the same as imported, or themselves as importers or exporters, and those  
who in fact import such products from various foreign countries and  
export the same, and truthfully represent their operations as such importers  
and exporters, and their said products as imported from various foreign  
countries; to the substantial injury of substantial competition in interstate  
commerce:

*Held*, That such acts and practices were all to the injury and prejudice of the  
public and competitors within the intent and meaning of Section 5.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. Edward L. Smith* and *Mr. John W. Hildrop* for the  
Commission.

*Mr. Milton H. Goldstricker*, of New York City, for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress, approved Sep-  
tember 26, 1914, entitled "An Act to create a Federal Trade Com-  
mission, to define its powers and duties, and for other purposes", the  
Federal Trade Commission having reason to believe that Universal

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Extract Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Universal Extract Company, 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 office and place of business in New York City in said State. It is now and for more than two years last past has been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. It now causes and for more than two years last past has caused such flavoring extracts, when sold by it, to be transported from its place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in said flavoring extracts. In the course and conduct of its business said respondent is now and has been for more than two years last past in substantial competition in commerce between and among various States of the United States, with other corporations and with individuals, firms and partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR. 2. In the course and conduct of its business respondent, in soliciting the sale of its flavoring extracts and in selling the same between and among the various States of the United States, has represented for more than two years last past and still represents in and by its advertisements, labels, stationery, and in other ways that it imports and exports the flavoring extracts which it manufactures and sells and that such extracts sold by the respondent are imported into the United States from foreign countries, when in truth and in fact said respondent is neither an importer nor exporter of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by it are manufactured by it in the city of New York aforesaid from ingredients purchased by the said respondent in the said city of New York and in various other cities of the United States.

PAR. 3. There are among the competitors of the respondent and have been for more than two years last past, manufacturers of flavoring extracts in the United States who manufacture such extracts

from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors, persons, firms, and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondent as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the beliefs that the flavoring extracts sold and offered for sale by the respondent are imported into the United States from foreign countries, that the respondent is in fact an importer of such flavoring extracts and an exporter thereof and thereby to induce the purchasing public to purchase flavoring extracts from respondent in such beliefs. Thereby trade is diverted to respondent from its competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and competitors of respondent 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.

#### 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 the 29th day of March 1935, issued and served its complaint in this proceeding upon respondent, Universal Extract Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John

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W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Milton H. Goldstricker, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto (oral arguments being waived); and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Universal Extract Company, 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 office and place of business in New York City in said State. It is now and for more than two years last past has been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. It now causes and for more than two years last past has caused such flavoring extracts, when sold by it, to be transported from its place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in said flavoring extracts. In the course and conduct of its business said respondent is now and has been for more than two years last past in substantial competition in commerce between and among various States of the United States, with other corporations and with individuals, firms and partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR 2. In the course and conduct of its business respondent, in soliciting the sale of its flavoring extracts and in selling the same between and among the various States of the United States, has represented for more than two years last past and still represents in and by its advertisements, labels, stationery, and in other ways that it imports and exports the flavoring extracts which it manufactures and sells and that such extracts sold by the respondent are



## Findings

imported into the United States from foreign countries, when in truth and in fact said respondent is neither an importer nor exporter of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by it are manufactured by it in the city of New York aforesaid from ingredients purchased by the said respondent in the said city of New York and in various other cities of the United States. On the bottles containing the flavoring extracts of respondent, which respondent sells and distributes in interstate commerce, labels are fixed containing the following words in Italian, to wit: "Soli representanti in America per la preparazione dei famosi genuini estratti", the English translation of which is as follows: "Sole representative in America of the famous preparations of this extract." On the letterheads, statements and invoices of respondent there appear the words "Importers and Exporters". The foregoing advertisements, statements and representations by respondent are false and misleading. In truth and in fact, respondent is not the sole representative in America of any famous or other preparation or preparations made in Italy or any foreign country, and neither exports nor imports any of the goods, wares or merchandise by it advertised, sold and distributed in interstate commerce.

PAR. 3. There are among the competitors of the respondent and have been for more than two years last past, manufacturers of flavoring extracts in the United States who manufacture such extracts from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors, persons, firms, and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondent as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the beliefs that the flavoring extracts sold and offered for sale by the respondent are imported into the United States from foreign countries, that the respondent is in fact an importer of such flavoring extracts and an exporter thereof and thereby

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to induce the purchasing public to purchase flavoring extracts from respondent in such beliefs. Thereby trade is diverted to respondent from its competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondent to substantial competition in interstate commerce.

## CONCLUSION

The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and competitors of respondent 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, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by John W. Hilldrop, counsel for the Commission, and Milton H. Goldstricker, attorney for the respondent (oral argument being waived), 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 ordered*, That the respondent, Universal Extract Company, Inc., a corporation, its agents, servants and employees, in the advertising, sale and distribution in interstate commerce of its commodity, to wit, flavoring extracts, cease and desist from:

(1) Advertising and representing by labels on bottles and other containers, letterheads, invoices, in newspapers, journals, periodicals, through radio broadcasts, or by any other method, means or device:

(a) That it imports or exports the flavoring extracts which it manufactures and sells in interstate commerce, as aforesaid; that such extracts or the ingredients composing the same are by respondent imported into the United States from foreign countries; that respondent is either an importer or an exporter; or that respondent is the sole representative in America for its said commodity.

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(b) That any of the aforesaid flavoring extracts or other merchandise which respondent manufactures, advertises, sells and distributes in interstate commerce, or any of the ingredients composing same, are manufactured in any foreign country or imported into the United States until and unless the said products are so manufactured or imported.

(2) Using on the labels placed on its bottles or other containers in which respondent's flavoring extracts are shipped and distributed in interstate commerce the words "Soli representanti in America per la preparazione dei famosie genuini estratti", or words in any language which state, import, or imply that respondent is the sole representative in America of the famous preparations of the extract contained, labelled and advertised in said bottles or containers.

*And it is hereby further ordered,* That the said respondent, Universal Extract Company, Inc., a corporation, shall within 60 days after the service upon it of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which it shall have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF  
STETSON PANTS COMPANY

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

*Docket 2609. Complaint, Nov. 2, 1935—Order, Jan. 28, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the sale of pants, forthwith to cease and desist from—

- (a) Making, publishing, circulating, or causing to be circulated in any manner in interstate commerce, statements for the purpose of falsely creating the impression and belief among potential purchasers of such products that the products so offered for sale or sold are products of its manufacture;
- (b) Representing or causing to be represented to potential customers that it is the exclusive owner of a particular form of merchandise or that it has any patent or copyright upon a so-called "vizualizer", integral part of a general sales method; or
- (c) Making or publishing any false or fraudulent representations as to the volume of business done or the goodwill or trade experience acquired by it.

*Mr. Alden S. Bradley* for the Commission.

*Paxton & Seasongood*, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions 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, the Federal Trade Commission, having reason to believe that the Stetson Pants Co., a corporation, hereinafter referred to as the respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Stetson Pants Co., is a corporation organized and existing under the laws of the State of Ohio, and has its principal office and place of business at No. 212 East Eighth Street, in the city of Cincinnati in said State. The principal business of the respondent consists in the sale and offering for sale of pants through the medium of personal solicitation and contact on the part of agents of said respondent, which agents are located in the various States of the United States; and the respondent now maintains, and since December 25, 1934, the date of its incorporation, has maintained, a constant current of trade and commerce in such

merchandise among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent's general method of effecting sales consists of the distribution of certain pamphlets, circular letters, and other printed matter, excerpts from which are hereinafter set out, which said pamphlets are used in the solicitation of prospective salesmen and the solicitation of customers, are distributed throughout the various States of the United States and the District of Columbia, and contain false and misleading statements and misrepresentations as hereinafter specified.

Respondent, in the pamphlets referred to, and particularly in circular letters as variously circulated by it, uses the following various statements:

STETSON PANTS CO.

Tailored-to-fit Trousers Direct to You.

Cincinnati, Ohio.

Your new "order getting" pants line.

The above, as contained in a circular letter, is undated.

A second circular letter used and now being used was issued as of March 1935, in which appears the following language:

STETSON PANTS CO.

Tailored-to-fit Trousers Direct to You.

Cincinnati, Ohio.

Dear Friend:

The famous Stetson Pants Line is now being offered to direct salesmen. This is the first time in history that salesmen will sell the famous Stetson Tailored-to-fit Trousers direct to the consumer and bring to wearers an amazing opportunity to save money. Above all, an entirely new Pants Line with which SALESMEN CAN MAKE REAL MONEY.

And the way you can present this line to your customers is new and different, too. The fancy patterns, the beautiful stripes and stylish checks will be sampled with extra long swatches. No more small scraps for swatches. These swatches are put up in a striking, novel way, so that your customer can see exactly how the finished pants will look. This is a copyrighted method, a plan all of our own, and will enable you to sell trousers much more quickly. Every customer will be interested as soon as you show him this novel sampling idea and will be sure to buy from you when they see this SENSATIONAL LINE SENSATIONALLY PRESENTED, and REMEMBER THIS: ONLY STETSON SALESMEN WILL BE PERMITTED TO SELL TROUSERS BY THIS NEW METHOD, and it does not cost you one cent.

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In truth and in fact, the merchandise so vended is made by persons, corporations, or copartnerships in no wise connected with the respondent company, and such merchandise is, in fact, purchased by the respondent in the ordinary marts of trade.

PAR. 3. There are, among the members of the purchasing public, a substantial number thereof who have an actual preference for purchasing merchandise directly from the manufacturer of the same, and the false use of the phrase, "Tailored-to-fit Trousers—Direct to You", and other phrases of similar tenor and import, does, among other things, mislead and deceive such portion of the purchasing public into the belief that they are, in fact, purchasing directly from the manufacturer and are avoiding the payment of the so-called middleman's or jobber's profit.

PAR. 4. The respondent, in addition to the distribution of circulars and pamphlets, as referred to in paragraph 1 of this complaint, has distributed and now distributes an undated circular letter from which the following excerpt is taken—

That reminds me to mention the new Stetson Visualizer, the amazing cut-out that enables your prospects to see how the pants pattern will look when made up. This is the greatest improvement ever brought out in pants selling—the most effective idea ever given to pants salesmen to help them sell more pants and make more money. Go through the line with this Visualizer, place the cut-out figure over each fancy pattern, and see for yourself. It is exclusive and patented. Only Stetson salesmen may use it.—

In truth and in fact, the so-called "Stetson Visualizer" is not patented by the respondent, is not exclusively owned by it, and such a "Visualizer", or one of strikingly similar nature, is used by a large number of competitors of the respondent.

PAR. 5. In the course and conduct of the business of respondent as above related, it caused from time to time, during or prior to April 1935, to be circulated among its salesmen, agents or representatives, various articles, either in the form of advertisements in trade magazines or in pamphlets, circular letters, or other printed matter, in which, among other things, appears the following statement in direct conjunction with the advertisement of the product offered by it for sale:

Over Four Million Pairs of Pants sold last year—

the purpose of such advertisement being to convey to the minds of salesmen, agents or representatives, and to the minds of members of the purchasing public, the acquisition of a goodwill and a merchandising experience not acquired by the respondent.

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In truth and in fact, at no time prior to the insertion of such advertisement had the company endured more than four-and-a-half months of corporate life.

PAR. 6. There are, among the competitors of the respondent, various firms, persons, partnerships, and corporations engaged in the sale of pants, who do not falsely represent or cause to be represented to members of the purchasing public, that the purchase of such merchandise is a purchase direct from the manufacturer or tailor thereof; who do not falsely represent to members of the purchasing public that the pants so offered by them for sale are tailored to meet the individual requirements of the purchaser; who do not falsely represent that they possess a monopoly of a certain method of merchandising, and who, for the purpose of securing the confidence of members of the purchasing public, do not falsely claim a substantial volume of business and acquisition of trade experience.

PAR. 7. The acts and practices of the respondent as hereinabove set forth have the capacity and tendency to and do, in fact, mislead and deceive the salesmen as agents or representatives of the respondent company and do mislead and deceive members of the purchasing public into the false belief that (1) the merchandise offered for sale is merchandise manufactured by the respondent company; (2) that the pants to be procured from the respondent are in every instance tailored to meet the individual requirements of the purchaser; (3) that respondent enjoys and possesses a monopoly of a certain method of merchandising superior to those of its competitors; and (4) that a substantial goodwill and trade experience has been acquired by the respondent as evidenced by the large volume of business represented to have been done by the respondent within the 12 months prior to April 1935, and has caused a substantial diversion of trade from competitors of the respondent and has occasioned substantial injury to competitors of the respondent engaged in the sale of similar products in interstate commerce.

Such acts and practices constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding, waiving hearing of the charges set forth in the complaint herein, and having stated in said substitute answer that it does not desire to contest said proceeding, and having consented in its said substitute answer that the Commission without hearing,

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without evidence, and without findings as to the facts or other intervening procedure, might make, enter and serve upon the respondent herein, an order to cease and desist from the methods of competition alleged in the complaint and the Commission being fully advised in the premises;

*It is hereby ordered*, That the respondent, the Stetson Pants Company, a corporation, and its several officers, agents, servants and employees, in connection with the sale or offering for sale in interstate commerce of pants, shall forthwith cease and desist:

(1) From making, publishing, circulating or causing to be circulated in any manner in interstate commerce, statements for the purpose of falsely creating the impression and belief among potential purchasers of such products that the products so offered for sale or sold are products of the manufacture of the respondent.

(2) From representing or causing to be represented to potential customers that it is the exclusive owner of a particular form of merchandise or that it has any patent or copyright upon a so-called "vizualizer" the same being an integral part of a general sales method.

(3) From making or publishing any false or fraudulent representations as to the volume of business done or the goodwill or trade experience acquired by it.

*It is hereby further ordered*, That the respondent shall within 60 days from the day of the date of the service upon it of this order, file with this Commission its report in writing, stating the manner and form in which it has complied with this order.



## Complaint

## IN THE MATTER OF

NEW ENGLAND COLLAPSIBLE TUBE COMPANY AND  
ROBERT P. GUST COMPANY, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2457. Complaint, June 26, 1935—Order, Jan. 29, 1936*

Consent order requiring respondents, their agents, etc., in connection with the sale and offer of toothpaste or other merchandise in interstate commerce, to cease and desist from—

- (a) Selling or offering for sale, or causing others to sell or to offer toothpaste or other merchandise for sale in tubes, boxes, cartons, or other packages, whose dress or appearance, when sold to dealers for resale or to the public for use of consumption, is contrived or otherwise formed, with or without the use of attached labels, by means of brand names or printed words or statements in type of the same or approximately the same size, form and arrangement, in colors or in white or black, and with retail resale prices marked or printed thereon, so that the dress or appearance simulates the dress or appearance of tubes, boxes, cartons, or other packages in which similar toothpaste or other merchandise is sold or offered for sale by a competitor or competitors, with the effect that the dress or appearance of their tube, etc., has the capacity and tendency to confuse, deceive and mislead dealers and members of the public into the belief that their toothpaste or merchandise is that of a competitor;
- (b) Representing by printed resale prices on the tubes, boxes, cartons or packages thereof, or verbally or otherwise representing, or causing others to represent the retail resale price or prices of toothpaste or other merchandise sold or offered for sale by them, or by either of them, to be a sum or sums greater than the actual price or prices at which the said toothpaste or other merchandise is regularly and customarily sold and offered for sale at retail to the public who purchase the same for use or consumption; or
- (c) Representing that the manufacturer of the toothpaste or other merchandise sold or offered for sale by them is other than the actual manufacturer thereof by printing a fictitious name and address on the tubes, boxes, cartons or packages thereof.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. Edward E. Reardon* for the Commission.

*Mr. Nathan Belcher*, of New London, Conn., for respondents.

## COMPLAINT

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, having reason to believe that New England Collapsible Tube Company and Robert P. Gust Company, Inc.,

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hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New England Collapsible Tube Company is a corporation, incorporated prior to the year 1930 under the laws of the State of Connecticut and having at all times since 1930 a factory for the manufacture, among other things, of dentifrices at New London, Conn., and a usual place of business also in the city of New York, N. Y.

PAR. 2. During all the times above mentioned, the respondent, New England Collapsible Tube Company, manufactured, among other things, four dentifrices, hereinafter mentioned and referred to in paragraphs 4, 6, and 7 hereof, which it sold and caused to be sold or distributed to dealers, purchasers and distributors thereof, located in the District of Columbia and in various States other than New York or Connecticut, for resale to the public, users thereof.

The respondent put up its four dentifrices in collapsible tubes which were sold enclosed in paper cartons and the tubes and cartons carried brand names and were subscribed with names and addresses purporting to be the name and address of the manufacturer of the dentifrice in each instance. The respondent caused the price 50¢ to be marked on the end of the cartons of three of its dentifrices. The brand names, the names and addresses of the manufacturer in each case and the price marked appearing on the four dentifrices were, respectively, as follows: "Quire's Milk of Magnesia Dental Cream—Quire Laboratories, New York—50¢"; Forsyth Dental Cream—Forsyth Labs., New York, New York"; "Payne's Tooth Paste—Payne Laboratories, New York—Price 50¢"; and, "Palmer's Tooth Paste—Palmer Laboratories, New York, N. Y.—50¢."

The said respondent during said times caused its four brands of dentifrices, when so sold or distributed by it to be transported from New York or Connecticut, or from the State of origin of the shipment to the purchasers located in States other than the State of origin of the shipments.

PAR. 3. Respondent Robert P. Gust Company, Inc., is a corporation, incorporated prior to the year 1930 under the laws of Illinois and having a usual place of business in Chicago, Ill., at all times since 1930.

PAR. 4. During all the times above mentioned, respondent Robert P. Gust Company has been engaged in the business of the sale or distribution of dentifrices and other merchandise, including both the merchandise and dentifrices owned by it or consigned to it as a man-

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manufacturers' sales agent for distribution to other dealers, and including the four dentifrices made by respondent New England Collapsible Tube Company mentioned and referred to in paragraphs 2, 6, and 7 hereof, and during said times the Robert P. Gust Company has caused the merchandise and the dentifrices, above mentioned or referred to, to be sold or distributed to dealers, purchasers thereof, located in various States of the United States other than Illinois.

The Robert P. Gust Company, during said times, has caused the said merchandise and dentifrices, when so sold or distributed by it, to be transported from Illinois, or the State of origin of the shipment, to the purchasers located in States other than the State of origin of the shipments.

PAR. 5. During all the times above mentioned and referred to, other individuals, firms, and corporations, located in various States of the United States, and hereinafter referred to as sellers, are and have been engaged, some of them in the business of the manufacture and sale, and others in the business of the sale of dentifrices which they have sold, respectively, under brand names in collapsible tubes, enclosed in paper cartons with the name of the manufacturer and in some instances with the regular or customary retail prices marked thereon, to dealers, purchasers thereof, located in the District of Columbia and in various States of the United States, other than the State of the seller, for resale under said brand names to the public, users thereof. The sellers, respectively, have caused the said dentifrices, when so sold by them, to be transported from the State of the seller, or the State of origin of the shipment, to the purchasers located in States other than the State of origin of the shipments.

PAR. 6. During all the times above mentioned and referred to the respondents are and have been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph 5 hereof, in the sale and distribution of dentifrices, including those mentioned in paragraphs 2, 4, and 7 hereof.

PAR. 7. During all the times above mentioned and referred to, the respondent New England Collapsible Tube Company has put up its four brands of dentifrices, mentioned and referred to in paragraphs 2, 4, and 6 hereof, in tubes and cartons approximately of the same size and shape, respectively, as the tubes and cartons in which four nationally known brands of dentifrices, namely, Squibb Dental Cream, Forhan's, Ipana Tooth Paste, and Pepsodent Tooth Paste, were put up and in which they were sold by their manufacturers and by dealers therein, among those referred to as sellers in paragraph 5 hereof.

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The said respondents' brand names on the tubes and cartons of its dentifrices simulated, respectively, the brand names above mentioned on the tubes and cartons of its competitors. In addition to the said brand names, the said respondent New England Collapsible Tube Company caused designs in colors to be put on the tubes and cartons of its dentifrices which were similar to the designs and colors thereof on the tubes and cartons of the dentifrices of its competitors. The said respondent also caused printed descriptive matter to appear on the tubes and cartons of its dentifrices which was approximately the same as that printed on the tubes and cartons of the dentifrices of its competitors in language, type, and appearance.

For greater accuracy of description of the dress and appearance of the tubes and cartons of respondent's said dentifrices and of the similarity thereof to the dress and appearance of the tubes and cartons of the dentifrices above mentioned and referred to of respondent's competitors, reference is hereby made to the actual tubes and cartons of the said dentifrices of the respondent and of its competitors which will be offered in evidence herein.

PAR. 8. The representation of the name and address of the manufacturer of the dentifrices which the New England Collapsible Tube Company, during the times above mentioned, caused to appear on the tubes and cartons in which they were displayed for sale and sold to the public was fictitious and false.

The price of 50¢ which said respondent caused to be marked on its cartons was not the usual and regular price at which the dentifrices so marked were regularly sold to the public, users of dentifrices, but was, in each instance, a fictitious and false price that was several times larger than the regular and usual price at which they were offered and sold to the public. The respondent's said price markings were approximately the prices at which the dentifrices of respondent's competitors, above mentioned, were regularly offered for sale and sold to the public during said times.

PAR. 9. The respondent, New England Collapsible Tube Company, caused the fictitious and false names and addresses of the manufacturers and the fictitious and false representations of retail prices at which its dentifrices were offered for sale and sold to the public to be printed on the tubes and cartons of its dentifrices, and caused the size, shape, dress, and appearance of the tubes and cartons to simulate in size, shape, dress, and appearance, the tubes and cartons of the dentifrices of respondents' competitors with the knowledge and intent that the said respondent's dentifrices would be so displayed, offered for sale, and sold to the public, users of dentifrices, in com-

petition with others and particularly in competition with the brands of respondents' competitors above mentioned.

PAR. 10. The respondents, New England Collapsible Tube Company and Robert P. Gust Company, sold and distributed, as set forth in paragraphs 2 and 4 hereof, the dentifrices manufactured by the New England Collapsible Tube Company, above described, with the intent and purpose to confuse, deceive, and mislead dealers and members of the public, users of dentifrices, into the belief that the names of manufacturers appearing thereon were, respectively, the actual names of the manufacturers thereof; into the belief that the prices thereon were the actual, regular, and customary prices at which the same were actually, regularly, and customarily sold to members of the public; and, into the belief that, in purchasing said dentifrices they were purchasing the products of respondents' competitors, which are and have been offered for sale and sold under the brand names, mentioned in paragraph 7 hereof. And, dealers in dentifrices and members of the public, purchasers of dentifrices were confused, deceived, and misled thereby into the belief that the said names of manufacturers were the names of the actual makers of the said respondent's dentifrices; into the belief that the said retail prices marked on the cartons thereof were the actual, regular, and customary retail prices thereof, and in consequence of the said names of alleged manufacturers, and of the said fictitious and false prices, and of the dress and appearance of said respondent's tubes and cartons dealers and members of the public were confused, deceived, and misled into purchasing the said dentifrices of respondent New England Collapsible Tube Company instead of the dentifrices sold by respondents' competitors under the brand names mentioned in paragraph 7 hereof and instead of the dentifrices sold by other competitors of respondents, and trade in dentifrices was thus diverted from competitors to respondents.

PAR. 11. The above acts and things done and caused to be done by the respondents were and are each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent 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 matter coming on to be heard by the Commission upon the complaint filed herein June 26, 1935, the answer to the complaint

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filed herein December 26, 1935, by the respondent, New England Collapsible Tube Company and the answer to the complaint herein filed December 31, 1935, by the respondent, Robert P. Gust Company, Inc., in which answers the respondents separately state that they waive hearing on the charges set forth in the complaint herein; that they refrain from contesting the proceeding and that they consent that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue, and serve upon the said respondents, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises;

*It is thereby ordered*, That the respondents, New England Collapsible Tube Company and Robert P. Gust Company, Inc., their several agents, representatives and employees, in the sale and offering for sale of toothpaste or other merchandise in interstate commerce do cease and desist from—

(1) Selling or offering for sale, or causing others to sell or to offer toothpaste or other merchandise for sale in tubes, boxes, cartons, or other packages, whose dress or appearance, when sold to dealers for resale or to the public for use or consumption, is contrived or otherwise formed, with or without the use of attached labels, by means of brand names or printed words or statements in the type of the same or approximately the same size, form, and arrangement, in colors or in white or black, and with retail resale prices marked or printed thereon, so that the dress or appearance simulates the dress or appearance of tubes, boxes, cartons, or other packages in which similar toothpaste or merchandise is sold or offered for sale by a competitor or competitors, with the effect that the dress or appearance of the tubes, boxes, cartons, or packages of the respondents has the capacity and tendency to confuse, deceive, and mislead dealers and members of the public into the belief that the toothpaste or merchandise of the respondents, or of either of them, is the toothpaste or merchandise of a competitor;

(2) Representing by printed resale retail prices on the tubes, boxes, cartons or packages thereof, or verbally or otherwise representing, or causing others to represent the retail resale price or prices of toothpaste, or other merchandise sold or offered for sale by respondents, or by either of them, to be a sum or sums greater than the actual price or prices at which the said toothpaste or other merchandise is regularly and customarily sold and offered for sale at retail to the public who purchase the same for use or consumption;

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(3) Representing that the manufacturer of the toothpaste or other merchandise sold or offered for sale by them is other than the actual manufacturer thereof by printing a fictitious name and address on the tubes, boxes, cartons, or packages thereof.

*It is further ordered,* That the respondents, New England Collapsible Tube Company, and Robert P. Gust Company, Inc., shall each within 30 days after the service of this order file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order to cease and desist.

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IN THE MATTER OF  
ETON KNITTING CORPORATION

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

*Docket 2581. Complaint, Oct. 15, 1935—Order, Jan. 29, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the distribution, offer for sale, and sale of wearing apparel knitted or crocheted from yarn, in interstate commerce, to cease and desist from using the word "knitting" as a part of or in connection with its corporate name in carrying on the business of distributing and selling such wearing apparel, or advertising or in any other way representing itself to be the manufacturer or knitter thereof, until and unless it actually owns, operates and controls a factory or factories in which such apparel is actually knitted or crocheted.

*Mr. Harry D. Michael* for the Commission.

*Mr. Carlton Z. Solomon*, of New York City, for respondent.

COMPLAINT

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, having reason to believe that Eton Knitting Corporation, hereinafter designated as respondent, is now, and has been, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating the charges in that respect as follows:

PARAGRAPH 1. Respondent, Eton Knitting Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in New York City in said State. It is now, and since its organization in 1932, has been engaged in the business of selling to wholesalers and retailers for resale wearing apparel knitted or crocheted from yarn, which said wearing apparel consists of hats, caps, berets, sweaters, and other articles. Now and since its organization it has caused such wearing apparel, when sold by it, to be transported from its place of business in New York City aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United



States and in the District of Columbia. And there is now, and has been, for more than two years last past a constant current of trade and commerce by respondent in such wearing apparel between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent has been, and now is, in substantial competition with other corporations and with firms, persons and partnerships engaged in the sale of knitted and crocheted wearing apparel between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business respondent now represents, and for more than two years last past has represented in and by the use of its aforesaid corporate name, by letterheads, invoices, billheads, statements and other stationery, and in other ways, that the wearing apparel which it sells and offers for sale and has sold and offered for sale, has been knitted, crocheted and manufactured by it. In truth and in fact, respondent does not knit, crochet or manufacture, and has not knitted, crocheted or manufactured the wearing apparel which it sells, has sold, offers for sale, and has offered for sale, and respondent does not own, operate or control, or have any interest in any factory or plant in which are knitted, crocheted or manufactured the products which it sells and has sold.

PAR. 3. A substantial number of retailers and wholesalers of crocheted and knitted wearing apparel and of the purchasing public believe that such crocheted or knitted wearing apparel, when purchased from the manufacturer thereof, is of a higher quality than such wearing apparel purchased from those who are not the manufacturers thereof, and that in purchasing from such manufacturers such wearing apparel is offered at a price from which is eliminated a middleman's profit.

PAR. 4. The aforesaid representations made by the respondent, as set out in paragraph 2 hereof, have the capacity and tendency to mislead and deceive, and have misled and deceived, wholesalers and retailers of such wearing apparel sold by the respondent and the purchasing public into the belief that respondent is and has been the knitter, crocheter, and manufacturer of such wearing apparel, and that, in purchasing from respondent or from respondent's dealers, the profit of the middleman has been eliminated, and to purchase respondent's products in such erroneous belief. There are among the respondent's competitors described in paragraph 1 hereof, manufacturers and knitters of the wearing apparel which they sell and who rightfully represent themselves to be the manufacturers and knitters thereof. There are also among such competitors dealers and distributors in knitted wearing apparel who do not misrepresent

that they are the knitters or manufacturers thereof. The aforesaid representations made by the respondent, namely, that it is the knitter or manufacturer of the wearing apparel which it sells, have had the capacity and tendency to, and have, diverted trade to respondent from its competitors who do not misrepresent that they are the manufacturers or knitters of the wearing apparel in which they deal. Thereby substantial injury is being done, and has been done by respondent to substantial competition in interstate commerce.

PAR. 5. The above and foregoing acts, practices and representations of the respondent have been, and 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 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

The respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

*It is hereby ordered*, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

*It is hereby further ordered*, That the respondent, Eton Knitting Corporation, a corporation, its officers, agents, representatives, and employees, in connection with the distribution, offering for sale and sale of wearing apparel, knitted or crocheted from yarn, in interstate commerce, forthwith cease and desist from:

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(1) Using the word "knitting" as a part of or in connection with its corporate name in carrying on the business of distributing and selling wearing apparel knitted or crocheted from yarn until and unless it actually owns, operates and controls a factory or factories in which said wearing apparel is actually knitted or crocheted;

(2) Advertising or in any way otherwise representing directly or by implication, through advertisements, advertising literature, stationery, or in any manner or means whatsoever, itself to be the manufacturer or knitter of the wearing apparel, knitted or crocheted from yarn that is sold and distributed by it, until and unless it actually owns, operates and controls a factory or factories wherein said wearing apparel, knitted or crocheted from yarn, is actually knitted or crocheted.

*It is further ordered,* That respondent shall within 60 days after service 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 and conformed to the order to cease and desist hereinabove set out.

IN THE MATTER OF  
FREDERICK W. DOBE, DOING BUSINESS UNDER THE  
NAME AND STYLE OF DOBE SCHOOL OF DRAFTING  
AND AS ENGINEER DOBE

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

*Docket 2464. Complaint, June 27, 1935—Order, Jan. 30, 1936*

Consent order requiring respondent, his agents, etc., in connection with the sale, offer for sale or distribution in interstate commerce of courses of study and instruction in drafting, or in any other subject, to cease and desist from—

- (a) Representing that draftsmen or workers in any line in which he gives instruction are in demand or that jobs in such lines are plentiful until such representations are true when made, and using reproductions of clippings from the "Help Wanted" columns to indicate such demand until such reproductions are of current advertisements and represent current employment conditions;
- (b) Representing and using a picture of a building to represent his occupation thereof in the conduct of his school, unless and until such building is occupied entirely and exclusively by such school, or unless accompanied by a conspicuous statement that the school occupies only a portion thereof;
- (c) Representing salaries of beginners or experts in its lines as other than those prevailing at the time such representations are made, or salaries of experienced workers as those that may be made by his students as beginners;
- (d) Representing that he maintains an employment service, or guarantees to, or that he can and will get jobs for students, unless and until he conducts a bona fide employment service through which active efforts are systematically made to locate openings for jobs and to place his students therein, and unless and until employment demands warrant such assurances at the time they are made;
- (e) Representing that money paid will be refunded unless positions are obtained by his students, unless and until such refunds are in fact made upon students' failure to secure positions after reasonable study and work on courses for which enrolled;
- (f) Representing that drawing tables or other equipment furnished students are limited in number or will be furnished only to those who enroll within a definite and limited time unless and until such equipment is in fact limited in number or cannot or will not be augmented by further purchases and unless and until such limitation as to time is in fact observed; or
- (g) Using reproductions of letters from his former students who have secured positions or have been advanced to high salaries or important positions unless and until such letters are of current or recent date and reflect then existing opportunities and employment conditions.

*Mr. Harry D. Michael* for the Commission.

*Doyle & Ross*, of Washington, D. C., for respondent.

## Complaint

## COMPLAINT

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, having reason to believe that Frederick W. Dobe, doing business under the name and style of Dobe School of Drafting and as Engineer Dobe, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Frederick W. Dobe, doing business under the name and style of Dobe School of Drafting, and as Engineer Dobe, is now and for more than five years last past has been engaged in the sale and distribution of courses of study and instruction designed and intended for training students thereof in various types of drafting, which said courses of study and instruction are pursued by correspondence. Said respondent, in conducting his said business, has his office and principal place of business near Libertyville, in the State of Illinois. Respondent, in the course and conduct of his said business, causes his said courses of study and instruction, consisting of books, pamphlets, study and instruction sheets, and other printed or mimeographed matter, as well as drawing equipment, consisting of tools, instruments, tables, etc., 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 various and numerous persons to whom said courses of study and instruction are or have been sold.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are, and have been, engaged in the sale and distribution in interstate commerce of courses of study and instructions designed and intended for training students thereof in various forms and types of drafting, as well as in the sale and distribution in interstate commerce of courses of study and instruction in other lines, all of which are pursued by correspondence. Such other individuals, firms, and corporations have caused and do now cause their said courses of study and instruction, and equipment connected therewith, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said courses of study and instruction, and supplies and equipment connected therewith, with such other individuals, firms, and corporations.

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PAR. 3. That respondent, in his advertising literature distributed to prospective students in various States of the United States, and in his advertisements inserted in magazines and other publications distributed generally to the public throughout the United States, makes various representations in regard to the prospects of employment in drafting positions, salaries paid, and otherwise, which are misleading and greatly exaggerated. Among the advertising circulars sent out by respondent within the last five years is one depicting a large number of newspaper clippings showing help-wanted advertisements for draftsmen and workers in kindred lines. Such advertising circulars represent and imply by such depictions that such help wanted advertisements are current advertisements and that they represent and depict the current demand for work in such lines, and that such work is plentiful at the time, and that many jobs of such nature were available at the time such circulars were used. In truth and in fact, such help-wanted advertisements so depicted were taken from newspapers published in 1929, or prior thereto. No such demand for draftsmen and workers in kindred lines has existed during the period from 1930 to 1935 when such circulars were used. The available supply of trained and experienced workers in such lines during such time has greatly exceeded the demand, and most concerns using draftsmen have greatly reduced their forces.

Other representations of such nature have been made by respondent in his advertising matter, among which are the following:

\* \* \* JOBS NOW in aviation, electricity, machinery, auto work and certain building lines. Even now all these industries and others, too, are employing draftsmen. \* \* \*

\* \* \* Trained men needed NOW! \* \* \*

\* \* \* Engineer Dobe will train you at your home by mail until you get that good job \* \* \*.

\* \* \* Jobs open NOW! \* \* \*

\* \* \* A good many of my students accept positions as first class Draftsmen long before they finish my course, which shows the demand there is for draftsmen, \* \* \*

\* \* \* Good positions for men to fill. Due to the size of the field in Drafting, there are open splendid positions for competent Draftsmen. \* \* \*

\* \* \* There are calls for Draftsmen daily. \* \* \*

\* \* \* You will have plenty of good pay positions to choose from at all times \* \* \*

Better JOBS now DRAFTING \* \* \*

\* \* \* During the past general let-down in business the Draftsmen have not suffered as so many less fortunate men in other lines have \* \* \*.

PAR. 4. That, in some of the said advertising matter used by respondent, as aforesaid, respondent makes use of the picture of a large building which indicates and implies to the public that the

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building so pictured is used by respondent in the conduct of his school, or for his work as a consulting engineer. The latter impression is increased in some of the advertising material by the wording, "Dobe Engineering Service", imposed upon the building so depicted. In truth and in fact, the building so depicted is not used by respondent for his school or for his engineering service and he maintains and operates no building, for either purpose, of the size and extent of the building pictured. Respondent's only employees are a few girls who attend to the office and clerical work incident to the conduct of the correspondence course.

PAR. 5. That respondent, in his advertising matter as hereinbefore described, makes many misleading, inaccurate and exaggerated statements in regard to the pay that his students may expect to receive upon completing the training offered, as well as in regard to the general pay scales in the work involved. Among such statements are the following:

Draftsmen .....	\$200 month
Head Draftsman.....	300 month
Designers.....	400 month
Chief Draftsman.....	600 month

\* \* \* Be ready for Big Pay \* \* \*

\* \* \* Jobs pay \$50 a week or more. \* \* \*

\* \* \* Earn up to \$50 a week to start. \* \* \*

Drafting office showing draftsmen, employed at steady work,  
 • drawing from \$250 and up to \$600 per month salary \* \* \*.

\* \* \* Draftsmen trained by me earn \$200 to \$300 a month.

You'll do this too. \* \* \*

If you earn less than \$70 a week I'll train you at home for a big pay position.

Big Pay—Opportunity.

\* \* \* Good designers are in urgent demand. Some command really big salaries—up to \$1,000 a month. That's what you can look forward to when you become proficient. \* \* \*

That, in truth and in fact, such statements as the above, together with others of the same general nature, made by respondent in his advertising matter, do not truly reflect the salary or wage situation in the field of work referred to, or the possibilities of earnings to be made by respondent's students on the completion of respondent's courses, nor did such representations reflect the wage or salary situation at the time they were made.

That, in truth and in fact, the average beginning draftsman receives only from \$15.00 to \$20.00 per week, and only trained, experienced draftsmen receive as much as \$50.00 per week. The higher salaries named by respondent in his advertising matter are the exceptional positions and not the general rule. No such positions or salaries are open to beginners who have finished respondent's courses.

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PAR. 6. That respondent represents in his advertising matter, as aforesaid, that he can and will get positions for his students, through the operation of his special employment service, and that he will guarantee a position, or money paid will be refunded; when, in truth and in fact, respondent has rendered no such employment service since 1931 and his correspondence and connections with employers took place prior to that time. Furthermore, he makes no guarantee of a position nor does he refund money paid if a position is not obtained. Among the misleading representations of respondent in that regard are the following:

FREE Employment Service.

After training you I help you to a job without charging you a cent for this service. For 30 years employers of Draftsmen have been writing me when they want help.

I'll train you until you actually have a good job as a draftsman.

(That's my guarantee, or your money back.)

\* \* \* I'll train you until competent and until assisted to position OR all your money back.

Employment service until in a steady position.

PAR. 7. That respondent, in his advertising matter, has offered to furnish a limited number of drawing tables to students if they enroll within a limited time, when, in truth and in fact, such tables furnished by respondent were not limited in number or as to time of enrollment of his students, but were furnished generally to all students, as a part of the equipment included in that furnished for the amount paid for the course. Such representations by respondent in that respect included the following:

For advertising purposes, a limited number of the "Chief's Own" folding drawing tables are offered NOW by me if you enroll as my student within the next 10 days after receiving application.

Moreover, respondent, in some of his advertising matter, represented that his available supply of drafting instruments was limited and that prospective students must hurry and get their applications in immediately, in order to be assured that they are in before the supply of instruments is exhausted, when, in truth and in fact, respondent has furnished and does furnish to all applicants sets of drawing instruments, regardless of when the applications are sent or received, and additional supplies of drafting instruments have been available to respondent at all times during the past five years. Such a representation so made by respondent is as follows:

If you enroll right away, I will send you this fine, complete working outfit immediately. But as my stock of instruments, which are imported from Europe, is limited, you must hurry and make arrangements to get your enrollment in before my supply is exhausted.



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PAR. 8. That respondent, in his advertising matter, as aforesaid, uses reproductions of letters of his former students who have advanced to high positions in business, or who have been advanced to positions paying high salaries. That prospective students are led to believe from such advertisements that such letters depict current conditions and are of current or very recent date. In truth and in fact, such letters do not reflect current conditions, nor are they of recent date, but were written eight or more years ago and reflect conditions that do not now exist, nor did they exist within the last five years during which such advertisements were used.

PAR. 9. That the representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that positions for draftsmen are available and plentiful; that business firms are advertising for draftsmen to fill positions; that employment conditions in drafting lines have been better than in other lines; that respondent has a large and extensive establishment where he conducts his school, or in which he conducts his business as a consulting engineer; that beginning wages are high and that exceptionally high-salaried positions are available and easily obtainable; that respondent can get positions for his students; that respondent will refund money paid for his training if positions are not secured; that equipment is furnished for a limited time, or in limited amount, and that advancement of his former students reflects current conditions and are current happenings, when, in truth and in fact, such are not the facts. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to answer his said advertisements, to sign contracts to take his courses, to pay money to respondent for the same and to pursue his courses of instruction, 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 the lines so offered by respondent, as well as from those so engaged in other lines of instruction by correspondence.

PAR. 10. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent 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**

The respondent herein having filed his answer to the complaint in this proceeding, and having subsequently filed with this Com-

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mission his motion that he be permitted to withdraw his said answer and that he be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

*It is hereby ordered,* That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by his said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in his said substituted answer that he does not contest the said proceeding, and having consented in his said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue, and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

*It is hereby further ordered,* That the respondent, Frederick W. Dobe, doing business under the name and style of Dobe School of Drafting and as Engineer Dobe, or under any other trade name, his agents, representatives, servants and employees, in connection with the sale, offering for sale or distribution in interstate commerce and in the District of Columbia of courses of study and instruction in drafting, or in any other subject, cease and desist from the following practices, to wit:

(1) Representing directly or indirectly that draftsmen or other workers in any line in which he gives instruction are in demand or that jobs in such lines are plentiful and to be had unless such are the facts and true at the time such representations are made.

(2) Using reproductions of clippings from "Help Wanted" columns of newspapers and other publications to indicate the demand for workers in drafting and other lines unless such reproductions are those of current advertisements at the time they are used and unless they reflect the employment conditions then existing.

(3) Representing by use of the picture of a building that such building is used and occupied by respondent in the conduct of his school when in truth and in fact such is not the case.

(4) Using the picture of a building in which respondent's school is conducted unless and until such building is occupied entirely and exclusively by the school or unless such picture is accompanied by

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a conspicuous statement setting forth the portion of the building used or that the school occupies only a portion thereof.

(5) Representing directly or indirectly that the beginning salaries of draftsmen or of other workers in the lines in which respondent gives instruction or that the salaries of expert workers in such lines are other than those prevailing at the time such representations are made.

(6) Representing directly or indirectly that salaries of experienced workers set out in his advertisements are those that may be made by his students as beginning salaries.

(7) Representing directly or indirectly that he maintains an employment service unless and until he does in fact conduct a bona fide employment service through which active efforts are systematically made to locate openings for jobs and to place his students therein.

(8) Representing directly or indirectly that jobs are guaranteed or that he can and will get jobs for his students unless and until such are the facts and unless and until employment demands warrant such assurances at the time they are made.

(9) Representing directly or indirectly that money paid will be refunded unless positions are obtained by his students unless and until such refunds are in fact made upon failure of such students to secure positions after reasonable study and work on the courses of study for which they enroll.

(10) Representing directly or indirectly that drawing tables or other equipment furnished to students who enroll for his courses are limited in number or that such will be furnished only to those who enroll within a definite and limited time unless and until such equipment is in fact limited in number or cannot or will not be augmented by further purchases and unless and until such limitation as to time is in fact observed.

(11) Using reproductions of letters from his former students who have secured positions or who have been advanced to high salaries or to important positions unless and until such letters are of current or recent date at the time of such use and reflect the then existing opportunities and employment conditions.

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

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IN THE MATTER OF  
AMERICAN WHITE CROSS LABORATORIES, INC.

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

*Docket 2640. Complaint, Nov. 26, 1935—Order, Jan. 30, 1936*

Consent order requiring respondent, its officers, etc., in connection with the offer for sale and sale of absorbent cotton in interstate commerce and in the District of Columbia, to cease and desist from—

- (a) Advertising, branding, labeling, or otherwise describing or representing packaged cotton as "sterilized" or "sanitary", or using any other word or words stating or implying that said product is sterilized or sanitary, unless the same is in fact sterilized and free from bacteria after being packaged and while contained in its original unbroken package; or
- (b) Advertising, etc., cotton as manufactured under the best sanitary conditions unless and until such cotton in fact has been so manufactured and packaged under strictest sanitary conditions in which full, and best accepted scientific sanitary precautions have been taken and followed for the removal and exclusion of all bacteria from such cotton after the packaging thereof.

*Mr. Marshall Morgan* for the Commission.

COMPLAINT

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, having reason to believe that American White Cross Laboratories, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American White Cross Laboratories, Inc., also known as American Laboratories, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 52 Webster Street in New Rochelle, State of New York, with a branch plant and office located at Cape Girardeau, Mo. Respondent's principal office and place of business was formerly

located at Mount Vernon, N. Y., having been moved to the New Rochelle address during the year 1935.

Respondent is now, and for more than two years last past has been engaged, as hereinafter described, in the business of manufacturing surgical supplies, including the processing of absorbent cotton and the selling of same principally to chain and syndicate stores, and to retail dealers, drug stores, surgical supply companies, and hospitals located in various parts of the United States. The said surgical supplies, including absorbent cotton as aforesaid, are manufactured as stated in New Rochelle, N. Y., and at respondent's branch plant at Cape Girardeau, Mo., where said products are packed, branded, and labeled by respondent for sale and distribution by it to said chain and syndicate stores, retail dealers, drug stores, surgical supply companies, and hospitals located in various parts of the United States, through whom said articles reach and are used by the consuming public. In connection with the sale and distribution of its said products the respondent transports them or causes them to be transported from its places of business in the States of New York and Missouri to the purchasers thereof located in a State or States of the United States other than said States of New York and Missouri.

In the course and conduct of its said business, respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution of surgical supplies, including absorbent cotton, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. One of the necessary and important articles employed by hospitals, physicians, surgeons and specialists, and in the homes of the people of the United States, is sterilized absorbent cotton. Health, in fact life, may at times depend on the purity, the sterile quality of absorbent cotton employed in connection with operations, and in dressing wounds, open sores or abrasions.

"Absorbent cotton" is a cotton from which all fatty matter has been extracted by scientific process, so that it readily takes up fluids. High Grade or "Hygrade" means a good grade of absorbent cotton. The best and finest absorbent cotton is made from purified cotton, white, fully bleached, fine filaments, containing no re-worked cotton or cotton linters, and free from lumps and visible impurities such as nibs, streaks of dirt, or other foreign matter. Virgin and peeler comber cotton well carded or bleached are generally used by the principal manufacturers in their higher priced manufactures. Lin-

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ters, fly, strip, nap, and macerated cotton rags are used in the cheaper and inferior qualities of absorbent cotton.

An object is "sterile" when it is free from all living micro-organisms or their spores. Unclean or contaminated septic dressings, including absorbent cotton, may jeopardize life and health. "Sterilization" comprehends the destruction of micro-organisms in and about an object.

"Sanitary" denotes that which is healthful or conducive to health. The terms "sterilized", "sterile", and "sanitary", when applied to absorbent cotton, are considered by consumers and users thereof as being synonymous with the state of being clean, sanitary, and germ-proof at the time of the purchase of the product. Some manufacturers of packages market their absorbent cotton products in cardboard packages and paper rolls, and there are large number of microscopic holes on the surface thereof and light rays can penetrate through such containers, permitting the growth of pathological organisms at some time therein. The terms "sterilized" and "aseptic" are terms not to be used unless and until the product be enclosed in a substantially dust-proof package and rendered completely sterile after packing.

"Emergency", when employed as a brand for absorbent cotton, implies a product that may be used safely in case of a sudden demand for action.

So-called "puffing" in connection with the sale of products, the use of which may affect the life or health of an individual, is at all times inadmissible.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, respondent has sold and distributed in interstate commerce among others of its products various types and grades of absorbent cotton branded and labeled as follows:

(1) A two-ounce carton or package on two sides of which is printed the following:

"HYGRADE  
SANITARY  
ABSORBENT COTTON  
Prepared by  
AMERICAN LABORATORIES  
Mount Vernon, N. Y.",

together with the picture of a nurse in uniform handling a package of absorbent cotton. The nurse wears a headdress bearing the white cross emblem.

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On another side of the container appears the following legend:

"ABSORBENT  
COTTON

2 Ounces                      Sterilized

BEST  
HOSPITAL  
QUALITY

'Hydrate' Absorbent Cotton is manufactured under the Best Sanitary conditions and is perfectly suited for all Surgical and Household needs.

SANITARY                      STERILIZED"

On the other side of the container appear the words:

"ABSORBENT  
COTTON"

above a picture of a roll of absorbent cotton and beneath this the words "Sanitary", "Sterilized".

On one end of this container appears a design of a circle with a white cross in the center and around this printed in a circular arrangement the words: "HYGRADE ABSORBENT COTTON".

This absorbent cotton is rolled in blue paper and packed or contained in a pasteboard box.

(2) A three ounce carton or package of absorbent cotton on two sides of which appears the legend:

"3 Ounces                      Sterilized

EMERGENCY  
ABSORBENT  
COTTON."

On another side of this container appears the following legend:

"'Emergency' Absorbent Cotton is manufactured under the best sanitary conditions and is suitable for all surgical and household needs.

For a higher grade COTTON we recommend our 'BEST' HOSPITAL QUALITY which is put up in the two ounce package."

On the fourth side of the container appears the following:

"Manufactured by

AMERICAN LABORATORIES

Mount Vernon, N. Y.

and

Cape Girardeau, Mo."

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On either end of this container appears a design of a circle with a white cross in the center, and around this printed in a circular arrangement the words: "HYGRADE ABSORBENT COTTON".

This package of emergency absorbent cotton is rolled in blue paper and packed in an oblong pasteboard carton or container.

PAR. 4. In truth and and fact respondent's absorbent cotton branded, labeled, advertised and described as "Sterilized Emergency Absorbent Cotton" and as "Best Hospital Quality Hygrade Absorbent Cotton" is not and has not been properly sterilized by scientific methods under the best sanitary conditions and is not suitable for all surgical and household needs, but on the contrary, said absorbent cotton is and has been found to be contaminated.

PAR. 5. Among the competitors of respondent referred to in paragraph 1 hereof there are many who sell and distribute in competition with respondent, absorbent cotton that is and has been properly sterilized and packaged in dust proof containers which render the product safe for use and in a sanitary condition when opened for use.

Respondent's absorbent cotton branded and labeled as "Best Hospital Quality" and as "Emergency Absorbent Cotton" are displayed, offered for sale and sold to the consuming public by the respondent through the medium of chain stores, drug stores, retail dealers and others, in competition with the said absorbent cotton of competitors.

Respondent's use of the words "Sterilized", "Hygrade" and "Sanitary", as hereinabove described, in relation to its product, absorbent cotton, is false and misleading. As a result of such false and misleading representations on the part of respondent, the consuming public is being and has been injured, trade is being and has been diverted to respondent from such competitors in interstate commerce, and thereby substantial injury is done and has been done by the respondent to substantial competition in interstate commerce, and there is and has been placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive and have misled and deceived the purchasing public.

PAR. 6. Said representations of respondent in its respective brands, labels, advertisements, circulars or other media through which the trade and consuming public are reached, have resulted in injury to respondent's competitors and to retail dealers and to the prejudice of the buying public, 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

## ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and file in lieu thereof as a substitute answer, the draft of a proposed substituted answer attached to the said motion; and the Commission having duly considered the said motion—

*It is hereby ordered*, That the said motion be, and the same is hereby granted; that the said answer be, and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue, and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

*It is hereby ordered*, That the respondent, American White Cross Laboratories, Inc., its officers, directors, representatives, agents servants and employees in connection with the offering for sale and sale in interstate commerce and in the District of Columbia, of absorbent cotton, do cease and desist from:

(1) Directly or indirectly advertising, branding, labeling, designating, describing, or otherwise representing packaged cotton as "sterilized" or "sanitary" unless and until said cotton is sterilized and free from bacteria after it has been packaged and while contained in its original unbroken package;

(2) Using any other word or words stating, importing, or implying that such cotton is sterilized or sanitary when or if such cotton has not in fact been sterilized and rendered sanitary and free from bacteria after it has been packaged and while contained in its original unbroken package;

(3) Directly or indirectly advertising, branding, labeling, designating, describing or otherwise representing cotton as manufactured under the best sanitary conditions unless and until such cotton in fact has been so manufactured and packaged under strictest sanitary conditions in which full, and best accepted scientific sanitary pre-

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cautions have been taken and followed for the removal and exclusion of all bacteria from such cotton after the packaging thereof.

*It is further ordered,* That the respondent shall within 60 days after the day 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 complied with the order to cease and desist as hereinabove set forth.

## Complaint

## IN THE MATTER OF

## HARRY KAPUST, TRADING AS ROSELILE MANUFACTURING COMPANY, AND AS ROSELILE CLOTHING MANUFACTURING COMPANY

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

*Docket 2653. Complaint, Dec. 10, 1935—Order, Jan. 30, 1936*

Consent order requiring respondent individual, his representatives, etc., in connection with the sale or offer for sale of men's suits in commerce among the several States and in the District of Columbia, to cease and desist from—

- (a) Advertising or in any way otherwise representing himself or his company as a manufacturer of men's suits, or using word "manufacturing" as part of or in connection with any trade name under which he carries on his said business, or using words "From maker to wearer" or words of similar import, until and unless he owns, operates, and controls a factory or factories in which such products are made; or
- (b) Advertising or otherwise representing, through advertisements, etc., or salesmen's solicitations or otherwise, that the men's suits of clothing offered for sale and sold by him are "tailored-to-fit" or that said men's suits of clothing are tailored or made to order or to the individual measure of the purchasers thereof, until and unless said suits are actually tailored or made to the order of or to the individual measure of the purchasers thereof.

*Mr. J. T. Welch* for the Commission.

*Mr. Robert R. Scher*, of Chicago, Ill., for respondent.

## COMPLAINT

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, having reason to believe that Harry Kapust, trading as Roselile Manufacturing Company and as Roselile Clothing Manufacturing Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the interest of the public, the said Federal Trade Commission hereby issues its complaint against the respondent and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Harry Kapust, is an individual trading under the names and styles of "Roselile Manufacturing Company" and "Roselile Clothing Manufacturing Company", with its

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principal place of business in the city of Chicago, in the State of Illinois. That said respondent is and has been for some time past engaged in selling men's suits of clothing to purchasers located in a State or States other than the State of Illinois, and pursuant to such sales and as a part thereof, causes and has caused said men's suits so sold to be transported from his place of business in the State of Illinois into and through States other than the State of Illinois to said purchasers in the State or States in which they are located.

PAR. 2. That during all of said time stated in paragraph 1 hereof there have been and now are other persons, firms, and corporations engaged in the business of selling men's suits similar to those sold by respondent, and pursuant to such sales and as a part thereof, have caused and do cause such suits to be shipped to customers located in States other than the States of origin of such shipments, and with such other persons, firms, and corporations respondent has been and is in substantial competition.

PAR. 3. That the said respondent, Harry Kapust, in the course and conduct of his business as described in paragraph 1 hereof, by and through sales agents and representatives, sells and has sold men's suits directly to the persons by whom such suits are to be worn; that the respondent furnishes and has furnished to his sales agents and representatives order blanks which set forth directions for taking measurements usually regarded as essential to the tailoring of a suit to the individual measure of a customer, and that such sales agents and representatives, by displaying such order blanks to customers and prospective customers, and by taking the measurements specified thereby, and by their statements and conduct, represent and have represented to such customers and prospective customers and lead and have led them to believe that the men's suits sold by respondent are tailored to the individual measurements of the purchasers thereof. That respondent also furnishes to his said sales agents and representatives, and through said sales agents and representatives and otherwise, displays to and circulates among his customers and prospective customers for men's suits, advertising booklets and other printed matter which contain in conspicuous type the words "Tailored-To-Fit". That in truth and in fact not all of the men's suits sold by respondent as aforesaid are made to the individual measurements of the purchasers thereof, but that on the contrary, many of respondent's orders for men's suits are and have been filled with suits already made in stock sizes, which are altered when necessary to conform to the measurements of the customers.

PAR. 4. That in the advertising booklets and other printed matter furnished to respondent's sales agents and representatives and

displayed to and circulated among respondent's customers and prospective customers for men's suits as set forth in paragraph 3 hereof, there appear in bold and conspicuous type the words "Low Cost Because Sold From Maker to Wearer", and other language to similar effect; and that respondent, by his said statements so made in his said advertising booklets and other printed matter, and by the statements and conduct of his sales agents and representatives, and by the use of the word "Manufacturing" in his trade names as aforesaid, and otherwise, represents and has represented to his customers and prospective customers and leads and has led them to believe that the men's suits so advertised and sold by respondent, are made by respondent in his own factory or place of business. That in truth and in fact the respondent does not and has not during any of the time hereinabove mentioned manufactured any of the men's suits sold by him as aforesaid, but that on the contrary, all of the said men's suits sold by respondent are and have been manufactured in a factory or establishment, or factories or establishments, neither owned, operated nor controlled by respondent.

PAR. 5. That the representations made by respondent as described and set forth in paragraphs 3 and 4 hereof, have the capacity and tendency to mislead and deceive, and do mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that the respondent operates or controls a factory or establishment in which the men's suits sold by respondent as aforesaid are manufactured to the individual measurements of the purchasers thereof, and that persons buying suits sold by respondent are buying such suits directly from the manufacturer thereof, and that such suits are made by respondent to the individual measurements of such purchasers; and that therefore customers and prospective customers of respondent are deceived and misled into the erroneous belief that they are obtaining the benefits of price, service and other advantages not obtainable by purchasing suits from persons, firms, and corporations other than manufacturers, and that they are obtaining the further advantage of having their suits made to their individual measurements, whereas none of the suits sold by respondent are made by respondent, but are made by other manufacturers and not all of such suits are made by such other manufacturers to the individual measurements of the purchasers.

PAR. 6. That there are among the competitors of respondent referred to in paragraph 2 hereof many who manufacture the men's suits which they sell and who rightfully represent that they are the manufacturers thereof; and that there are others of said competitors who purchase the men's suits in which they deal and resell same, and who do not represent that they manufacture said suits;

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that there are also among said competitors many who rightfully represent that the men's suits which they sell are tailored according to the individual measurements of the purchasers thereof, and others of said competitors who sell suits made in stock sizes and who do not represent that such suits are made to the individual measurements of the purchasers; and that the acts and practices of respondent in representing that he manufactures the suits sold by him, and that such suits are tailored to the individual measurements of the purchasers thereof, tend to divert and do divert business from and otherwise injure and prejudice said competitors.

PAR. 7. That the aforesaid acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of the said Act of Congress hereinabove entitled.

## ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon a complaint filed herein on the 10th day of December 1935 and answer to said complaint, filed on January 4, 1936 by Harry Kapust, trading as Roselile Manufacturing Company, etc., respondent herein, which answer of said respondent states that he waives hearing on the charges set forth in the complaint; that he refrains from contesting the proceeding and that he consents that the Commission, without trial, without evidence, and without findings as to facts, or other intervening procedure, may make, enter, issue, and serve upon said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission now being fully advised in the premises:

*It is hereby ordered,* That the respondent, Harry Kapust, his agents, representatives, salesmen and employees, in connection with the sale or offering for sale, in commerce between and among the several States of the United States and in the District of Columbia, of certain men's suits of clothing, cease and desist from:

(1) Advertising or in any way otherwise representing, directly or by implication, himself or his company, by advertisements, advertising literature, stationery or in any manner or means whatsoever, to be a manufacturer of men's suits of clothing, until and unless he owns, operates and controls a factory or factories in which said men's suits of clothing are manufactured;

(2) The use of the word "manufacturing" as a part of, or in connection with, any trade name under which he carries on his said business of selling men's suits of clothing, or the use in any way of the words "from maker to wearer" or words of similar im-

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port, until and unless he owns, operates and controls a factory or factories in which the said men's suits of clothing are manufactured;

(3) Advertising or in any other way otherwise representing, directly or by implication, through advertisements, advertising literature, salesmen's solicitations, or in any manner or means whatsoever, that the men's suits of clothing offered for sale and sold by him are "tailored-to-fit" or that said men's suits of clothing are tailored or made to order or to the individual measure of the purchasers thereof, until and unless said suits are actually tailored or made to the order of or to the individual measure of the purchasers thereof.

*It is further ordered,* That respondent shall within 60 days from the date of 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 hereinabove set forth.

IN THE MATTER OF  
GENERAL TIRE & RUBBER COMPANY

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

*Docket 2669. Complaint, Dec. 24, 1935—Order, Jan. 30, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the distribution, offer for sale and sale in interstate commerce of tires made or sold by it, to cease and desist from—

- (a) Representing or advertising its tires to be "blowout proof", unless and until said tires are proof against blowouts, and from couching its advertisements in such general words and phrases as to cause or tend to cause the public to believe that the tires made or sold by it are blowout proof, unless and until said tires are proof against blowouts; or
- (b) Furnishing to the dealers and distributors in and of its tires copy for advertising to be used in pamphlets, etc., by said dealers and distributors, and which contains space at the bottom of the copy for the insertion of the name and address of the particular dealer or distributor and represents or imports or implies, or causes the purchasing public to believe, that the tires made or sold by it are "blowout proof", unless and until the said tires are proof against blowouts.

*Mr. Reuben J. Martin* for the Commission.

*Waters, Andress, Wise, Roetzel & Mawon*, of Akron, Ohio, for respondent.

COMPLAINT

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, having reason to believe that General Tire & Rubber Company has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. General Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located in the city of Akron within said State of Ohio. It is now and for more than two years last past has been engaged in the manufacture of automobile tires and in the sale and distribution thereof between and among the various States of the United States.



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It causes such automobile tires when sold by it to be transported to the purchasers thereof located in the State of Ohio and in various other States of the United States. There is now and has been for a long time, to wit, more than two years last past, a constant current of trade and commerce by respondent in such automobile tires between and among the various States of the United States. In the course and conduct of its business the respondent is now and for a long time, to wit, for more than two years last past, has been in substantial competition in commerce between and among the various States of the United States with various other corporations, partnerships, firms and individuals engaged in the interstate sale of automobile tires.

PAR. 2. In the course and conduct of its said business as hereinbefore described in paragraph 1 hereof, said respondent, General Tire & Rubber Company, has entered into and still does enter into arrangements with various wholesale and retail automobile tire dealers and distributors engaged in the sale of automobile tires, inner tubes and accessories, located in various cities in the several States of the United States under and by virtue of which said arrangements said dealers and distributors carry in stock and sell and distribute the automobile tires manufactured and sold by said respondent.

PAR. 3. Among the various automobile tires manufactured and sold by said respondent in interstate commerce is an automobile tire known and designated by said respondent as "The New General Dual Balloon, The Blowout-Proof Tire." Said respondent, General Tire & Rubber Company, has also been and now is engaged in the manufacture and sale of various other grades and types of tires.

PAR. 4. In the course and conduct of its said business as hereinbefore set out in paragraphs 1 and 2, said respondent has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of its said products, including "The New General Dual Balloon, The Blowout-Proof Tire." As mediums of advertising said respondent has used and is now using newspapers located in various cities throughout the United States, various magazines with national circulation, various trade journals, pamphlets, circulars, folders, handbills, and radio broadcasts with a national hookup.

In addition to the advertising which has been and now is being done by said respondent over the radio and in magazines of national distribution, said respondent has been and now is furnishing to its dealers and distributors located in cities throughout the various States of the United States, pamphlets, circulars, folders, handbills,

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and copy for newspaper advertising, and space has been left at the bottom of all advertising copy for the insertion of the name and address of the particular dealer using the advertisement, and various dealers and distributors have used and are using said advertisements furnished to them by said respondent. All of said advertisements were and are intended by said respondent, the General Tire & Rubber Company, to be read by the general public and, in particular, by the purchasers of tires, and to cause and induce said purchasers to buy tires manufactured by said respondent.

PAR. 5. Said respondent in its advertising by the use of broadcasts over a national hookup, by publication in newspapers located in various cities of the several States of the United States, by publication in magazines with national distribution and in trade journals, pamphlets, circulars, folders, and handbills as hereinbefore set forth in paragraph 4 hereof, has represented and is now representing to the public that its said product "The New General Dual Balloon Tire" is "blowout proof" when in truth and in fact said tire is not blowout proof.

Said representations made and now being made by said respondent in its said advertisements, have been and now are being couched in such general words and phrases that they have and do now mislead and deceive the public and have and do now cause the public to believe that all of the tires manufactured by said respondent are "blowout proof" when in truth and in fact said tires manufactured by said respondent are not blowout proof.

PAR. 6. The use by said respondent, the General Tire & Rubber Company, of the above and foregoing false and misleading representations alleged to be used by the said respondent in paragraph 5 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the tires manufactured and sold by said respondent were and are in fact blowout proof, and have thereby induced and do now induce the consuming public, and especially the tire purchasing public, acting in said erroneous belief, to purchase respondent's tires in preference to tires of similar types and quality offered by manufacturers, retail dealers and distributors who, in connection with their sales do not misrepresent their tires and do not falsely and misleadingly advertise their tires to be blowout proof. As a result of such false and misleading representations on the part of said respondent, trade is diverted to respondent from such competitors in interstate commerce, and thereby injury has been done and is being done by the respondent to its competitors in interstate commerce, and there have been and are placed in the hands of respondent's dealers and distributors,

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instruments by means of the use of which they have and now do mislead and deceive the purchasing public.

PAR. 7. Said false and misleading representations of respondent contained in its radio announcements and in its newspaper and radio advertising and in the advertising matter used by and distributed through respondent's dealers and distributors, have resulted in injury to respondent's competitors and to retail dealers and in prejudice to the buying public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and 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 matter coming on to be heard by the Commission upon the complaint filed herein on December 24, 1935, and the answer to said complaint filed January 24, 1936, by the General Tire & Rubber Co., a corporation, respondent herein, in which answer the said respondent states that it waives hearing on the charges set forth in the complaint herein; that it refrains from contesting the proceeding, and that it consents that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue and serve upon the said respondent an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises;

*It is hereby ordered*, That the respondent, the General Tire & Rubber Co., its officers, representatives, agents, servants, employees and successors, in connection with the distribution, offering for sale and sale in interstate commerce of tires manufactured or sold by it, forthwith cease and desist from:

(1) Representing or advertising its tires to be "blowout proof", unless and until said tires are proof against blowouts, and from couching its advertisements in such general words and phrases as to cause or tend to cause the public to believe that the tires manufactured or sold by it are blowout proof, unless and until said tires are proof against blowouts;

(2) Furnishing to the dealers and distributors in and of its tires copy for advertising to be used in pamphlets, circulars, folders, handbills, and newspapers by said dealers and distributors, which said copy for advertising contains space at the bottom of the copy for the insertion of the name and address of the particular dealer or distributor using the advertisement, and which said copy represents

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the tires manufactured or sold by the respondent, the General Tire & Rubber Co., to be "blowout proof" unless and until the said tires are proof against blowouts, or which copy imports or implies, or causes the purchasing public to believe that the tires manufactured or sold by said respondent are "blowout proof", unless and until the said tires are proof against blowouts.

*It is further ordered,* That the respondent shall within 60 days after 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 complied with the order to cease and desist hereinabove set out.

## Syllabus

IN THE MATTER OF  
THE BLIND WEAVERS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2358. Complaint, Apr. 9, 1935—Decision, Jan. 31, 1936*

Where a corporation which included six blind persons among its employees and words "Blind Weavers" in its corporate name, and was engaged as a private commercial enterprise in the sale direct to purchasers through agents or salesmen of standard woven rugs manufactured by it and of machine-made chenille rugs which it did not manufacture but purchased in the open market—

Represented itself as a charitable institution for the blind through portrayal of portion of its said corporate name in labels, tags, advertising circulars, stationery, mailing matter and literature and supplied its said agents, salesmen and representatives with credentials and certificates of identification designed to hold them out falsely as representatives of such an institution or association and the products sold by them as made by the blind inmates or members thereof, and furnished its said agents, etc., with instructions so prepared as to create in the minds of the prospective customer the false impression that all said rugs were made by the blind;

The facts being that its sales of said machine-made chenille rugs constituted from 65% to 70% of its total sales during the past three years, and that in preparation of said chenille rugs for shipment to purchasers it employed a force of shipping clerks and assistants in addition to the six blind and two other employees used in making standard woven rugs, and used said blind persons on preparation of chenille rugs in "fringe tying" only, cost of which process was proportionally negligible;

With effect of deceiving a substantial portion of the purchasing public into the erroneous belief that rugs sold by it as aforesaid were produced in their entirety by the labor of blind people in charitable institutions, and with capacity and tendency so to do and to induce purchasers thereof to buy the same in such belief and divert trade from the producers of truthfully marked rugs who sold products on their merits rather than the basis of sympathy for the blind and from charitable institutions and associations whose blind residents and members weave rug products for sale to the public; to the substantial injury of substantial competition in interstate commerce:

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

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

*Mr. P. C. Kolinski* for the Commission.

*Mr. Erwin W. Roemer* of *Gardner, Carton & Douglas*, of Chicago, Ill., for respondent.

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## COMPLAINT

Pursuant to the provisions of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that The Blind Weavers, Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized for profit, existing and doing business under, and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago in said State. It was incorporated on February 25, 1928, with an authorized capital stock of \$1,000. It is engaged in the manufacture, purchase, and sale, in commerce, of rugs, and causes said rugs, when sold by it in the manner hereinafter described, to be transported from its place of business in the State of Illinois, into and through other States of the United States, to the purchasers thereof located in such States. In the course of conduct of its said business, respondent is in substantial competition with other individuals, partnerships, corporations and eleemosynary institutions, also engaged in the manufacture of rugs and the sale of same, in commerce, between and among various States of the United States.

PAR. 2. In the conduct of its said business, respondent manufactures in its place of business standard woven rugs, employing eight persons, six of whom are blind. In addition to such rug manufacturing, respondent employs a force of shipping clerks and assistants for the preparation for shipment of machine-made chenille rugs not manufactured by respondent, but purchased in the open market. In the preparation of said machine-made chenille rugs for shipment to purchasers, respondent employs said blind persons in the process known as "fringe-tying", the cost of which fringe-tying constitutes a negligible proportion of the total cost to respondent of said machine-made chenille rugs.

PAR. 3. Respondent sells all of its rug products, including the rugs woven in its own plant, as well as the machine-made chenille rugs purchased in the open market, by the method of direct selling to purchasers, employing as high as one hundred agents, salesmen and representatives for that purpose. The respondent's average an-

nual sales for the past three years of said machine-made chenille rugs have constituted from 65% to 70% of the total sales made by respondent during said years. Respondent in connection with such sales, uses labels, tags, advertising circulars, stationery, mailing matter, and literature portraying a portion of its corporate name so designed as to misrepresent itself as a charitable institution for the blind. Respondent supplies its said agents, salesmen and representatives with credentials and certificates of identification designed to falsely represent said agents, salesmen and representatives as the representatives of a charitable institution or association of the blind, and that the products they sell are manufactured by the blind inmates or members of such institutions or associations. Respondent furnishes its agents, salesmen and representatives with instructions so prepared as to create in the minds of prospective customers the false impression that all rugs offered for sale by such representatives are manufactured by the blind. Respondent's agents, salesmen, and representatives, in the sale of respondent's rugs, have continued and continue to mislead and deceive purchasers and prospective purchasers into the belief that they are purchasing the product of blind people located in charitable institutions instead of the product of a private commercial enterprise.

PAR. 4. The use by respondent of its aforesaid corporate name, and of the advertising and sales methods in the sale of its woven and machine-made chenille rugs as set forth in paragraph 3 hereof, has the capacity and tendency to, and does deceive a substantial portion of the purchasing public into the erroneous belief that said rugs sold by respondent as aforesaid are produced in their entirety by the labor of blind people in charitable institutions; to induce purchasers thereof to purchase the same in that belief; to divert trade from the producers of truthfully marked rugs who sell their products on their merits rather than upon the basis of sympathy for the blind; and to divert trade from charitable institutions and associations whose blind residents and members weave such rug products for sale to the public. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate commerce, within the 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.

## 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 9, 1935, issued and served its complaint in this proceeding upon respondent, The Blind Weavers, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Erwin W. Roemer, attorney for respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint, and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized for profit, existing and doing business under, and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago in said State. It was incorporated on February 25, 1928, with an authorized capital stock of \$1,000. It is engaged in the manufacture, purchase, and sale, in commerce, of rugs, and causes said rugs, when sold by it in the manner hereinafter described, to be transported from its place of business in the State of Illinois, into and through other States of the United States, to the purchasers thereof located in such States. In the course of conduct of its said business, respondent is in substantial competition with other individuals, partnerships, corporations, and eleemosynary institutions, also engaged in the manufacture of rugs and the sale of same, in commerce, between and among various States of the United States.

PAR. 2. In the conduct of its said business, respondent manufactures in its place of business standard woven rugs, employing eight



persons, six of whom are blind. In addition to such rug manufacturing respondent employs a force of shipping clerks and assistants for the preparation for shipment of machine-made chenille rugs not manufactured by respondent, but purchased in the open market. In the preparation of said machine-made chenille rugs for shipment to purchasers, respondent employs said blind persons in the process known as "fringe-tying", the cost of which fringe-tying constitutes a negligible proportion of the total cost to respondent of said machine-made chenille rugs.

PAR. 3. Respondent sells all of its rug products, including the rugs woven in its own plant, as well as the machine-made chenille rugs purchased in the open market, by the method of direct selling to purchasers, employing as high as one hundred agents, salesmen, and representatives for that purpose. The respondent's average annual sales for the past three years of said machine-made chenille rugs have constituted from 65% to 70% of the total sales made by respondent during said years. Respondent in connection with such sales, uses labels, tags, advertising circulars, stationery, mailing matter, and literature portraying a portion of its corporate name so designed as to misrepresent itself as a charitable institution for the blind. Respondent supplies its said agents, salesmen, and representatives with credentials and certificates of identification designed to falsely represent said agents, salesmen and representatives as the representatives of a charitable institution or association of the blind, and that the products they sell are manufactured by the blind inmates or members of such institutions or associations. Respondent furnishes its agents, salesmen and representatives with instructions so prepared as to create in the minds of prospective customers the false impression that all rugs offered for sale by such representatives are manufactured by the blind. Respondent's agents, salesmen, and representatives, in the sale of respondent's rugs, have continued and continue to mislead and deceive purchasers and prospective purchasers into the belief that they are purchasing the product of blind people located in charitable institutions instead of the product of a private commercial enterprise.

PAR. 4. The use by respondent of said advertising and sales methods in the sale of its woven and machine-made chenille rugs has the capacity and tendency to, and does deceive a substantial portion of the purchasing public into the erroneous belief that said rugs sold by respondent as aforesaid are produced in their entirety by the labor of blind people in charitable institutions; to induce purchasers thereof to purchase the same in that belief; to divert trade from the producers of truthfully marked rugs who sell their

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products on their merits rather than upon the basis of sympathy for the blind; and to divert trade from charitable institutions and associations whose blind residents and members weave such rug products for sale to the public. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

## CONCLUSION

The acts and practices of respondent, The Blind Weavers, Inc., 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 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."

## 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, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by P. C. Kolinski, counsel for the Commission, and by Erwin W. Roemer, counsel 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 ordered*, That respondent, The Blind Weavers, Inc., its officers, agents, representatives and employees, in connection with the sale of or offering for sale or distribution in interstate commerce of hand woven and machine-made chenille rugs, cease and desist directly or indirectly, from:

(1) Using labels, tags, stationery, advertising circulars, and mailing matter representing respondent as a charitable institution for the blind.

(2) Representing to purchasers of respondent's products that they are purchasing the product of blind people located in charitable institutions, instead of the product of a private commercial enterprise.

(3) Advertising for sale machine-made chenille rugs without a statement in such advertising in clear, prominent and legible type that such machine-made rugs are not made or woven by the blind.

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(4) Selling machine-made chenille rugs without a tag affixed to each such rug bearing the statement that such rug was not made or woven by the blind; provided that where such machine-made chenille rugs bear a fringe which has been attached or tied to the rug by blind workers, such fact may be so stated on said tags.

*It is further ordered,* That respondent shall within 60 days after service 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 and conformed to the order to cease and desist as above set forth by the Commission.

Complaint

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IN THE MATTER OF  
UNION PENCIL COMPANY, INC.

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

*Docket 2584. Complaint Oct. 16, 1935—Order, Feb. 4, 1936*

Consent order requiring respondent, its officers, etc., in connection with the offer for sale or sale in interstate commerce of pencils to cease and desist from representing through advertising, letterheads or other stationery or in any manner whatsoever that it holds and possesses a certificate of merit, its said pencils have been tested by the Bureau of Standards or have been tested for comparison with competitive products by an independent and unbiased agency, or will outlast other brands in the same price range three or four times or that it holds a medal of honor for the highest possible award for advertising pencils.

Before *Mr. John L. Hornor*, trial examiner.  
*Mr. William L. Pencke* 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 Union Pencil Company, Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Union Pencil Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 305 Broadway, in the city of New York, in the State of New York. Respondent is now and for several years last past has been engaged in the sale, offering for sale, and distribution of imprinted and advertising pencils in commerce among and between the various States of the United States, and in the District of Columbia, in the course and conduct of which respondent has caused its said pencil products, when sold, to be transported from its place of business in the city of New York, in the State of New York, to purchasers thereof located in various States of the United States other than the State of New York, and to purchasers in the District of Columbia, and in the course and conduct of which business respondent

ent has been and now is engaged in competition with other corporations, firms, partnerships, and individuals engaged in like commerce.

PAR. 2. Respondent has sold and offered for sale and now sells and offers for sale its said pencil products in interstate commerce, as set forth in paragraph 1, by use of the mails, interstate carriers and other channels of interstate commerce, by means of advertising literature, circulars, billheads, and other forms of printed matter which have had and have a circulation in and through the various States of the United States and in the District of Columbia, and by means of agents and solicitors taking purchase orders for delivery of respondent's pencil products in and among the various States of the United States and in the District of Columbia, in the course and conduct of which said respondent has made and now makes false and misleading statements and representations, all to the injury of the public and the injury of respondent's competitors.

PAR. 3. In the course and conduct of the business of respondent, as aforesaid, and in the course and conduct of the advertising and promotion of said business, as aforesaid, respondent has made and now makes the following statements and representations, among others, to wit:

What Mileage do you get on a Pencil?

Certificate of Merit

A series of tests have proved that Union Pencils outlast other brands, in the same price range, by three to four times.

Bureau of Standards  
Union Pencil Company, Inc.

Highest Possible Award  
For Advertising Pencils  
Medal of Honor, P. P. I. E.  
San Francisco, 1915

PAR. 4. In the course and conduct of the business of said respondent as aforesaid and in the advertising, promotion, selling, and distribution of the said product, as aforesaid, respondent has falsely and misleadingly stated and now falsely and misleadingly states and represents that it holds and possesses a certificate of merit; that said certificate is issued by the Bureau of Standards; that its pencil products have been tested by the Bureau of Standards; that its pencil products had been tested for comparison with competing pencil products by an independent and unbiased agency for that purpose; that its pencil products "will outlast other brands in the same price range

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by three to four times", and that respondent holds a "highest possible award for advertising pencils Medal of Honor"; whereas, in truth and in fact said respondent does not hold or possess a certificate of merit or other evidence of recognition or merit for its pencil products issued by or emanating from the Bureau of Standards or any other governmental agency; respondent's pencil products have not been tested by the Bureau of Standards; respondent's pencil products have not been tested for comparison with competing pencil products by any recognized independent and unbiased agency for that purpose; respondent's pencil products will not outlast other brands of pencils in the same price range by three to four times, and respondent does not hold a highest possible award for advertising pencils Medal of Honor. It is further alleged that in the year 1931 by stipulation No. 835, entered into by and between the said respondent and the Federal Trade Commission, said respondent agreed to cease and desist from using the phrase, "highest possible award for advertising pencils Medal of Honor", or any other or similar words or expressions which import or imply or which may confuse, mislead and deceive purchasers into the belief that said award was "the highest possible award" and given for quality, instead of a diploma of honorable mention for a display of advertising pencils at the Panama Pacific Exposition in 1915, which stipulation said respondent has violated, by continuing, upon its billheads, the phrase, "highest possible award for advertising pencils Medal of Honor".

PAR. 5. The aforesaid false and misleading statements and representations so made by respondent in the course and conduct of his business, as aforesaid, have had and have the tendency and capacity to deceive and mislead, and to deceive and mislead purchasers and prospective purchasers of like products of competitors of respondent and the purchasing public into the false and erroneous belief that the said statements and representations are true, thereby causing said customers and prospective customers of competitors of respondent to purchase respondent's imprinted and advertising pencil products in lieu and instead of imprinted and advertising pencil products of respondent's competitors, in consequence of which trade has been and is diverted to respondent from its competitors who do not misrepresent their products, all thereby substantially injuring respondent's competitors and competition in interstate commerce.

## ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed the 16th day of October, 1935, and the answer to said complaint filed January 16, 1935, by Union Pencil Co., Inc., respond-

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ent herein, in which answer the said respondent states that it waives hearing on the charges set forth in the complaint herein; that it refrains from contesting the proceeding, and that it consents that the Commission, without trial, without evidence, and without findings as to the facts or other intervening procedure, may make, enter, issue and serve upon the said respondent an order to cease and desist from the methods of competition charged in the complaint; and the Commission being now fully advised in the premises;

*It is hereby ordered*, That the respondent, Union Pencil Co., Inc., its officers, directors, agents, representatives, and employees, in connection with the offering for sale or selling in interstate commerce of pencils, do hereby cease and desist:

1. From making representations through advertising, letterheads, or other stationery, or in any manner whatsoever, that it holds and possesses a certificate of merit; that its pencil products have been tested by the United States Bureau of Standards; that its pencil products had been tested for comparison with competing pencil products by an independent and unbiased agency for that purpose; and that its pencil products will outlast other brands in the same price range by three or four times.

2. From making representations through advertising, letterheads, or other stationery, or in any manner whatsoever, that it holds a medal of honor as the highest possible award for advertising pencils.

*It is further ordered*, That respondent, within 60 days from the notice hereof, file with the Commission a report in writing, setting out in detail the manner and form in which it has complied with the order of the Commission herein set forth.

IN THE MATTER OF  
VERNON SEITZ AND RAYMOND G. SEITZ, TRADING AS  
WINONA MONUMENT COMPANY

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

*Docket. 2437. Complaint, June 17, 1935—Decision, Feb. 6, 1936*

Where a firm, engaged in the manufacture and sale of granite and other monuments and memorials, sold as Barre granite monuments products not in fact made of said highly reputed product from the Barre quarries in Vermont, but made of cheaper granite, and inferior in appearance and lasting qualities to those made from the genuine substance; with result that the purchasing public was defrauded by such sales, and with capacity and tendency to deceive purchasers of said products and divert business from other competing manufacturers who do not make such substitutions: *Held*, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

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

*Mr. Everett F. Haycraft* and *Mr. Reuben J. Martin* for the Commission.

*Lamberton & Lamberton*, of Winona, Minn., for respondents.

COMPLAINT

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, having reason to believe that Vernon Seitz and Raymond G. Seitz, copartners, trading as Winona Monument Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Vernon Seitz and Raymond G. Seitz, are copartners, trading as Winona Monument Company, with their principal place of business located in the city of Winona in the State of Minnesota. They are now and for more than two years last past have been engaged in the business of manufacturing, among other kinds, granite monuments and memorials, and of the sale thereof, between and among the various States of the United States. They have caused and still cause such granite monuments and me-



monials when sold by them to be transported from their place of business in the city of Winona aforesaid to the purchasers thereof, some located in the State of Minnesota and others located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondents in such granite monuments and memorials between and among the various States of the United States.

In the course and conduct of their business respondents are now and for more than two years last past have been in substantial competition with other partnerships, and with persons, firms, and corporations engaged in the sale of granite monuments and memorials between and among the various States of the United States.

PAR. 2. Barre granite is found and quarried only in the Barre district of the State of Vermont, which district begins at the southerly part of the city of Barre in Washington County in said State and extends westerly about two and one-half miles and southerly about four miles to and including Williamstown in Orange County in said State. Barre granite by reason of its texture, color, durability, and other qualities, has acquired a high reputation, and by reason of its qualities and reputation said Barre granite and monuments and memorials made therefrom command a higher price than do other kinds of granite found and quarried in Vermont and in other States, and than monuments and memorials made from such other kinds of granite.

PAR. 3. To monuments and memorials manufactured from granite quarried in various sections of the United States other than the aforesaid Barre district of the State of Vermont, said respondents have given in and by their advertisements, catalogs, letterheads, bill heads, invoices, and by other means, the designation and name "Barre Granite", and have offered for sale and still offer for sale and have sold and still sell such monuments and memorials as "Barre Granite"; when, in truth and in fact as hereinabove stated, such monuments and memorials are not and were not Barre granite, but are and were inferior to monuments and memorials made of Barre granite.

PAR. 4. There are among the competitors of respondents mentioned in paragraph 1 hereof, partnerships, persons, firms, and corporations who sell and have sold monuments and memorials made of genuine Barre granite; and there are also among such competitors persons, firms, partnerships, and corporations who manufacture monuments and memorials from granite not quarried in the aforesaid Barre district but who have not called nor do not call such monuments and memorials "Barre Granite".

The practice of the respondents in designating as Barre granite the monuments and memorials made of granite quarried outside

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of the Barre district hereinabove described, has had the capacity and tendency to mislead and deceive the purchasing public into the belief that the monuments and memorials offered for sale and sold by the respondents as Barre granite were and are Barre granite, and to induce the purchase of such monuments and memorials in such erroneous belief. Such practice of the respondents has had and still has the capacity and tendency to divert trade to respondents from competitors who have sold and offered for sale and still sell and offer for sale genuine Barre granite monuments and memorials, and from competitors who, without misrepresentation, have sold and offered for sale and still sell and offer for sale the same kind of granite monuments and memorials as respondents have represented and still represent to be Barre granite; thereby substantial injury has been done and is being done by respondents to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondents have been and still are to the prejudice of the public and 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."

## 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 the 17th day of June 1935, issued and served its complaint in this proceeding upon the respondents, Vernon Seitz and Raymond G. Seitz, copartners trading as Winona Monument Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by Everett F. Haycraft, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by H. M. Lamberton, Jr., of Lamberton & Lamberton, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and

the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Vernon Seitz and Raymond G. Seitz, are a partnership, trading and doing business under the name of Winona Monument Company, with their principal place of business located in the city of Winona, in the State of Minnesota. They are engaged in the business of manufacturing granite and other monuments and memorials, and of selling such goods in the several States of the United States. Such goods, when sold, are shipped from the respondents' place of business in Winona, Minn., to the places of purchase and erection in the several States of the United States.

PAR. 2. In the course and conduct of their said business, the respondents are now and have been for several years in substantial competition with other partnerships, persons, firms, and corporations engaged in the sale of granite and other monuments and memorials in the several States of the United States.

PAR. 3. Among the various kinds of granite is a granite known as Barre granite which is found and quarried only in the Barre district of the State of Vermont. Said Barre district begins at the southerly part of the city of Barre in Washington County within the State of Vermont, and extends westerly about two and one-half miles and southerly about four miles, to and including Williamstown, in Orange County, within said State of Vermont.

PAR. 4. Barre granite, by reason of its texture, color, durability, and other qualities, has acquired a high reputation and is considered a granite of high quality. Because of its reputation for such quality, it commands a higher price than other granites not quarried in the Barre district within the State of Vermont. Barre granite is sold to customers in the several States of the United States, and is shipped from the Vermont monument manufacturers to customers in such other States.

PAR. 5. In the sale of their monuments and memorials, respondents have sold and are now selling monuments and memorials as Barre granite which said monuments were not and are not in fact made out of Barre granite quarried from quarries within the Barre district in the State of Vermont. The granites which were and are being substituted by said respondents for Barre granite in said monuments and memorials were and are inferior to monuments and

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memorials made from Barre granite, both as to appearance and as to lasting qualities. Such sales so made and being made constitute a fraud upon the purchasing public and have the capacity and tendency to deceive purchasers thereof and to divert business from other manufacturers in competition with respondents, which said other manufacturers have not and do not make such substitutions.

## CONCLUSION

Respondents, by reason of the facts set forth in the foregoing findings have been and now are using 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief filed herein by Everett F. Haycraft, counsel for the Commission, 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 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 respondents, Vernon Seitz and Raymond G. Seitz, copartners trading as Winona Monument Company, and their officers, representatives, agents, employees, and successors, in connection with the offering for sale and sale of granite monuments and memorials, in interstate commerce, forthwith cease and desist from:

(1) Representing that the granite used in making said monuments and memorials is "Barre" granite, unless and until the granite so used is in truth and in fact granite quarried from quarries in the Barre district within the State of Vermont;

(2) Representing that the monuments and memorials manufactured and sold or offered for sale by respondents are made of or are to be made of "Barre" granite, unless and until in truth and in fact said monuments and memorials are made of or are to be made of granite quarried from quarries within the Barre district of the State of Vermont;

(3) Substituting for Barre granite where said Barre granite has been specified in an order or contract, granite of any other sort, quality, and kind than Barre granite actually quarried from quarries within the Barre district of the State of Vermont.

*It is further ordered,* That the respondents, 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 the order to cease and desist hereinabove set out.

IN THE MATTER OF  
UNITED STATES ELECTRIC MANUFACTURING  
CORPORATION

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

*Docket 2504. Complaint, July 31, 1935—Decision, Feb. 6, 1936*

Where a corporation engaged in the manufacture and sale of flashlight and dry cell batteries sealed with a strip of bakelite instead of the usual wax-top—

Represented and described such batteries as having a special patented "Lok-Top" and advertised and offered them under the trade name "Usalite Lok-Top" batteries, and made use of the word "patented" in its advertising matter in such a way as to deceive purchasers into the belief that it had the exclusive right to make or sell the feature thus referred to;

The facts being that products in question were not patented under the laws of the United States or any other country and it had no exclusive right to make the cell thus designated to indicate aforesaid difference;

With capacity and tendency to mislead and deceive a substantial part of the purchasing public and induce their purchase of said batteries in and because of the erroneous belief that same had been patented, and with effect of placing in the hands of dealers therein the means of defrauding the purchasing public through the sale of said products, and with capacity and tendency unfairly to divert trade from and otherwise injure the business of competitors and with effect of so doing:

*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.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. Joseph C. Fehr* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that United States Electric Manufacturing Corporation, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. United States Electric Manufacturing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal

place of business located at New York, in the State of New York. It is now and, for more than one year last past, has been engaged in the manufacture of flashlight and dry cell batteries, under the trade name of "Usalite Lok-Top" batteries, and in the sale and distribution of said products, in commerce, between and among various States of the United States; causing 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 business, respondent United States Electric Manufacturing Corporation was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent United States Electric Manufacturing Corporation, in soliciting the sale of and selling its flashlight batteries in interstate commerce, represented, referred to, and described the same as having a "special patented Lok-Top"; when in truth and in fact, said corporation had no United States or other patent on its said flashlights, or on the method of construction of the same or any part thereof.

PAR. 3. In the course and conduct of said business, in promoting and furthering the sale and distribution of its said product in commerce among the several States of the United States, as hereinbefore set forth, 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 flashlight and dry cell batteries under the trade-name of "Usalite Lok-Top" batteries, and has used the word "patented" and other words of equivalent meaning in its advertisements or advertising matter distributed in interstate commerce in a manner having the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it has the exclusive right to make or sell the feature of its said batteries so referred to, when such is not the fact.

PAR. 4. The said trade-name of "Usalite Lok-Top" 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 public, and to cause them to purchase said so-called "Usalite Lok-Top" batteries in and because of the erroneous belief that said product has been patented as described.

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PAR. 5. The aforesaid use by respondent of said trade-name "Usalite Lok-Top" places in the hands of dealers of said products the means or instrument by which they may commit a fraud on the purchasing public, and such use of said trade-name is calculated to, has had the capacity and tendency to, and does aid or enable dealers in said product to pass off and sell to the purchasing public flashlight and dry cell batteries under the trade-name "Usalite Lok-Top" batteries, and described in its advertising circulars as having unit cells made with "special patented Lok-Top" contrary to the fact.

PAR. 6. The above alleged false, misleading, and deceptive acts and practices of respondent, under the circumstances and conditions hereinabove set forth, have had and have the capacity, tendency and effect of unfairly diverting trade from and otherwise injuring the business of respondent's competitors, all 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.

## 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 July 31, 1935, issued and served its complaint in this proceeding upon respondent, United States Electric Manufacturing Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the Commission received a letter from respondent, as an answer thereto, dated August 3, 1935, which was accepted and filed as an answer thereto.

Thereafter testimony and evidence in support of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it at a hearing held in New York City, N. Y., on October 15, 1935, and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the said answer thereto, and said testimony and evidence; and the Commission having duly considered the same, and being fully advised in the premises finds that the pro-



ceeding is in the interest of the public and makes this, its report, stating its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** United States Electric Manufacturing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at New York, in the State of New York. It is now and, for more than two years last past, has been engaged in the manufacture of flashlight and dry cell batteries, under the trade name of "Usalite Lok-Top" batteries, and in the sale and distribution of said products, in commerce, between and among various States of the United States; causing 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 business, respondent, United States Electric Manufacturing Corporation, was at all times herein referred to in competition with other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

**PAR. 2.** In the course and conduct of the business as described in paragraph 1 hereof, respondent, United States Electric Manufacturing Corporation, in soliciting the sale of and selling its flashlight and dry cell batteries, represented and described the same as having a "special patented Lok-Top". The designation "Lok-Top" was used to indicate the difference between batteries, which were sealed with a strip of bakelite under the zinc and which covered up the entire cell, and the ordinary wax-top sealed batteries, commonly used in the trade, which said wax-top sealed batteries were closed by the pouring of wax over the top of said batteries. The representation by respondent that its flashlight and dry cell batteries had a "special patented Lok-Top" was designed to import and imply, and did import and imply, that the respondent manufactured said flashlight and dry cell batteries under patents issued by the United States Government or other Governments. In fact, the flashlight and dry cell batteries so represented and sold by respondent were not patented under the patent laws of the United States, or any other country.

**PAR. 3.** In the course and conduct of said business, in promoting and furthering the sale and distribution of its said product in commerce among the several States of the United States, as hereinbefore set forth, respondent, for more than two years last past, and

## Conclusion

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until on or about the first day of February 1935, caused said product to be advertised, represented, described, offered for sale, sold, and distributed as and for flashlight and dry cell batteries under the trade-name of "Usalite Lok-Top" batteries, and used the word "patented" and other words of equivalent meaning in its advertisements or advertising matter distributed in interstate commerce in a manner having the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it had the exclusive right to make or sell the feature of its said batteries so referred to, when such was not the fact.

PAR. 4. The said trade-name of "Usalite Lok-Top" when applied to respondent's product as aforesaid, is false, misleading, and deceptive. Respondent's use thereof, as hereinabove set forth, was calculated to and had the capacity and tendency to mislead and deceive substantial parts of the purchasing public, and to cause them to purchase said "Usalite Lok-Top" flashlight and dry cell batteries in and because of the erroneous belief that said batteries had been patented.

PAR. 5. Respondent's representation that its flashlight and dry cell batteries under the trade-name "Usalite Lok-Top" had a "special patented Lok-Top", placed in the hands of dealers of said products the means or instrument by which to commit a fraud on the purchasing public, and such use of said trade-name was calculated to and has had the capacity and tendency to aid or enable dealers in said product to pass off and sell to the purchasing public flashlight and dry cell batteries under the trade-name "Usalite Lok-Top" batteries, and described in its circulars, labels, and other advertising literature, as having unit cells made with a "special patented Lok-Top", contrary to the fact.

PAR. 6. The above alleged false, misleading, and deceptive acts and practices of respondent, under the circumstances and conditions hereinabove set forth, have had the capacity, tendency and effect to unfairly divert trade from and otherwise injure the business of respondent's competitors, all 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.

## CONCLUSION

The practices of the said respondent under the conditions and circumstances stated in the foregoing findings are to the prejudice of the public and respondent's competitors, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act

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## Order

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 testimony and evidence having been taken before Edward M. Averill, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto (the filing and serving of the trial examiner's report, and the filing of briefs and oral arguments by counsel for both the Commission and the respondent having been waived), 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 ordered*, That the respondent, United States Electric Manufacturing Corporation, a corporation, its officers, agents, servants and employees, in connection with the sale or the offering for sale in interstate commerce of flashlight and dry cell batteries forthwith cease and desist—

From representing in circulars, on labels, in catalogs, in other advertising literature or in any other way that said flashlight and dry cell batteries have a "special patented Lok-Top", or that they are "patented", or from using any other word or words of similar tenor, import or substance, to describe or designate said flashlight and dry cell batteries as being "patented" or as having a "special patented Lok-Top."

*And it is hereby further ordered*, That the said respondent shall within 60 days from the day of the date of the service upon it of this order file with this Commission its report in writing, stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF  
HOME DRUG COMPANY

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

*Docket 2164. Complaint, July 2, 1934<sup>1</sup>—Decision, Feb. 11, 1936*

Where a corporation engaged in the sale direct to the public of proprietary remedies represented as efficient therapeutic agents for self-medication; in advertising and describing its "Prescription No. 69" for gallstones, gallstone colic, liver, gall bladder and stomach disorders, in newspapers, through purported testimonial recommendations from prior users, sent to inquirers, and in circulars enclosed with product, and in circular, and circular follow up letters;

- (a) Falsely represented that said preparation would relieve or cure diseases or pathological conditions of the gall bladder or connected ducts and would cause gallstones to be dissolved and evacuated from the body, and thus avoid surgical operations for their removal, against asserted ineffectiveness and danger of which it warned, facts being more than 97% of such operations are successful;
- (b) Set forth as symptoms indicating presence of gallstones, attacks of mild indigestion and a number of other conditions, facts being the ordinary member of the public is not qualified to diagnose diseases or pathological conditions, and said various conditions set forth were symptoms of many different abdominal disorders and a competent physician would make no diagnosis and prescribe no remedy on the basis thereof; and
- (c) Represented said "Prescription No. 69" broadly as an effective medical treatment for liver and stomach disorders or troubles, facts being that, in the minds of lay people, a stomach disorder is any distress in the lower abdominal area and includes such diseases and conditions as impacted gallstones, gastric ulcer, and cancer of the stomach, tendency of which is progressive, in which latter conditions, as in the case of those described as "liver" or "stomach" trouble it would have no effect by way of relief or cure, but might lead to incurable conditions or premature death through delaying resort to competent and effective treatment;

With result of misleading and deceiving members of the public into believing aforesaid representations to be true and in reliance on such belief into purchase of said preparation in place of products of competitors sold for diseases or pathological conditions of the abdominal tract other than gallstones or the gall bladder, and into purchase thereof for removal of gallstones and for gall bladder disorder, and with capacity and tendency so to do, and to cause such members mistakenly to diagnose conditions with which they were afflicted and thus delay or fail to obtain competent surgical or medical care or treatment necessary, in the case of dangerous progressive diseases, to stay their course or remove their cause, to the great

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<sup>1</sup> Amended.

## Complaint

public prejudice, and with result of diverting from competitors to it trade in articles or preparations for treatment of certain ailments:

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

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

*Mr. Edward E. Reardon* for the Commission.

*Mr. Clinton Robb*, of Washington, D. C., and *Mr. F. W. Murphy*, of Minneapolis, Minn., for respondent.

## AMENDED COMPLAINT

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, having reason to believe that the Home Drug Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Home Drug Company, is a corporation, incorporated and existing under the laws of South Dakota since February 24, 1930. The respondent was duly qualified to do business in Minnesota on March 7, 1930, in compliance with the foreign corporation law of Minnesota and since on or about March 7, 1930, the respondent had and now has a place of business at number 18 North Fourth Street, Minneapolis, Minn.

PAR. 2. The respondent during the times above mentioned has been and now is engaged in the business of the sale of drugs and proprietary articles or remedies, direct to members of the public, consumers thereof, which respondent claims and represents to be efficient therapeutic agents in their self-medical treatment by the purchasers thereof for various diseases and pathological conditions of the human body hereinafter mentioned, including the proprietary article called "Prescription 69" which the respondent during said times has sold and still sells for their self-medical treatment to the members of the public referred to, purchasers thereof, residing in various States of the United States other than Minnesota; and the respondent during said times has caused its said drugs and proprietary articles or remedies, including its so-called "Prescription No. 69" when so sold by it to be transported from respondent's place of business in Minnesota or from the State of origin of the shipment to, into and through other States to the purchasers.

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PAR 3. During all the times above mentioned others, manufacturers, wholesale and retail dealers hereinafter referred to as sellers, located in the District of Columbia and in various States of the United States, have been and now are engaged in the business of the sale of drugs and articles or remedies used in the medical treatment of the diseases and pathological conditions of the stomach and liver, including those diseases and pathological conditions of the stomach and liver mentioned, and referred to in paragraphs 6 and 7 hereof, to purchasers, residing in the District of Columbia and in States other than the State of the seller or the State of origin of the shipment, including consumers and users and wholesale and retail dealers who buy the drugs, articles or remedies for resale and who resell and distribute them to users and consumers.

The sellers above mentioned, respectively, have caused the drugs, articles or remedies referred to, when so sold by them, to be transported from the District of Columbia, the State of the seller or the State of origin of the shipment, as the case may be, to, into and through other States, and into the District of Columbia, to the purchasers.

PAR. 4. The respondent, during all the times above mentioned and referred to has been and still is in substantial competition in commerce in the sale of its drugs and proprietary articles or remedies, including its proprietary article, called "Prescription No. 69", with other individuals, firms and corporations, the sellers of the drugs and proprietary articles or remedies referred to in paragraph 3 hereof.

PAR. 5. During the times above mentioned the respondent has caused advertisements of its proprietary article called "Prescription No. 69" to be published in newspapers, magazines, and other periodicals circulating among the public in the various States and in circulars, pamphlets, and booklets which respondent has caused to be distributed among the public of the various States.

PAR. 6. In the advertisements of respondent mentioned and referred to in paragraph 5 hereof the respondent caused statements to be made concerning its "Prescription No. 69", among others, as follows:

**GALLSTONE COLIC, LIVER, GALL BLADDER AND STOMACH DISORDERS  
QUICKLY RESPOND.**

**Don't Operate!**

You make a bad condition worse. Treat the cause in a sensible, painless, inexpensive way at home. Write Home Drug Co., 812-146 Masonic Temple, Minneapolis, Minn., for a recognized practicing specialist's prescription on liver and gall bladder troubles and literature on treatment which has been giving gratifying results for 28 years. Sold under money-back guarantee.

The ingredients in Prescription 69 have the proper medicinal qualities to do four essential things in the relief of such disorders. The liver is relieved of its sluggish and torpid condition; this naturally makes possible healthy bile secretion, which dissolves the gallstones; irritation and inflammation in the gall bladder and ducts are cleared up and the stomach receives the required tone which gives the sufferer back that much desired health, comfort, and figure.

This medicine acts directly upon the sluggish liver, where the bile is made. It clears up the torpid liver, which will then make healthy bile, capable of dissolving the stones in the gall bladder.

Operations do not clear up the causes of a sluggish liver, where the disorder starts. Prescription No. 69 gets at the real cause. It works on the liver. It restores the inactive cells and starts healthy bile secretion. When healthy bile begins to flow into the gall bladder it alone has the power to dissolve the gallstones. It cuts like acid and the particles of stagnant bile, lime and salts which make up gallstones give way to its action.

Are you going to continue to hide your pains, tortures, dangers and living misery; the future happiness of yourself and family, behind the Delays, Excuses and Future Time, which perhaps may lead only to a fatal result; or will you join those who are gratified with results of the medicine and who are shouting the praises of Prescription No. 69.

Prescription No. 69 corrects the disorder—it gets to the real cause. Healthy bile is created which has a dissolving action on the stones and they pass out.

Should the stone pass through the duct, after days of suffering, the lining is scratched and torn, which sets up a violent inflammation, never healing, but frequently developing into a cancer.

PAR. 7. Respondent has represented in its advertisements during the times above mentioned that "Many have gallstones and don't know it" and has represented in its advertisements, as symptoms of gall bladder and liver disorders, as follows:

Early attacks of mild indigestion, burning pains around the liver, back and right side below the ribs, sour stomach, dizziness, biliousness, jaundice, colic, vomiting, gastritis with often chills and fever, \* \* \*

and

Long-standing stomach trouble is a forewarning of gallstones.

PAR. 8. The respondent's proprietary article or alleged remedy called "Prescription No. 69" is not a remedy or cure for gallstones, gallstone colic, liver, gall bladder or stomach disorders or any of the diseases or pathological conditions for which it is claimed by respondent to be a cure, remedy or treatment.

Respondent's "Prescription No. 69" will not act upon the human system so as to cause, by dissolution of the gallstones or otherwise, evacuation of them from the body of the person who has taken a treatment or treatments consisting of the said "Prescription No. 69."

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The symptoms represented by respondent as being symptoms of gall bladder and liver disorders are not necessarily symptoms of gall bladder and of liver disorders. Such symptoms are also symptoms of other conditions and diseases. Long-standing stomach trouble is not necessarily a forewarning of gallstones. Gallstones passing through the gall ducts do not necessarily scratch and tear the lining, thereby setting up a violent inflammation which never heals but frequently develops into cancer.

The ingredients in respondent's "Prescription No. 69" do not have medical or therapeutic qualities sufficiently efficient to do any of the essential things necessary for the dissolution or removal of gallstones from the human body or for the relief of liver and stomach disorders and the use of respondent's "Prescription No. 69" for the treatment of gallstones, liver or stomach disorders may result in definite harm to the persons using the same for their self-treatment, because of the progression of the diseases, disorders or pathological conditions for which it is used, which may result from neglecting to have proper medical care and treatment during the period of time respondent's said product is being used.

PAR. 9. The acts and things done by respondent as set out above have the capacity and tendency to mislead and deceive members of the public, purchasers of respondent's "Prescription No. 69" into the belief that it is an efficient medical or therapeutic agency as a remedy or cure for gallstones, gallstone colic, liver disorders, gall bladder disorders, and stomach disorders, or any of the said diseases or pathological conditions for which it is represented as a treatment by respondent, and relying upon such belief into purchasing the respondent's "Prescription No. 69" instead of the drugs, proprietary articles or remedies sold, respectively, by respondent's competitors for the treatment, relief or cure, respectively, of the various diseases or pathological conditions above mentioned, and the said acts and things done by respondent tend to and do divert trade from respondent's competitors.

PAR. 10. The above acts and things done and caused to be done by respondent are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent 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.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717, 719), 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 2nd day of July 1934, issued its amended complaint in this proceeding and caused it to be served upon the respondent Home Drug Company on July 5, 1934, 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 by Clinton Robb, Esq., and after the filing of the respondent's answer to the amended complaint, testimony and evidence in support of the allegations of the amended complaint were introduced by Edward E. Reardon, Esq., attorney for the Commission, before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the amended complaint by Mr. D. A. Lundy, general manager of respondent, representing the respondent; and the testimony and evidence introduced was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission upon the said amended complaint, the answer thereto, testimony and evidence, the brief in support of the amended complaint, and upon the oral arguments of counsel for the Commission and for the respondent; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** The respondent, Home Drug Company, is a corporation organized February 24, 1930, and existing under the laws of South Dakota. The respondent was duly qualified to do business in Minnesota on March 7, 1930, and at all times since the latter date it had and now has a place of business at Minneapolis, Minn.

**PAR. 2.** The respondent during all the times since on or about March 7, 1930, has been and now is engaged in the business of the sale of drugs and proprietary articles or remedies, direct to members of the public, purchasers and consumers thereof, which respondent represents to be efficient therapeutic agents in self-medical treatment by the purchasers thereof for various diseases and pathological conditions of the human body, including the proprietary article called "Prescription No. 69" which the respondent during said times has sold for self-medical treatment of the diseases or pathological conditions known as gallstones, gallstone colic, liver, gall bladder, and stomach disorders, to purchasers thereof, members of the public residing in various States of the United States other than Minnesota.

The respondent during said times has caused its drugs and proprietary articles, including its so-called "Prescription No. 69", when so sold by it, to be transported from respondent's place of business in Minnesota or from the State of origin of the shipment to, into and through other States to the said purchasers located in other States.

PAR. 3. During all the times above mentioned others, manufacturers, and wholesale and retail dealers, hereinafter referred to as sellers, located in the District of Columbia and in various States of the United States, have been and now are engaged in the business of the sale of drugs and proprietary articles for use in the medical treatment of diseases and pathological conditions of the human body, including diseases and pathological conditions of the stomach and liver for the medical treatment of which the respondent sells its "Prescription No. 69", to purchasers, including consumers and users, and wholesale and retail dealers who purchase the same for resale, residing in the District of Columbia and in States other than the State of the seller or the State of origin of the shipment.

The sellers above referred to, respectively, have caused the drugs or proprietary articles referred to, when so sold by them, to be transported from the State of the seller or the State of origin of the shipment, as the case may be, to, into and through other States and the District of Columbia to the said purchasers located in other States.

The respondent, during all the times above mentioned and referred to has been and still is in substantial competition in interstate commerce in the sale of its drugs and proprietary articles, including its "Prescription No. 69", with the other individuals, firms and corporations, the sellers above referred to.

PAR. 4. During all the times above mentioned, the respondent's proprietary article called "Prescription No. 69", has been and still is a dark brown viscous liquid having the characteristic odor of anise and at first a sweetish followed by a bitter taste. It consists of glycerin, water, plant extracts, strychnine, bile acids, and oil of anise with indications of caramel. One hundred cubic centimeters of the product contain substantially approximately 102.9 grams of glycerin, approximately .254 gram of taurocholic acid, and .0093 gram of plant extractive, alkaloid, and probably glycocholic acid together with traces of other plant extractive. Chemical analysis of the product showed no positive test for podophyllum, and chemical tests were negative for quinine, brucine, hydrastine, and berberine, the latter five substances being plant extracts claimed by respondent to be in the composition of the product.

**PAR. 5.** The respondent caused advertisements to be placed in newspapers which circulated among the public of various States and caused circulars to be distributed in the packages in which its product, "Prescription No. 69", was sold and delivered to members of the public for use and consumption, and caused copies of testimonial recommendations purporting to have been received from prior users of "Prescription No. 69" to be sent to members of the public in reply to their inquiries concerning the effects of the use of the product. It caused statements to be made in its advertisements, and in its circulars and in its correspondence with members of the public, concerning its "Prescription No. 69", among others, as follows:

Gall Stone Colic, Liver, Gall Bladder and Stomach Disorders Quickly Respond.

Avoid operations if possible. Treat the cause in a sensible, painless, inexpensive way at home. Write Home Drug Company, 18-147 North Fourth Street, Minneapolis, Minnesota, for a recognized practicing specialist's prescription on liver and gall bladder troubles, for literature on treatment which has been giving gratifying results for 28 years. Sold under money back guarantee.

**Why Wait! Why Delay! When Results May Be Yours!**

Surely you should listen to this timely advice if you knew the results of gall stones. If you have experienced the unbearable pains, the tortures and suffering which they cause, you should be first to welcome relief. The item of price should be your smallest consideration. An operation is not a cheerful outlook but will eventually come, yet it will not cure gall stones. Neither will an operation clear a sluggish liver—correct an unhealthy bile, nor can it prevent the formation of gall stones.

So why should you suffer and neglect the duty you owe to yourself and others about you, when an easy, sensible home treatment may be found in "Prescription No. 69." And think of the small expense as compared with hundreds of dollars for an operation with added misery and suffering to yourself and then the possibility of having the same disheartening trouble return.

In circular letters which the respondent sent out to the public, the respondent made statements, among others, as follows:

An operation at best can only clean the gall bladder. This does not get at the accepted cause of the trouble. Operations are dangerous, painful and expensive. To our knowledge few have been relieved permanently, or even temporarily so why submit to uncertainties only as a last resort. "Prescription No. 69" has given hundreds of our patients results after an operation had failed.

This medicine "Prescription No. 69" has been cheating the knife for years as hundreds of our patients will bear witness by testimonials. The medicine in itself is harmless. It has no habit-forming tendencies but has most gratifying beneficial effect upon the stomach and liver regions. It gives just the required toning

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effect. It gets at the real cause. The treatment causes healthy bile to flow, the liver to again function normally. \* \* \*

So why hesitate! Why be a slave to Gall bladder, Liver and Stomach suffering if you can clean your system of the disorders which cause them. Especially with a Money Back Guarantee, the matured suggestions of a practicing physician and a medicine that has been giving relief to others for 28 years.

With letters containing the above statements the respondent sent circulars containing a number of testimonial recommendations purporting to have been received from prior users of the product and in the letters were included, among others, statements as follows:

It is not a patent medicine.

When taking this medicine some at first (but the majority never have any symptoms of this proof of passing out), get a sore feeling in the right side, showing that materials are breaking up and passing out. The very thing the poor sufferer wants to have happen, that is Get Rid of Them. \* \* \*

"Prescription No. 69" has spared many a liver and gall sufferer from the tortures and expenses of an operation. It is a safe, simple home treatment taken as easily as one's meals.

In circular follow-up letters to customers and prospective customers, respondent, among other statements, made the following:

Like a Thief in the Night.

Long-standing stomach trouble is a forewarning of gallstones. They may lie inactive, in the gall-bladder for years and not make themselves felt by gallstone colic. Yet, at any moment a large gallstone may slip into the neck of the gall-bladder and close the passage. An operation may be necessary, if the stone can't pass through the duct no larger than a knitting needle. Death frequently results from such an operation. Should the stone pass through the duct, after days of suffering, the lining is scratched and torn, which sets up a violent inflammation, never healing, but frequently developing into cancer.

Heed the Timely Warning, Order Prescription No. 69.

The ingredients in Prescription No. 69 have the proper medicinal qualities, to do four essential things in the relief of such disorders. The liver is relieved of its sluggish and torpid condition; this naturally makes possible healthy bile secretion, which dissolves the gall-stones; irritation and inflammation in the gall-bladder and ducts are cleared up and the stomach receives the required toning which gives the sufferer back that much desired original health, comfort and vigor.

PAR. 6. The statements above mentioned and referred to that the respondent made and caused to be made in its advertisements in newspapers and in its circulars distributed with its Prescription No. 69 when sold and delivered to members of the public and in its correspondence with members of the public in answering inquiries concern-

ing the use and the effect of the use of its Prescription No. 69 as a treatment for the relief and cure of the diseases and pathological conditions mentioned and referred to by the respondent in its said statements, were statements that represented it to be a fact that the use of respondent's Prescription No. 69 as a medical treatment for those diseases and conditions would relieve and cure, among others, the diseases and pathological conditions mentioned and referred to under the names or classifications, liver and stomach disorders or troubles, gall stone colic, gall bladder disorders, and gall stones. The statements of the respondent made to members of the public as set forth above included statements of fact that surgical operations for the removal of gall stones from the human body were dangerous; that death frequently results from such operations; that the results of operations for gall stones were uncertain and that such operation did not, by removing gall stones from a person afflicted with them, permanently or even temporarily remove the cause of their occurrence, or cure the subjects of the operations except in a few instances.

The statements of the respondent disparaging and warning against surgical treatment for gall stones represented on the other hand that the use of respondent's Prescription No. 69, as a treatment for the relief and cure of gall stones and the condition occasioned by their presence, as shown over a period of years, caused the gall stones to be dissolved and evacuated from the bodies of subjects of the treatments in the cases of hundreds of persons afflicted, and effectually relieved and cured the condition occasioned by the presence of gall stones so that the condition did not again recur.

The statements referred to above, made by the respondent, included statements of fact to members of the public to the effect that the ingredients, of which respondent's Prescription No. 69 was composed, were of the proper medicinal qualities to dissolve gall stones in the human body and to relieve and cure the gall bladder and gall bladder ducts of irritation and inflammation and to tone the stomach of the user of the respondent's product and restore the user of it to his original health and vigor.

PAR. 7. The ordinary member of the public is without medical training or knowledge sufficient to be qualified properly or correctly to diagnose diseases from which he or other members of the public may be suffering or existing pathological conditions, and the respondent during all the times above mentioned and referred to represented in its advertisements that many persons have gall stones and don't know it and represented the symptoms indicating the presence of gall stones to be: Early attacks of mild indigestion, burning pains around the liver, back and right side and below the ribs, sour

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stomach, dizziness, biliousness, jaundice, colic, vomiting, gastritis with often chills and fever and long standing stomach trouble.

PAR. 8. During all the times above mentioned the respondent represented to members of the public who purchased respondent's Prescription No. 69 the manner of using the same in directions which the respondent gave for that purpose as follows:

Two teaspoonfuls in one-half glass of water before the morning meal for liver and gall bladder trouble. Shake bottle.

Further directions were given by respondent, as follows:

IMPORTANT. In using Prescription No. 69 the most satisfactory results are obtained by taking two teaspoonfuls daily for the first two months and one teaspoonful for the next eight months. Then keep it on hand to take occasionally as is necessary.

and

When taking No. 69 if there is soreness or pain it is considered a good sign, it is due to materials passing out—sediment, thick bile and other materials which cause spasm of the gall duct and this in turn causes pain.

and

If there is much soreness or pain take full dose of two teaspoonfuls two or three times a day for a few days. Also keep bowels acting freely—at least two or three bowel movements a day are necessary.

PAR. 9. The respondent's product, Prescription No. 69, when taken by a member of the public according to the directions given by the respondent for its administration as a treatment for the relief from or the cure of any of the diseases for which its use is recommended by the respondent and for which it has been sold by the respondent to members of the public for their use in such cases, is innocuous and harmless. Besides being harmless when so used, Prescription No. 69 is also without efficacy to produce any beneficial effect either in relieving, or curing any of such diseases, or any pathological conditions from which the user of it may be suffering.

Practically, the sole ingredients in the composition of respondent's Prescription No. 69 which produce any physiological effect to the user who takes it according to the directions of the respondent for its use, are the bile salts, represented by taurocholic and glycocholic acids. But, neither bile salts administered orally in any amount whatsoever, nor any other known substance so taken by a person can dissolve any gall stones present in the body of such person. The full dosage of respondent's product taken by a person every day would not cause an appreciable increase in the flow of bile of such person.

It is an impotent dose of bile salts. Respondent's Prescription No. 69 is composed approximately 80% of glycerin by volume. Glycerin taken in large amounts internally is likely to cause irritation of the stomach, gastro-enteritis, and inflammation of the whole tract of the stomach. While respondent's product is harmless in the dosage directed by respondent, if the dosage was enlarged to cause a considerable secretion of bile, it would in consequence involve the taking of an amount of glycerin that would cause the use of the respondent's product to be harmful.

PAR. 10. The terms "stomach disorders" or "stomach troubles" are vague terms and they do not appear in the regular classification of diseases, and such terms are not used to state a cause of death. The symptoms which the respondent represented to members of the public to indicate the presence of gall stones, as set forth in paragraph 7 hereof are not symptoms of the presence of gall stones. They are symptoms of many different abdominal disorders and a competent physician in the procedure of scientific treatment would make no diagnosis and prescribe no remedy for treatment of a patient on the basis of such symptoms.

PAR. 11. In the minds of lay people a stomach disorder is anything that causes distress in the lower abdominal area, and such trouble, amongst others, might be gastric ulcer, cancer, gastritis, gall-bladder disease, appendicitis, colitis, or many other diseases or pathological conditions that might be mentioned. Also there are a number of diseases which the layman might consider to be included in the term "stomach disorders" which have a progressive tendency. For instance, gastric ulcer may cause symptoms in the upper abdomen. Unless properly treated, it may progress until the ulcer ruptures and causes death from peritonitis; or until the ulcer begins to bleed and causes death from extensive hemorrhage or loss of blood.

Cancer of the stomach is another similar example of a progressive disease. Still another example is the case of gall stones in the gall bladder. The gall stone may become impacted in the hepatic duct which leads the bile from the gall bladder. A rupture or empyema of the gall bladder may result from such an impacted gall stone in which case the gall bladder may even rot and break open into the abdominal cavity and cause death.

PAR. 12. More than 97% of the surgical operations for the removal of gall stones are successful. A surgeon might or might not be able to save the life of a patient where there was a rupture of the gall bladder, depending principally on how long a time after the rupture occurred before the patient consulted the surgeon. The use of the respondent's Prescription No. 69 while it has no effect

at all to relieve or cure any of the conditions described by the terms "liver trouble" and "stomach trouble" would have a harmful effect insofar as it would be the cause of preventing or delaying persons subject to such conditions as above mentioned from obtaining competent medical or surgical treatment until the disease or condition had progressed to the extent that it had become incurable and the cause of death, perhaps prematurely.

PAR. 13. The respondent's proprietary article called Prescription No. 69 is not an efficient therapeutic agent or treatment for the relief or cure of any of the diseases or pathological conditions for which it has been sold and offered for sale by the respondent to members of the public, including the diseases or pathological conditions mentioned and referred to by the respondent as gall stones, gall stone colic, gall bladder trouble, liver and stomach disorders. The respondent's said Prescription No. 69 during all said times when used as a treatment for gall stones, has not caused gall stones to be dissolved or evacuated from the body of any member of the public. It has not caused the relief or cure of gall stone colic, gall bladder trouble or the condition known as gall stones. The respondent's Prescription No. 69 cannot be said to have caused the cure of any of the diseases or pathological conditions referred to by the respondent as liver and stomach disorders or to have caused relief from such diseases or pathological conditions to any member of the public who used it as a treatment for the relief and cure of the same, and the statements and representations of the respondent, mentioned and referred to above, to the effect that its Prescription No. 69 is an efficient therapeutic agent for the relief or cure of the diseases or pathological conditions, or of any of them for which it was offered for sale and sold by respondent, are and have been false statements and representations.

PAR. 14. The statements and representations above mentioned and referred to made by the respondent to members of the public concerning the use and the effect of the use of its product, Prescription No. 69, had, during all the times above mentioned, the capacity and tendency to mislead and deceive members of the public, and members of the public were misled and deceived thereby, into the belief that they were true, and, in reliance upon such belief, into purchasing respondent's Prescription No. 69 instead of proprietary articles or products sold by respondent's competitors for use in the treatment for the relief of certain of the various diseases or pathological conditions of the abdominal tract other than gall stones or of the gall bladder.



The respondent's said statements also had the capacity and tendency to mislead and deceive members of the public, and members of the public were misled and deceived thereby, into the belief that the use of respondent's Prescription No. 69 would cure gall bladder disorder and cause the removal of gall stones without the necessity of a surgical operation or of other medical treatment and that surgical operation for the removal of gall stones was dangerous, and in reliance upon such belief into purchasing respondent's Prescription No. 69 for the removal of gall stones and gall bladder disorder.

The statements and representations of the respondent had the further capacity and tendency to mislead and deceive members of the public into believing that they were true and, in reliance upon such belief into mistakingly diagnosing the cause of the condition with which they were afflicted, and into purchasing and using respondent's Prescription No. 69. In consequence they would be delayed or be prevented from obtaining competent surgical or medical care or treatment, necessary when dangerous progressive diseases are present in order successfully to stay the course of the disease, or to remove its cause; or, in some instances, to prolong the life of the person afflicted. And so the public has been greatly prejudiced by the above practices of the respondent and trade in articles or preparations for the medical treatment of certain diseases or pathological conditions has been diverted from competitors to the respondent.

PAR. 15. In consequence of the practices of the respondent above set forth, trade in articles or preparations for the treatment of certain various diseases or pathological conditions was diverted to the respondent from competitors.

#### CONCLUSION

The practices of the respondent, Home Drug Company, under the conditions and circumstances described in the foregoing findings were to the prejudice and injury of the competitors of the respondent and were to the prejudice and injury of the public and were unfair methods of competition in commerce and constitute a 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 amended complaint of the Commission, the answer of

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the respondent to the amended complaint, testimony and evidence taken before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, in support of the charges of the amended complaint and in opposition thereto, the brief on the part of the Commission filed herein, and oral arguments by Edward E. Reardon, Esq., counsel for the Commission, and by Clinton Robb, Esq., counsel for the respondent, 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 ordered*, That the respondent, Home Drug Company, its agents, representatives, and employees, in the sale and offering for sale in interstate commerce of the proprietary article, Prescription No. 69, or of any other proprietary article or preparation of substantially the same composition, whether sold or offered for sale under the name or designation, Prescription No. 69 or under any other name or designation, do

*Cease and desist* from representing or causing others to represent to the public or individual members thereof; either verbally or in correspondence by mail, or by means of advertisements in newspapers or periodicals; or in circulars delivered with its proprietary article or preparation, herein mentioned; or by means of radio broadcasts; or by publishing or otherwise communicating to the public the contents of testimonial recommendations of such article or preparation received by it and purporting to have been written by users thereof that;

(1) The proprietary article, Prescription No. 69, or any preparation of substantially the same composition, will cause gall stones in the human body to be dissolved or that it will cause gall stones when present in the human body to be evacuated therefrom or that it will relieve or cure diseases or pathological conditions of the gall bladder or connected ducts, including those diseases or conditions caused by the presence of gall stones in the body of the user.

(2) Certain stated symptoms of body disorder or of human ailments indicate the presence of a particular disease or pathological condition, when, in fact, such symptoms occur in the case of various body disorders or pathological conditions possessing definitely different natures and requiring definitely different treatments or remedies.

(3) The use of its Prescription No. 69 or of any other preparation of substantially the same composition will cause any result to the user, other than the secretion or increased flow of an inconsiderable amount

of bile in the body of the user, unless and until any other result to the user of the same can reasonably be ascertained and be identified as the result of the use thereof.

*It is further ordered,* That the respondent, Home Drug Company, shall within 30 days after the service of this order file with the Federal Trade 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  
**MAX KIPPERMAN AND SAMUEL ORENSTEIN, DOING  
BUSINESS AS SAMAC KNITTING MILLS**

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

*Docket 2635. Complaint, Nov. 20, 1935—Decision, Feb. 18, 1936*

Where a firm engaged as jobbers in the sale and distribution of clothing and knitted goods—

- (a) Included words "Knitting Mills" in their trade name and displayed same on invoices, letterheads, statements and other printed matter in soliciting sale of and selling their said products in commerce among the States, and printed on their letterheads and other printed matter the words "Manufacturers of Sweaters and Knit Goods", and set forth on labels affixed to their aforesaid products words "Samac Knit", notwithstanding fact they neither owned, operated nor controlled any mill or factory making the same, but filled orders therefor with products knitted or made in a mill or factory neither owned, controlled, nor operated by them; and
- (b) Set forth on labels attached to their said products the term "100% Pure Spun", notwithstanding fact products thus labeled were not composed wholly of wool but contained in substantial part material other than wool, and were not products of superior characteristics and made of "100% pure spun wool" as imported by said phrase, and did not have characteristics superior to those made of like material and in like manner;

With capacity and tendency to deceive ultimate purchasers into buying that which they did not intend to buy, and with effect of so doing and placing in the hands of retailers the means of deceiving the ultimate purchaser, and with further capacity and tendency to divert to them trade of competitors engaged in selling products of the same kind and nature, truthfully advertised and described:

*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. John Darsey* for the Commission.

COMPLAINT

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 having reason to believe that Max Kipperman and Samuel Orenstein, copartners doing business as Samac Knitting Mills, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Max Kipperman and Samuel Orenstein, hereinafter referred to as the respondents, are copartners doing business under the firm name and style of "Samac Knitting Mills", with their principal place of business located at 36 West Thirty-Second Street in the city of New York, N. Y. They are now, and for several years last past have been engaged as jobbers in the sale and distribution of clothing and knitted goods in commerce between and among the various States of the United States, and in the course of said sale and distribution ship said clothing and knitted goods or cause same to be shipped from their place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York.

PAR. 2. In the course and conduct of their said business, the respondents are in competition with other partnerships, firms, individuals, and corporations likewise engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

In the course and conduct of their business, the respondents use as and for their trade name the words "Samac Knitting Mills", and which trade name containing the words "Knitting Mills" the said respondents use on their invoices, letterheads, statements, and other printed matter in soliciting the sale of and selling their products in commerce between and among the various States of the United States. In addition to the said trade name, the respondents use and cause to be printed on their letterheads, invoices, statements and other printed matter the words "Manufacturers of Sweaters and Knit Goods." The respondents also cause to be affixed to their said products, which are offered for sale and sold by them in commerce between and among the various States of the United States, labels which bear the words "Samac Knit". All of the above referred to terms are used by the respondents in the manner set forth above, when in truth and in fact the said respondents do not at any time knit or manufacture the products sold by them as aforesaid and when, in truth and in fact, they do not own, operate or control any mill or factory in which the said products sold, or offered for sale, by them are manufactured or knitted, but, on the contrary, the respondents fill orders for their said products as aforesaid with products which are knitted or manufactured in a mill or factory which they neither own, operate or control.

In addition to the use by respondents of the terms in the manner set out above, the respondents cause to be printed on and contained in labels which they attach to their aforesaid products the phrase

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"100% Pure Spun", which said phrase has the capacity and tendency to impute to the said products so marked superior characteristics and has the capacity and tendency to cause a purchaser to believe that the said products are made of 100 percent pure spun wool; when, in truth and in fact, the products so labeled are not composed wholly of wool, but on the contrary are composed in substantial part of a material other than wool and are not products of superior characteristics to products which are made of like material and in a like manner.

PAR. 3. Under the foregoing facts and circumstances the use by respondents of the terms in the manner set out in paragraph 2, *supra*, is false and misleading and has the capacity and tendency to deceive, and does deceive, the ultimate purchasers into buying that which they did not intend to buy; and through and by virtue of the practices aforesaid the respondents place in the hands of the retailer the means of deceiving the ultimate purchaser. The aforesaid practices have the capacity and tendency to divert to respondents the trade of competitors engaged in selling in commerce between and among the various States of the United States products of the same kind and nature as those of respondents, which products are truthfully advertised and described. Thereby substantial injury is done by respondents to substantial competition in commerce between and among the various States of the United States.

PAR. 4. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and 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.

## 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 November 20, 1935, issued its complaint in this proceeding, and on November 22, 1935, said complaint was served upon Max Kipperman and Samuel Orenstein, copartners doing business as Samac Knitting Mills, the respondents, charging the said respondents with the use of unfair methods of competition in commerce in violation of the provisions of the said act. Respondents answered said complaint, and in said answer admitted the allegations of the complaint and the facts therein set forth to be true and

stated that they waived hearing on the charges set forth in the complaint, that they refrain from contesting the proceeding, and that they consented that the Commission make, enter, issue, and serve upon them without hearing or other intervening procedure, findings as to the facts and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto and the Commission, having duly considered the same and being fully advised in the premises, advises that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Max Kipperman and Samuel Orenstein, are and have been for several years last past copartners doing business under the firm name and style of "Samac Knitting Mills", with their principal place of business located at 36 West Thirty-Second Street in the city of New York, N. Y. They are now, and for several years last past have been engaged as jobbers in the sale and distribution of clothing and knitted goods in commerce between and among the various States of the United States. In the course of sale of their said products the respondents have caused and cause the same to be shipped from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York.

PAR. 2. In the course and conduct of their said business, the respondents have been and are in competition with other partnerships, firms, individuals and corporations likewise engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents use as and for their trade name the words "Samac Knitting Mills", which trade name containing the words "Knitting Mills" the respondents use on their invoices, letterheads, statements, and other printed matter in soliciting the sale of and selling their products in commerce between and among the various States of the United States. In addition to the use of the aforesaid trade name, the respondents use and cause to be printed on their letterheads, invoices, statements, and other printed matter the words "Manufacturers of Sweaters and Knit Goods". The respondents also cause to be affixed to their said products, which are offered for sale and sold by them in commerce between and among the various

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States of the United States, labels which bear the words "Samac Knit".

PAR. 4. The respondents use and have used all of the terms referred to in paragraph 3, *supra*, and in the manner set forth therein, when in truth and in fact the said respondents do not at any time knit or manufacture the products sold by them as aforesaid and when, in truth and in fact, they do not own, operate or control any mill or factory in which the said products which are sold and offered for sale by them are manufactured or knitted, but on the contrary the respondents fill orders for their said products with products which are knitted or manufactured in a mill or factory which they neither own, operate, or control.

PAR. 5. In the course and conduct of their said business, the respondents also use and have used on labels which are attached to their products which are sold in commerce between and among the various States of the United States the term "100% Pure Spun", which said phrase has the capacity and tendency to impute to the said products so marked superior characteristics and has the capacity and tendency to cause a purchaser to believe that the said products are made of 100% pure spun wool. The respondents use and have used the term "100% pure spun" on their labels and in the manner aforesaid when in truth and in fact the products so labeled were and are not composed wholly of wool, but on the contrary are composed in substantial part of a material other than wool and are not products of superior characteristics to products which are made of like material and in a like manner.

PAR. 6. The use by respondents of the terms, and in the manner set forth, in paragraphs 3 and 5, *supra*, is false and misleading and has the capacity and tendency to deceive, and does deceive, the ultimate purchasers into buying that which they did not intend to buy; and through and by virtue of the practices aforesaid the respondents place and have placed in the hands of the retailer the means of deceiving the ultimate purchaser. The use by respondents of the aforesaid practices have the capacity and tendency to divert to respondents the trade of competitors engaged in selling in commerce between and among the various States of the United States products of the same kind and nature as those of respondents, which products are truthfully advertised and described.

## CONCLUSION

The practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of



the public and of respondents' competitors, and 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

The respondent in and by its answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said answer that it does not contest the said proceeding, and having admitted in its answer the truth of the allegations and facts set forth in the complaint, and having consented in its said answer that the Commission, without hearing or further procedure, might make, enter, issue and serve upon the said respondents findings of facts and conclusion and an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises:

*It is hereby ordered*, That the respondent, Samac Knitting Mills, its officers, agents, representatives and employees, in connection with the offering for sale, and sale of their clothing and knit goods products in interstate commerce, forthwith cease and desist from:

(1) Representing through their trade name, and through their invoices, letterheads, statements, labels, and other printed matter, or in any other manner, by the use of the words "mill" or "mills", "knitting" or "knit", "manufacturers", "knitters", and through the use of any other word or words of similar import and meaning, that respondents own, operate or control a mill or mills in which its said products are knitted or manufactured.

(2) Representing by the use of the term "100% pure spun", or any other such term or phrase of similar import or meaning, that the product which said term or terms is being used to describe, is made of 100% pure spun wool, unless and until the products so labeled are composed wholly of wool.

*It is further ordered*, That within 60 days from the date of the service of this order upon said respondent that it file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with.

Complaint

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IN THE MATTER OF  
BEST & COMPANY

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

*Docket 2359. Complaint, Apr. 11, 1935—Decision, Feb. 19, 1936*

Where a corporation engaged in the sale and distribution of a general line of merchandise including women's hats, made use of words "Toyo Panama" and "Panama", in newspaper advertising describing and offering certain hats, notwithstanding fact that said products were not the genuine superior Panama hat woven moist in South American countries by natives skilled in the distinctive type of hand weaving concerned, and made of material from the tropical jipljapa or paja toquilla plant, but were made of rice paper and imported from an island of Japan; with capacity and tendency to induce purchasing public to buy said hats as and for the genuine Panama product and to divert trade unfairly from competitors engaged in the sale of "Toyo" hats, Japanese meaning of which designation is not popularly known or understood by purchasing public, and from those engaged in sale of Panama hats, truthfully and rightfully advertised and represented by said competitors:

*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.

Before *Mr. William C. Reeves*, trial examiner.

*Mr. Astor Hogg* for the Commission.

*Mr. M. James Spitzer* of *Strauss, Reich & Boyer*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Best & Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and at all times hereinafter mentioned has been, a corporation duly organized, created, and existing 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 the State of New York. It is now, and for a number of years last

past has been, engaged in the sale and distribution of a general line of merchandise, including hats. Its sales are made directly to the purchasing public located throughout the various States of the United States and in the District of Columbia, and pursuant to such sales shipments are made from respondent's place of business in New York, N. Y., into and through various States of the United States other than the State of the point of origin of such shipments, and in the District of Columbia. In so carrying on its said business, respondent maintains a constant current of trade and commerce between the State of New York and other States of the United States. There are in the United States other persons, firms and corporations engaged in the business of selling and distributing a general line of merchandise, including hats, who, pursuant to such sales, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and with such other persons, firms and corporations respondent is, and at all times hereinafter mentioned has been, in active and substantial competition.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling certain of its merchandise, namely, hats, causes same to be advertised in newspapers having circulation in the various States of the United States, wherein said hats were represented, designated and referred to by the following language:

Get under the shady brim of a Toyo\* Panama. Panamas are more talked about than ever this summer because nothing beats them for chic, cool comfort and versatility. Here are three very new Best versions to wear with print or pastels in town or at a resort. In white only. Exclusive with Best's.

and

\* Okinawa Toyo, the Best Quality.

As a part of said advertisement there are three pictorial representations of three different styles of hats, and one of them is referred to as "Maria Guy uses a long quill to give this Panama dash."

PAR. 3. The word "Panama," when used in connection with hats, means to the trade and purchasing public hats imported from Central or South America, made from the leaf of the *paja toquilla* or *jipijapa* plant which has been woven by hand while in a saturated condition and then dried in the sun.

PAR. 4. The statements and representations made by respondent in the advertising, as set forth in paragraph 2 hereof, are false and misleading because said hats were not made from the leaves of the *paja toquilla* or *jipijapa* plant, or in accordance with the process used in the manufacture of Panama hats, but were manufactured in accord-

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ance with a process other than that used in the manufacture of Panama hats and from materials other than those of which Panama hats are made.

PAR. 5. There is a preference on the part of many wearers of hats located throughout the United States for Panama hats, and the false and misleading statements and representations used by respondent in aid of the sale of the hats sold and distributed by it as aforesaid had and have the capacity and tendency to induce the purchasing public to purchase and use respondent's hats in the belief that said statements and representations made as to them are true, and had and have the capacity and tendency to unfairly divert trade from competitors of respondent engaged in the sale in interstate commerce of Panama hats, which said competitors truthfully and honestly advertise and represent their said Panama hats. On account of the aforesaid practices of respondent, substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 6. The acts and things done by the respondent are to the injury and prejudice of the public and the competitors of respondent 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.

## 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 11, 1935 issued and served its complaint in this proceeding upon respondent Best & Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegation of said complaint were introduced by Astor Hogg, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by M. James Spitzer, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of

## Findings

the complaint and in defense thereto, and oral argument of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts, and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Best & Company, is a corporation organized, existing, and doing business under and by virtue of 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. For several years last past respondent has been engaged in the business of selling and distributing a general line of merchandise including hats for women. Sales are made by respondent directly to the purchasing public located throughout the various States of the United States. Respondent causes said merchandise, including women's hats when so sold, to be transported from its place of business in the State of New York, into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of its said business respondent is in active and substantial competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution of merchandise, including women's hats, in commerce between and among the various States of the United States.

PAR. 2. In the month of June 1931, respondent, through newspapers having interstate circulation, advertised and offered for sale women's hats made in Japan of rice paper as "Toyo Panama" hats and as "Paper Panama" hats.

Subsequently in, to wit, the year 1934, respondent in soliciting the sale of and selling its said hats advertised in newspapers having circulation in the various States of the United States certain of its women's hats with the following language:

**BEST & CO.**

Fifth Avenue at 35th Street

Garden City Mamaroneck East Orange Brookline Ardmore  
advises you to

**Get Under The Shady Brim Of A TOYO\* PANAMA**

Panamas are more talked about than ever this Summer because nothing beats them for chic, cool comfort and versatility. Here are three very new Best versions to wear with prints or pastels, in town or at a resort. In white only. Exclusive with Best's.

\*Okinawa Toyo, the best quality.

(Illustration of lady's hat.)

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**LINEN FACING** and band to match  
your linen coat or dress, on this wide-  
brimmed beauty—17.50

(Illustration of lady's hat)

**MARIA GUY**

uses a long quill to  
give this Panama dash.

Best's copy—15.00

(Illustration of lady's hat)

**DUNLAP SAILOR**

with good looking new  
scoop brim and smart  
tassel band—11.75

PAR. 3. Panama hats are made from material derived from tropical plants known as jipijapa or paja toquilla. They are woven entirely by hand while in a moist condition, in South American countries, by natives skilled in the distinctive type of weaving, of which such hats are produced. There are various grades of hats made in Japan of rice paper which resemble Panama hats in appearance and type of weave. The correct name of these hats made in Japan, and made of rice paper, is "Toyo", but the purchasing public does not understand the meaning of the word "Toyo" when used in connection with hats. The word "Panama", as applied to hats, carries with it the idea of quality. The superiority of Panama hats over Toyo hats is due to the quality of material from which Panama hats are made. Toyo hats resemble Panama hats to such an extent that the purchasing public cannot readily distinguish between them. The respondent admits by its answer that the hats advertised by it as Toyo Panama hats were not in fact Panama hats, but were hats made of paper and imported from the Island of Okinawa, Japan.

PAR. 4. Said statements and representations made by respondent in its advertising as set forth in paragraph 2 hereof, are false and misleading because said hats so advertised were not Panama hats, and were not made from the leaves of the paja toquilla or jipijapa plant, or in accordance with the process used in the manufacture of Panama hats, but on the contrary said hats so advertised and sold were made of rice paper and imported from Japan. Said representations used by respondent in aid of the sale of said hats sold and distributed by it as aforesaid, had and have the capacity and tendency to induce the purchasing public to purchase said hats in the belief that they were in fact Panama hats, when such was not and is not the fact, and said representations in said advertisement had and have the capacity and tendency to unfairly divert trade from competitors of respondent engaged in the sale in interstate commerce of Toyo hats and Panama hats, which said competitors truthfully and rightfully advertise and represent their said hats.

## Order

## 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 in 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, testimony and evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Astor Hogg, counsel for the Commission, and M. James Spitzer, counsel 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 ordered*, that respondent Best & Company, its officers, agents, servants, and employees, in connection with the sale, offering for sale, or distribution of Toyo hats made from rice paper, in interstate commerce, do cease and desist:

(1) From representing or advertising in any manner whatsoever that its "Toyo" hats are "Panama" hats;

(2) From using the word "Panama", in designating or describing its said "Toyo" hats, standing alone or in connection or conjunction with any other word or words, so as to import or imply that the said "Toyo" hats are Panama hats;

(3) From representing, designating, or advertising as "Panama" any other hat or hats, unless such hats so designated and advertised are genuine Panama hats, woven by hand in a saturated condition, and made from the leaf of the *paja toquilla* or the *jipajapa* plant.

*It is further ordered*, That the respondent shall, within 60 days after 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 complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
O. F. SCHOECK, DOING BUSINESS AS O. F. SCHOECK  
SCHOOL

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

*Docket 2414. Complaint, May 24, 1935—Decision, Feb. 19, 1936*

Where an individual engaged in the sale and distribution of correspondence courses of study in Diesel engine operation and refrigeration and air-conditioning, and in secretarial training, bookkeeping, and kindred subjects—

- (a) Represented through "blind" advertisements in the "Help Wanted" and similarly captioned and classified advertising columns of the papers, that he was seeking to secure the services of people qualified for different positions, through such typical ads as "Wanted—We want to select several clean-cut young men mechanically inclined, to train for high salaried positions as Diesel engine experts. Write Schoeck care of Plain Dealer", "Wanted—Several young ladies from Grand Rapids and vicinity with some knowledge of shorthand and typing, to train for secretarial positions; experience unnecessary; write MX 342, care Press", and through advertisements in magazines, catalogs and other literature, and orally, both directly and through his salesmen and representatives, that he wished to secure the services, for high salaried positions, of mechanically inclined young men, and of young women with some knowledge of shorthand and typing for secretarial and clerical positions, facts being he was not seeking to secure the services of young men and women as above set forth, but was seeking solely to contact persons to whom he might be able to sell his said courses and to provide himself and his representatives with an opportunity of inducing such persons to subscribe to said courses in the belief that they would be given positions;
- (b) Promised jobs in many instances to those thus contacted, and in other instances advised them, in effect, that he had consummated arrangements with various firms through which they would employ students who had completed said courses, and represented, directly and through his representatives, and advertising circulars and literature that he maintained an employment service which was operative for two years in all courses from the date of graduation, and agreed to train thoroughly and assume responsibility for employment service for students after they had completed their training, and set forth that his employment service worked internationally and in cooperation with all companies, facts being he had no positions at his disposal to give to those who subscribed to his courses, had no such arrangements in cooperation with companies, international or otherwise, or with employers, through which his students could obtain employment, and had failed to secure positions for those who had completed and paid for his said course in the belief that they would secure employment through him;
- (c) Listed alleged executive officers in his advertisements, catalogs, and other advertising literature, as Home Office Registrar, Supervisor of Em-



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ployment Service, Supervisor of Refrigeration and Air-Conditioning, Supervisor of Accounts, etc., facts being that said alleged executive officers, referred to by the aforesaid and other titles of the same general nature, were in fact his ordinary clerical and other subordinate employees, and, in some instances, his traveling representatives, at times far distant from his office and principal place of business, and the character and nature of their positions were not truthfully represented by such administrative and professional titles;

- (d) Represented, through his catalogs, circulars and circular letters, and through his employees and representatives, that he had surrounded himself with a staff of trained instructors and registrars, and that his educational program reached out to all English-speaking countries, facts being his instructors and registrars were his ordinary clerical and other subordinate employees, and, in some instances, his travelling representatives, who, among other duties, graded, corrected, and otherwise passed upon lesson materials sent into his headquarters for such purpose, and, excepting a few persons who subscribed to some of his courses abroad and in insular possessions of the United States, his alleged educational program did not extend to all English-speaking countries; and
- (e) Represented, as above set forth, that students of the so-called engineering class of courses would, shortly after their enrollment, receive tools in connection with their courses, facts being such students did not receive such tools, promised them for the successful pursuit of such so-called engineering courses, but were furnished with said tools only after the course had been paid in full, and, in view of the sale of the courses upon a monthly payment plan, not until after completion of the courses by payment of the contract price in full or as adjusted to his satisfaction, and, in some instances, did not receive such tools till long after payment had been made in full;

With tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said statements were true, and to induce, and with effect of inducing, members of the public to purchase said courses of study and instruction in such mistaken belief to its consequent damage and injury, and of diverting trade unfairly to him from competitors, to the substantial injury of substantial competition in interstate commerce:

*Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

*Mr. Joseph C. Fehr* for the Commission.

*Mr. J. P. Streuber*, of Alton, Ill., for respondent.

## COMPLAINT

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, having reason to believe that O. F. Schoeck, doing business under the name and style of O. F. Schoeck School, hereinafter referred to as respondent, has been and is using

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unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, O. F. Schoeck, an individual trading as the O. F. Schoeck School, is now and has been for more than two years last past engaged in the sale and distribution of correspondence courses of study and instruction in aviation, diesel engine operation and maintenance, air-conditioning, secretarial work and other subjects. Said respondent has his office and principal place of business in the city of Alton, in the State of Illinois, and in the course and conduct of his business causes the courses of study and instruction when sold to be transported from his said place of business to purchasers located in the various States of the United States, and in the District of Columbia, and there is now and has been for more than two years last past a constant current of trade and commerce by respondent in said courses of study and instruction between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business respondent is now and for more than two years last past has been in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with various other individuals and with corporations, partnerships, and firms engaged in the sale and distribution of like or similar courses of study and instruction.

PAR. 2. In the course and conduct of his said business, the respondent, in soliciting the sale of his courses of study and instruction between and among the various States of the United States and in the District of Columbia, has advertised and advertises in newspapers, magazines, journals, and periodicals having interstate circulation, and by circular letters and by the representations of his agents and representatives that he wishes to secure the services of people qualified for different positions. Typical of such advertisements is the following, to wit:

"WANTED—WE WANT TO SELECT several clean-cut young men, mechanically inclined, to train for high salaried positions as Diesel Engine Experts. Write SCHOECK, care of Plain Dealer."

In truth and in fact the representations made by the above quoted advertisement of said respondent are false and untrue in that the said respondent does not wish to "select several clean-cut young men, mechanically inclined to train for high salaried positions as Diesel Engine Experts", but said advertisement is merely for the purpose

of inducing the readers thereof to answer it in the belief that they will secure jobs and to give the salesmen of the respondent an opportunity to induce the purchaser and prospective purchaser to buy the respondent's courses of study in the belief that they will be given jobs. Further, in truth and in fact they never secure the jobs.

Another of such advertisements is the following, to wit:

"WANTED—SEVERAL YOUNG LADIES in Grand Rapids and vicinity with some knowledge of shorthand and typing to train for Secretarial positions. Experience unnecessary. WRITE MX 342, care PRESS."

In truth and in fact the representations made in the above quoted advertisement of respondent are false and untrue in that respondent does not wish young ladies to train for secretarial positions, but said advertisement is for the purpose of inducing the readers thereof to answer it in the belief that they will secure jobs and to give the salesmen of the said respondent an opportunity to induce the purchaser and prospective purchaser to buy the respondent's courses of study in the belief that they will be given jobs. Further, in truth and in fact they never secure the jobs.

PAR. 3. Respondent, through and by his salesmen and agents and through his advertising circulars and circular letters and catalogs, represents to purchasers and prospective purchasers of his courses of study and instruction that he maintains an employment service. Such representations are as follows, to wit:

"Employment Service

"We are offering two years employment service in all courses dating from the date of graduation. We realize that our students are persons who are desirous of securing a position in their respective chosen field. We agree to train them thoroughly and are willing to assume responsibility for employment service after they have completed their training. Our employment service works internationally and in cooperation with all companies."

In truth and in fact the respondent does not maintain an employment service and the representations to that effect made by him are false and untrue. The respondent does not work in cooperation with companies internationally or otherwise, and such representations are false and untrue.

PAR. 4. Respondent represents, through his advertisements and other literature, that his school is housed in a modern three-story building containing several thousand feet of floor space and further he represents that every inch of the aforementioned building is used in the interest of the school, when in truth and in fact his school is not housed in a modern three-story building containing several

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thousand feet of floor space, and further, when in truth and in fact every inch of the aforementioned building is not used in the interest of the school.

PAR. 5. Respondent, through his advertisements, catalogs, and other advertising literature, lists therein certain alleged executive officers of the school, to wit: "Home Office Registrar, Supervisor of Refrigeration and Air-Conditioning, Supervisor of Aeronautical Department, Supervisor Employment Service, Supervisor of Mailing Department, Supervisor of Accounts, Chief Engineer, Director of Enrollment, and General Manager."

In truth and in fact the above representations of respondent are untrue and false in that there are no such executive officers in or connected with respondent's said school and the above administrative and professional titles are given to respondent's ordinary clerical and other employees, and in many instances to his traveling representatives, who are at times thousands of miles removed from the office and principal place of business of respondent.

PAR. 6. Said respondent, through his catalogs, circulars and circular letters, represents that he has surrounded himself with a staff of trained instructors and registrars and further that today his educational program reaches out to all English-speaking countries.

In truth and in fact the respondent has not surrounded himself with a trained staff of instructors and registrars and his alleged educational program does not extend to all English-speaking countries.

PAR. 7. Respondent, through his catalogs, circulars and circular letters and other advertising literature represents that students, shortly after their enrollment, will receive tools in connection with their courses in Diesel engine operation and maintenance, aviation, electricity and other courses requiring tools for their successful pursuance.

In truth and in fact students do not receive the aforementioned tools until the account has been paid in full, and further said courses of respondent are sold upon the monthly payment plan which in fact and in truth means the students do not receive the tools necessary for the successful pursuit of the course of study in which they are enrolled until they have completed the course, in some instances as long as two years after their enrollment.

PAR. 8. Each and all of the foregoing false, misleading and exaggerated statements and representations hereinbefore set out have had and have the tendency and the capacity of misleading and deceiving the purchasing public into the belief that they are true and do and have induced them to purchase the courses of study and

instruction of respondent, and have unfairly diverted trade from his competitors and thereby substantial injury has been done by respondent in interstate commerce to his competitors.

PAR. 9. The acts and practices set forth herein are to the prejudice of the public and all respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, on May 24, 1935, issued and served its complaint in this proceeding against respondent O. F. Schoeck, doing business under the name and style of O. F. Schoeck School, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer and supplemental answer thereto, testimony and evidence in support of said complaint was introduced by Joseph C. Fehr, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Respondent, although represented by counsel at the first hearing held in this case, to wit, at Alton, Ill., on August 28, 1935, did not appear in person or by counsel at the subsequent hearings and although afforded an opportunity did not introduce any evidence in defense of the allegations of the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer and supplemental answer thereto, testimony and evidence, and brief in support of the complaint (respondent not having filed a brief in defense thereto and not appearing on the day set for final arguments), and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, O. F. Schoeck, an individual trading as the O. F. Schoeck School, is now and has been for more than two

years last past engaged in the sale and distribution of correspondence courses of study and instruction which he divides into two classes, engineering and commercial. In the class denominated by him as engineering, are included Diesel engine operation and refrigeration and air-conditioning; and in the class denominated as commercial, are secretarial training, bookkeeping, and kindred subjects. At one time an unsuccessful attempt was made by respondent to sell a course in aviation, but this attempt was discontinued in 1934. Said respondent has his office and principal place of business in the city of Alton, in the State of Illinois.

Respondent places advertisements in newspapers and magazines, usually in the classified advertising pages under such headings as "Help Wanted", which cause the readers of said advertisements to believe that the respondent is offering employment. The said advertisements request persons answering them to write the respondent in care of the paper or magazine in which the advertisements appear. Persons seeking employment in the particular lines with which these advertisements deal reply to them as directed, and said replies are collected by agents or representatives of the respondent who thereafter write to the persons making said replies and fix a time and place for an interview. At these interviews the persons who have answered respondent's advertisements and who are still under the impression that they are to be offered employment, are told for the first time that respondent is selling courses of study and instruction. The persons so contacted are, however, informed that they will secure jobs or positions upon the completion of the courses of instruction sold by respondent, and induced to subscribe to and pay for said courses in the expectation and belief that positions are available and will be given them when they complete said courses.

The charge for the courses of instruction in Diesel engineering classes and in refrigeration and air-conditioning classes is \$119.60, payable in monthly installments of \$10.00, with the privilege of 10% discount for cash on unpaid balances. The initial payment, which is usually \$10.00, but which is sometimes as low as \$5.00 and sometimes as much as \$15.00, is retained in its entirety by the respondent's agents as part of their fee or commission for selling said courses of instruction. The agent's fee or commission amounts to 30% of the sum paid by the students subscribing to said courses. At the time of the first hearing in this proceeding, namely, in August 1935, there were enrolled with respondent for instruction in Diesel engineering courses approximately 2,500 students, and for instruction in refrigeration and air-conditioning courses approximately 1,500 students.

To all persons to whom respondent has sold or to whom he sells his correspondence courses as a result of contacts made through the methods outlined above, the respondent has caused and causes lesson material and other written and printed matter pertaining to the courses of instruction sold by him to be shipped through the United States mails from his place of business at Alton, Ill., through and into States of the United States other than the State of Illinois and in the District of Columbia. In the course and conduct of his said business, respondent has been and is now in active competition with various partnerships and corporations and other persons also engaged in the business of selling courses of instruction by correspondence through the mails in commerce among the several States of the United States.

Certain of the courses offered for sale by respondent, particularly the Diesel engineering instruction courses, are not suitable for home study instruction and cannot be given successfully exclusively by correspondence for the reason that study in the home must be supplemented by practical work.

PAR. 2. In the course and conduct of his aforesaid business, the respondent, in soliciting the sale of his courses of study and instruction between and among the various States of the United States and in the District of Columbia, has advertised, caused to be advertised, and still does so advertise in the classified advertising pages of newspapers under the headings of "Help Wanted", "Men Wanted", "Wanted Male Help", "Employment", and other similar headings, that he wishes to secure the services of people qualified for different positions. Typical of such advertisements dealing with Diesel engine operators or experts and refrigeration or air-conditioning operators, mechanics or engineers, are the following:

**WANTED—WE WANT TO SELECT SEVERAL** clean-cut young men, mechanically inclined, to train for high salaried positions as Diesel Engine Experts. Write Schoeck, care of Plain Dealer. Diesel engines are supplanting gasoline engines almost entirely. Offering unusual opportunity and steady employment to trained experts. Several men mechanically inclined wanted for immediate training for high salaried positions as Diesel engine experts. Tools furnished. Write Schoeck, care of Journal-Gazette.

**Men—If you are mechanically inclined, have a fair education and realize the future in the Diesel industry, we will train you in spare time; small fee includes instruction, consultation and employment service. Also tools. Write Schoeck, care of Journal-Gazette.**

Several men mechanically inclined will be selected from this territory by Dr. O. F. Schoeck, Alton, Illinois, to start imme-

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date training to install and service electrical refrigeration and air-conditioning units. Tools furnished. State qualifications and phone number. Apply to O. F. Schoeck, Box 4143, Detroit Times.

Men wanted. Diesel engines. We want several men mechanically inclined to start immediate training for well-paying positions, servicing and operating Diesel engines. Tools furnished. Write Schoeck, Diesel Engineering, Box E-22, Blade.

Wanted several young men mechanically inclined to train for servicing electrical refrigerators. Experience unnecessary. Tools furnished. Box A—Journal.

Typical of similar advertisements with respect to secretarial positions are the following:

WANTED—SEVERAL YOUNG LADIES in Grand Rapids and vicinity with some knowledge of shorthand and typing to train for Secretarial positions. Experience unnecessary. WRITE MX 342, care PRESS.

WANTED. SEVERAL YOUNG LADIES in Toledo vicinity with some knowledge of shorthand and typewriting, to train for secretarial work. Experience unnecessary. Write Box-B-141, Blade.

The advertisements set forth above are what is known as "blind" advertisements, in that they do not disclose the business or object of the advertiser, and they are so worded that they create the false impression that employment is being offered. This form of advertisement has enabled the respondent and his representatives to contact prospects who have been deceived and misled by said advertisements into thinking that they were being offered jobs or positions. A number of students who had been enrolled by respondent as a result of said advertisements have testified that they responded to said advertisements upon the assumption that a job could be obtained, and that they had no idea that the object of the advertisements was to sell a course of instruction to be given by correspondence until after they had talked with a representative of respondent.

The said advertisements of respondent almost invariably appeared in the "Help Wanted" columns of the classified advertising pages of the newspapers, as shown above, and were and are misleading, regardless of their text, because readers expect to find in the "Help Wanted" columns only offers of employment.

Respondent also represents and has represented through advertisements in magazines, catalogs, and in other literature, and by oral statements made by him and by his salesmen, agents, and representatives, that he wishes to secure the services for high-salaried positions of young men mechanically inclined, such as operators for Diesel engines, trained operators in electrical refrigeration and air-conditioning plants, and the services of young ladies, with some knowledge



of shorthand and typewriting, for secretarial and clerical positions. These representations are deceptive, false and misleading. Respondent does not seek or wish to secure the services of young men and women as engineers or secretaries, but is solely seeking to contact persons to whom he may be able to sell his aforesaid courses of instruction.

The aforesaid representations are made for the purpose of promoting the sale of respondent's correspondence courses of instruction, and for the purpose of inducing the readers thereof or the persons to whom the oral representations are made to respond thereto in the hope and belief that they may find employment and that they will secure positions, and to give the salesmen or representatives of respondent and respondent himself, an opportunity to induce purchasers and prospective purchasers of his courses of study to subscribe to and pay for the same in the belief that they will be given jobs or positions. In many instances positive promises of jobs were made and in other instances representations were made by respondent or his representatives to the effect that respondent had consummated arrangements with various firms through which such firms would employ students who had completed the courses of instruction sold by respondent. At all times such representations were and are made the respondent had and has no such jobs or positions at his disposal to give to those who enrolled or subscribed or who enroll or subscribe to his several courses of instruction, and respondent has failed to and fails to secure jobs or positions for those persons who have completed and paid for said courses of instruction in the belief that they would secure employment through him.

PAR. 3. Respondent, through and by his salesmen and agents, and through his advertising circulars and circular letters and catalogs, represents to purchasers and prospective purchasers of his courses of study and instruction that he maintains an employment service. Such representations are as follows:

#### Employment Service

We are offering two years employment service in all courses dating from the date of graduation. We realize that our students are persons who are desirous of securing a position in their respective chosen field. We agree to train them thoroughly and are willing to assume responsibility for employment service after they have completed their training. Our employment service works internationally and in cooperation with all companies.

Respondent does not maintain an employment service nor does he work in cooperation with companies, internationally or otherwise, nor does he have any arrangements with employers by means of which

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students of his courses can obtain employment, and the foregoing and other representations to that effect made by him are false and untrue.

PAR. 4. Respondent, through his advertisements, catalogs, and other advertising literature, lists therein certain alleged executive officers of the school as: "Home Office Registrar, Supervisor of Refrigeration and Air-Conditioning, Supervisor of Aeronautical Department, Supervisor Employment Service, Supervisor of Mailing Department, Supervisor of Accounts, Chief Engineer, Director of Enrollment, and General Manager."

The representations of respondent as to said alleged executive officers are untrue and false in that the above mentioned administrative and professional titles are given by respondent to his ordinary clerical and other subordinate employees and in many instances to his traveling representatives who are at times thousands of miles removed from respondent's office and principal place of business, said administrative and professional titles being misleading and deceptive in that they do not truthfully represent the character or nature of the positions held by said employees.

PAR. 5. The respondent, through his catalogs, circulars and circular letters, and through the representations of his employees and other representatives, represents that he has surrounded himself with a staff of trained instructors and registrars and further that his educational program reaches out to all English-speaking countries.

The respondent is not surrounded with a staff of trained instructors and registrars, as represented. In truth and in fact, respondent's instructors and registrars are his ordinary clerical and other subordinate employees and in some instances his traveling representatives who among other duties assigned to them grade, correct and otherwise pass upon the lesson materials sent in to respondent's headquarters for grading and correction; and with the exception of a few persons who did subscribe to some of respondent's correspondence school courses abroad and in insular possessions of the United States, his alleged educational program does not extend to all English-speaking countries.

PAR. 6. Respondent, through his catalogs, circulars and circular letters and other advertising literature and through the representations of his employees and other representatives, represents that students of the so-called engineering class of courses will, shortly after their enrollment, receive tools in connection with their courses.

Students of respondent's school do not receive the tools promised them in respondent's contract of enrollment for the successful pursuance of their so-called engineering courses, said tools being furnished only after a student's account with the school has been paid

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in full, and as respondent's courses are sold upon a monthly payment plan, students do not receive said tools until after they have completed their courses by payment of the contract price in full or as adjusted to respondent's satisfaction, and in some instances said tools are not received by students until long after payment has been made in full.

PAR. 7. Each and all of the foregoing false and misleading statements and representations of respondent as set out in paragraphs 2 to 6 hereof, both inclusive, have had and have the tendency and the capacity to mislead and deceive the purchasing public into the erroneous belief that said statements are true, and do induce and have induced members of the public to purchase the correspondence courses of study and instruction of the respondent in such mistaken belief to the consequent damage and injury of said purchasing public, and have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

PAR. 8. The acts and practices set forth herein are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent 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 by the Federal Trade Commission upon the complaint of the Commission, the answer and supplemental answer of respondent, testimony and evidence taken before trial examiner, William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief on behalf of the Commission filed herein, oral arguments of counsel for the Commission and the respondent's having been waived by reason of the failure of re-

spondent or his counsel to appear on the day set for the said arguments, 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 respondent, O. F. Schoeck, doing business under the name and style of O. F. Schoeck School, or under any other name and style, and his associates, agents, representatives, servants, and employees in connection with the sale, offering for sale or distribution in interstate commerce, and in the District of Columbia, of correspondence courses of study and instruction, cease and desist:

(1) From representing, through the use of advertisements in newspapers, magazines, in other advertising literature or in any other manner, that employment is being offered or will be offered to persons who answer said advertisements.

(2) From representing, through advertisements in classified advertising pages of newspapers, magazines, in other advertising literature, or in any other manner under such headings as "Help Wanted", "Men Wanted", "Wanted Male Help", and "Employment", or in any other manner, that respondent has positions or jobs at his disposal, or that employment is being offered.

(3) From representing, through catalogs and circular letters, and through the representations of agents, employees and representatives, or in any other manner, that respondent has arrangements with various firms by which such firms will employ students who have concluded any course of instruction sold by it.

(4) From representing, through catalogs, circulars, and circular letters, and through the representations of agents and representatives, or in any other manner, that respondent's ordinary clerical and other subordinate employees are executive officers such as "Home Office Registrar", "Supervisor of Refrigeration and Air-Conditioning", "Supervisor of Aeronautical Department", "Supervisor Employment Service", "Supervisor of Mailing Department", "Supervisor of Accounts", "Chief Engineer", "Director of Enrollment", and "General Manager".

(5) From representing, through catalogs, circulars, and circular letters, and through the representations of agents and representatives, or in any other manner, that respondent's educational program reaches out to all English-speaking and other foreign countries, unless and until such are the facts.

(6) From representing, through catalogs, circulars, and circular letters, and other advertising literature, and through the representa-

tions of agents and other representatives, or in any other manner, that students shortly after their enrollment, will receive tools in connection with their so-called engineering courses, unless and until respondent does in fact include such tools among the material sent his students to be used in connection with their home study courses.

*It is further ordered,* That respondent shall, within 30 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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## IN THE MATTER OF

McCAMBRIDGE & McCAMBRIDGE COMPANY, INC., DOING  
BUSINESS AS EVERFRESH PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2664. Complaint, Dec. 19, 1935—Decision, Feb. 20, 1936*

Where a corporation engaged in the manufacture and sale of certain forms of pharmaceutical preparations, including its "Everfresh Aspirin", made many unfair, exaggerated, false and misleading statements with reference thereto and the effect upon users thereof, including such assertions as that it gave better, quicker relief because "Everfresh", kept user free of tired spells, nerve ailments and other troubles, and was pure and therefore harmless, and taken as directed, soothed nerve tension at night and made sound sleep possible, and advised the taking of two tablets thereof with water three times a day for grippe; with capacity and tendency, through said representations, in disparagement of competitors, to mislead and deceive the public in buying its said product in reliance upon the truth of said various statements and to divert trade unfairly from or otherwise injure and prejudice customers:

*Held*, That such acts, practices and representations were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Joseph A. Simpson*, trial examiner.

*Mr. Joseph C. Fehr* for the Commission.

*Mr. Sol Shappirio*, of Washington, D. C., for respondent.

## COMPLAINT

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, having reason to believe that McCambridge & McCambridge Company, Inc., a corporation trading and doing business as Everfresh Products Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Everfresh Products Company is a trade name employed by McCambridge & McCambridge Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business located in the city of Washington, District of Columbia at 12 L

Street, S. E. in said city. Said respondent is now, and for several years last past has been, engaged in the business of manufacturing certain forms of pharmaceutical preparations, one of which is "aspirin". Aspirin is made of a drug technically known as acetyl salicylic acid. The said respondent has named and designated its aspirin as "Everfresh Aspirin", which product respondent has offered for sale and sold in commerce between and among the different States of the United States and in the District of Columbia. Said respondent has caused and still causes said "Everfresh Aspirin" when so sold by it to be transported from its place of business into and through the various States of the United States and into and through the various parts of the District of Columbia to purchasers thereof located therein. There has been for several years last past and still is a constant current of trade in commerce in said product so manufactured by the respondent in the District of Columbia.

In the course and conduct of its business, as aforesaid, respondent is now and has been in competition with other corporations, firms and individuals engaged in the manufacture and sale of aspirin between and among the various States of the United States and in the District of Columbia, causing such aspirin when sold by them to be transported from their respective places of manufacture to purchasers thereof in States other than the States in which such aspirin is manufactured.

PAR. 2. In the course and conduct of its business as aforesaid, the respondent in soliciting the sale of and selling "Everfresh Aspirin" and for the purpose of creating a demand on the part of the consuming public for said product, now causes and for several years last past has caused advertisements, circulars and labels to be issued, published and circulated to and among the general public of the United States.

In said ways and by said means respondent makes and has made to the general public many unfair, exaggerated, false and misleading statements with reference to the therapeutic value of said "Everfresh Aspirin" and its effect upon the users thereof, a portion of which are as follows:

You will find this aspirin gives better, quicker relief because it is  
Everfresh;

Keep Everfresh at hand and keep free of \* \* \* tired-spells, nerve  
ailments and other troubles;

It is pure—hence it is harmless;

For \* \* \* grippé, take two tablets with water three times a day;

An Everfresh aspirin and a glass of hot milk soothes the nerve tension  
at night, making sound sleep possible;

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PAR. 3. In and by said ways and means, respondent's representations are in disparagement of its competitors and have the capacity and tendency to, and are calculated to mislead and deceive the purchasing public into the belief that "Everfresh Aspirin" is better and gives quicker relief than ordinary aspirin; that said product relieves tired-spells and cures nerve ailments and other troubles; that it is pure and harmless; that said product is a cure for grippe when two tablets are taken with water three times a day; and that "Everfresh Aspirin" and a glass of hot milk soothes the nerve tension at night, making sound sleep possible and has a sedative and hypnotic effect; and causes said purchasing public to purchase said product in such belief, whereas in truth and in fact, "Everfresh Aspirin" is not better nor will it give quicker relief because it is "Everfresh" nor will said product relieve tired-spells or cure nerve ailments and other troubles, nor is it absolutely pure and harmless, nor will two tablets taken with water three times a day cure grippe, nor does said product when taken with a glass of hot milk soothe nerve tension and have a sedative and hypnotic effect, nor does respondent's product continue to remain fresh longer than any other aspirin or acetyl salicylic acid but will decompose within the usual time in which ordinary aspirin or acetyl salicylic acid will decompose. Said representations by respondent have the capacity and tendency to unfairly divert trade from or otherwise injure and prejudice respondent's competitors in interstate commerce.

PAR. 4. The above and foregoing acts, practices and representations of the respondent have been and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

## 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 the 19th day of December 1935, issued and served its complaint in this proceeding upon the respondent, McCambridge & McCambridge Company, Inc., a corporation, trading and doing business as Everfresh Products Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of said respondent's answer thereto,



a stipulation as to the facts was entered into between the respondent through its attorney, Sol Shappirio, Esq., and this Commission, subject to its approval, through its chief counsel, W. T. Kelley, Esq., in and by which stipulation it was agreed that the statement of facts contained therein 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 in which stipulation it was provided that the Commission might proceed upon said statement of facts to make its report, its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and under its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Everfresh Products Company (a trade name employed by McCambridge & McCambridge Company, Inc.), is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business located in the city of Washington, District of Columbia, at 12 L Street, S. E., in said city. Said respondent is now, and for several years last past has been, engaged in the business of manufacturing certain forms of pharmaceutical preparations, one of which is "Aspirin". Aspirin is made of a drug technically known as acetyl salicylic acid. The said respondent has named and designated its aspirin as "Everfresh Aspirin", which product respondent has offered for sale and sold in commerce between and among the different States of the United States and in the District of Columbia. Said respondent has caused and still causes said "Everfresh Aspirin", when so sold by it, to be transported from its place of business into and through the various parts of the District of Columbia to purchasers thereof located therein. There has been for several years last past and still is a constant current of trade in commerce in said product so manufactured by the respondent in the District of Columbia.

In the course and conduct of its business, as aforesaid, respondent is now and has been in competition with other corporations, firms and individuals engaged in the manufacture and sale of aspirin between and among the various States of the United States and in the District of Columbia, said competitors causing such

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aspirin, when sold by them, to be transported from their respective places of manufacture to purchasers thereof in States other than the States in which such aspirin is manufactured.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent in soliciting the sale of and selling "Everfresh Aspirin" and for the purpose of creating a demand on the part of the consuming public for said product, now causes and for several years last past has caused advertisements, circulars and labels to be issued, published and circulated to and among the general public of the United States.

In said ways and by said means respondent makes and has made to the general public many unfair, exaggerated, false and misleading statements with reference to the therapeutic value of said "Everfresh Aspirin" and its effect upon the users thereof, a portion of which are as follows:

You will find this aspirin gives better, quicker relief because it is Everfresh; Keep Everfresh at hand and keep free of \* \* \* tired-spells, nerve ailments and other troubles.

It is pure—hence it is harmless;

For \* \* \* grippe, take two tablets with water three times a day; An Everfresh aspirin and a glass of hot milk soothes the nerve tension at night, making sound sleep possible.

PAR. 3. In and by said ways and means, respondent's representations are in disparagement of its competitors and have the capacity and tendency to and are calculated to mislead and deceive the purchasing public into the belief that "Everfresh Aspirin" is better and gives quicker relief than ordinary aspirin; that said product relieves tired-spells and cures nerve ailments and other troubles; that it is pure and harmless; that said product is a remedy for grippe when two tablets are taken with water three times a day; and that "Everfresh Aspirin" and a glass of hot milk soothes the nerve tension at night, making sound sleep possible; and causes said purchasing public to purchase said product in such belief, whereas in truth and in fact, "Everfresh Aspirin" is not better nor will it give quicker relief because it is "Everfresh" nor will said product relieve tired-spells or cure nerve ailments and other troubles, nor is it absolutely pure and harmless, nor will two tablets taken with water three times a day cure grippe, nor does said product when taken with a glass of hot milk soothe nerve tension; nor does respondent's product continue to remain fresh longer than any other aspirin or acetyl salicylic acid, but will decompose within the usual time in which ordinary aspirin or acetyl salicylic acid will decompose. Said representations by respondent have the capacity and tendency to

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unfairly divert trade from or otherwise injure and prejudice respondent's competitors in interstate commerce.

PAR. 4. The above and foregoing acts, practices and representations of the respondent have been and are all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued its complaint against the respondent, McCambridge & McCambridge Company, Inc., a corporation trading and doing business as Everfresh Products Company, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said act. Thereafter the respondent filed its answer to the charges set forth in the complaint, and on, to wit, the 14th day of February 1936, a stipulation as to the facts was entered into by and between the chief counsel of the Federal Trade Commission, subject to the approval of the Commission, and Sol Shappirio, Esq., counsel for respondent, wherein it was stipulated and agreed that the statement of facts thus stipulated might be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which stipulation it was agreed that the Commission might proceed upon said stipulation of facts to make its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts), and its conclusion based thereon, and its order disposing of this proceeding without the presentation of argument or the filing of briefs; and the Commission having accepted and approved the said stipulation as to the facts and 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."

*Now, therefore, it is hereby ordered,* That said respondent, McCambridge & McCambridge Company, Inc., a corporation trading and doing business as Everfresh Products Company, its officers, agents, servants, and employees, in the sale and offering for sale by

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it in interstate commerce and in the District of Columbia of its product called "Everfresh Aspirin", forthwith cease and desist from representing through advertisements in newspapers, magazines, or through circulars, labels, or any other form of printed matter, or by radio broadcasting, or in any other way or manner,

That its said product gives better or quicker relief than other forms of aspirin or acetyl salicylic acid; that it keeps the user thereof free from tired spells, nerve ailments and other troubles; that it is harmless because it is pure; that two tablets of said product taken with water three times a day is a remedy for grippe; or that one tablet of said product, when taken with a glass of hot water, will soothe the nerve tension at night and will make sound sleep possible, or from making any other similar representation or any representations of similar tenor or import;

*And it is hereby further ordered,* That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report in writing, setting forth the manner and form in which it shall have complied with this order.

## Complaint

IN THE MATTER OF  
UNITED DISTILLING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2474. Complaint, June 28, 1935—Decision, Feb. 27, 1936*

Where a corporation engaged in the distilled spirits rectifying industry under permit of the Federal Alcohol Control Administration—

Featured its corporate name in which was included word "Distilling", on stationery and in advertising price lists and other printed matter, and on labels attached to bottles in which it sold and shipped its said liquors, notwithstanding fact it had never applied for a distiller's permit, was never authorized by the Government to produce any distilled spirits from the grain, and never did distill and never owned a still, but purchased in bulk from distillers and other rectifiers all of its distilled spirit requirements and rectified, blended or bottled such spirits for sale in bottles under its own brand names and, in some cases, those of its customers, and failed to give adequate notice that it was not an actual distiller, through phrase "Bottled by" and display of rectifying permit "R-15", printed thereon and blown in the glass, in view of unappreciated significance thereof, on part of dealer and consuming public;

With capacity and tendency to mislead and deceive dealers and purchasing public into belief that it was a distiller, and that the whiskies, gins and other alcoholic beverages sold by it were made and distilled by it from mash, wort, or wash by process of original and continuous distillation through continuous closed pipes and vessels until manufacture was completed, and with effect of so doing and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, etc., and thereby divert trade to it from competitors, who do not thus or otherwise misrepresent themselves as manufacturers by distillation of alcoholic beverages; to the substantial injury of substantial competition in commerce:

*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.

Before *Mr. John W. Bennett* and *Mr. Charles F. Diggs*, trial examiners.

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Louis Weiland*, of Cincinnati, Ohio, for respondent.

## COMPLAINT

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, having reason to believe that United

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Distilling Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its office and principal place of business in the city of Cincinnati, in said State. It is now, and for more than one year last past has been engaged in the business of wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins and other alcoholic beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms and partnerships engaged in the business of purchasing, rectifying, blending and bottling whiskies, gins, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the

purchasing public prefers to buy alcoholic liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to the vendees, both retailers and the ultimate consuming public, that it is a distiller and that the whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other alcoholic beverages by it so bottled, labeled, sold, and transported, and does not own, operate or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of alcoholic beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other alcoholic beverages sold by them and who truthfully use the words "distillery", "distilleries", "distillers" or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other alcoholic beverages who do not use the words "distillery", "distilleries", "distilling", or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins and other alcoholic beverages bottled and sold by the respondent, thereby diverting trade to respondent

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from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other alcoholic beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6 The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

## 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 June 28, 1935, issued, and on July 1, 1935, served its complaint in this proceeding upon respondent, United Distilling Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and thereafter before Charles F. Diggs, an examiner of the Commission duly substituted for the said John W. Bennett by order of the Commission, and in defense of the allegations of the complaint by Louis Weiland, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, United Distilling Company, was incorporated on September 6, 1933, under the laws of the State of



Ohio, to carry on the business of "producing, manufacturing, blending, compounding, buying, selling, and otherwise dealing in alcoholic liquids and industrial alcohol produced and manufactured in accordance with the statutes of the State of Ohio and of the United States of America, and conducting any other business not contrary to law"; with 250 shares of a par value of \$100 each, and began operations with a capital of \$500 at its principal place of business in Cincinnati, Ohio, in a plant operated under its own name, there engaging in the distilled spirits rectifying industry under permit of the Federal Alcohol Control Administration, dated January 11, 1934, and designated as "Permit R-15". This permit was based upon its application dated December 23, 1933, and was issued "subject to compliance with all State and Federal laws."

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol). Subsequent to the issuance of its permit respondent has continuously been engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending and bottling whiskies and gins and other alcoholic beverages. Respondent never applied for a distiller's permit, was never authorized by the Government to produce any distilled spirits from the grain, never distilled and never owned a still, but purchases all of its distilled spirits requirements in bulk from distillers and other rectifiers and rectifies, blends, or bottles such spirits for resale in bottles under its own brand names and, in some cases, under the names and brands of its customers who are wholesalers, jobbers, or retailers. The words "Bottled by United Distilling Company" and "Permit R-15" appear on 35 of the 42 labels of respondent admitted in evidence.

When sold, respondent ships its bottled liquors so labeled which it has rectified or blended or simply bottled to other wholesalers, jobbers and dealer customers from its principal place of business aforesaid into and through various States of the United States to the purchasers thereof located in the States of the United States other than Ohio, in competition with distillers and rectifiers likewise engaged in the regular course of business in the sale of whiskies, gins and other alcoholic beverages in commerce among the several States, and the evidence shows that respondent's bottled liquors are offered for resale and sold by its said customers both to retailers and the consuming public in States and territories coextensive with the territories in which its competitors likewise offer spirituous beverages for sale to wholesalers, jobbers, and the consuming public.

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The Commission finds that the undisputed evidence shows that the respondent is in competition with actual distillers, and also with other rectifiers who do not by the use of such words as "distilling", "distillers" or "distilleries", as a part of their corporate or trade names misrepresent their status to the trade. In 1934 respondent's sales amounted to approximately \$350,000, approximately 80 percent of which was whiskey. Respondent rectifies only about 2 percent of the liquor purchased by it in bulk, and rebottles the remainder as received except in some instances where water is added in order to reduce the proof.

PAR. 2. The complaint charges, the answer admits and the proof shows that for a long period of time the word "Distilling", when used in connection with the liquor industry and the products thereof, has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture thereof is completed.

PAR. 3. The Commission finds that in the course and conduct of its business, as aforesaid, respondent's use of the word "Distilling" as a part of its corporate name conspicuously printed on its stationery, advertising, price lists and other printed matter, and on the labels attached to the bottles in which it sells and ships its said liquors, has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies, gins and other alcoholic beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins and other alcoholic beverages, and that thereby respondent does substantial injury to substantial competition in interstate commerce.

The record contains the testimony of twelve members of the public, whose names were selected from the classified section of the Cincinnati and Cleveland telephone directories, to the effect that they had a fair understanding of what "distilling" meant—for instance, "A process of manufacturing alcohol or liquor with the principle of

evaporation and condensation"; "Distilling means to take the raw product, to vaporize it and then condense it"; "Distilling means the manufacture of whiskey, that is all I know about it"; "By distilling I mean the processing of basic grains from which the alcohol is extracted, which is used as a basis of making liquors", etc. Such testimony also showed that such members of the public, from the name of respondent, would believe it to be engaged in the business of the manufacture of distilled spirits and whiskies from basic grains, and that the use by a concern on labels attached to its bottled goods of a name containing the word "Distilling" would influence them favorably in purchasing such bottle in preference to a like bottle which did not contain any such name or indication.

The evidence also shows that often members of the public actually purchase bottled whiskies and other distilled spirits, being influenced in their selection by well advertised brand names and without noticing the name of the producer, maker or bottler. Most of the instances in this record where such was shown by the evidence were selections of whiskies which were bottled by actual distilleries either at the distillery, in the bonded warehouse or in a rectifying plant owned by the distillery.

From the testimony of members of the public adduced in this record, the Commission infers that the members of the public who might be and are influenced to exercise the aforesaid preference is sufficiently substantial to constitute a competitive advantage to the respondent over those of its competitors who are distillers and those who are rectifiers but do not characterize themselves as distillers or distilling companies.

Respondent adduced some evidence tending to show that the use by it on its labels of the phrase "Bottled by" and a reference to its permit "R-15" printed on the labels and blown in the glass of the bottles negated the suggestion to the prospective purchaser that respondent was an actual distiller. In this connection, the evidence shows that both distillers' and rectifiers' permits are issued in the liquor industry, the former being issued to those who distill from mash and the latter to those engaged in the kind of business in which respondent has been and is engaged. It is the practice in the industry for distillers to have blown into the bottles which contain their liquors a symbol "D" with a hyphen thereafter, after which hyphen appears the number of their distiller's permit, thus identifying the distiller and his bottle. The rectifier follows the same practice, using the symbol "R" followed by the number of his permit. Many distillers are also rectifiers and on their rectified products use an "R-No." symbol on their bottles and labels which

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are rectified, mixed or blended in their rectifying plants. On the distiller's products which are not rectified appear the words "Distilled and Bottled by", usually followed by the name of the distilling company; whereas on the rectified products prepared and bottled by the distilling company in its rectifying plant or by a rectifier such as respondent appear the words "Bottled by" followed by the name of the company. The preponderance of the testimony in this record shows that the liquor dealers and the consuming public are not as yet well informed concerning the significance of the aforesaid symbols or of the words "Bottled by", and the use of such words and symbols in that manner the Commission finds are not informative to the ordinary dealer or consumer purchaser.

PAR. 4. The secretary and treasurer of the respondent testified and the Commission finds that respondent has derived some commercial advantage from the use of the name, "United Distilling Company". The testimony of other competitors, both rectifiers not designating themselves as distillers and actual distillers shows that such commercial advantage takes the form of increased sales resistance to concerns not indulging in the practice. The record shows instances where new contacts would rather "buy from the source, from the manufacturer", doing away with the middleman.

The record further shows that a distiller or distillery ordinarily requires a much greater outlay of capital for plant and equipment than a rectifier, usually carries large stocks of whiskies in bonded warehouses for aging purposes, and must have additional capital available for that purpose; whereas the rectifier usually carries only such stocks on hand as are necessary for his immediate needs, in addition sometimes purchasing warehouse receipts for his further requirements, and his capital outlay for the carrying of stocks is ordinarily much less than that of a distiller. While there is no minimum distiller's bond, in 75 percent of the cases of distillers at present operating in the United States the bond is in the maximum sum of \$100,000, and both the bond and title to the property are subject to the application of lien for taxes, and the property is subject to forfeiture in the event of certain violations or illegal uses. Except in exceptional cases the bond of the rectifier is in the amount of \$3,000 to \$5,000, and he neither has to own fee simple title nor have the consent of the owner of the premises that the real estate shall be subject to the same applications of liens for taxes as aforesaid. These differences in requirements and differences in amounts of investments, bonds and other liabilities have naturally resulted in attaching to rectifiers on the one hand a certain status well defined and different from the status attaching to a distiller.

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Certain prestige attaches to the use of the term "Distilling" which is an advantage to the person using it in the liquor trade. The evidence shows this to be of tremendous value on account of the investment, stability and backing of an organization of the character of the ordinary distilling company or distillery to stand back of the merchandise it sells. The record shows that a dealer customer preference in buying goods bearing the label of a distilling company to goods which only bears the label of a distributing company, wholesaler or rectifier is presented in an indirect way almost daily in the ordinary course of trade. There is no specific instance shown in this record where a competitor lost a sales order to this particular respondent but the record is replete with proof that competitors in the field frequently meet with competition from other rectifiers who were following the identical practices of respondent in this regard, and that such practices operated and had a tendency to divert trade through sales resistance and through the unfair competitive advantage possessed by the rectifier which represented itself as a distilling company. It follows that if such general practice had that effect, this respondent's practices would likewise tend to have that effect upon all competition for the sale of bottled liquors in the same coextensive territories where such liquors were competitively sold.

## CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, 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 the respondent, testimony and evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and thereafter before Charles F. Diggs, an examiner of the Commission duly substituted for the said John W. Bennett by order of the Commission, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by PGad B. Morehouse, counsel for the Commission, and by Louis Weiland, counsel for the respondent, and the Commission having made its

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findings as to the facts and its 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 ordered*, That the respondent, United Distilling Company, its agents, salesmen and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins and other spirituous beverages, do forthwith cease and desist from:

Representing, through the use of its corporate name on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins and other spirituous beverages; or (b) that the said whiskies, gins and other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate or control a place or places where such whiskies, gins and other spirituous beverages are by it manufactured through a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

*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 or reports 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.

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IN THE MATTER OF  
SESSIONS CLOCK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2682. Complaint, Jan. 9, 1936—Decision, Feb. 27, 1936*

Where a corporation engaged in the manufacture of spring and electric clocks under various trade names, shipped certain of its clocks in cartons, the label of which contained the legend "Midland—Mahogany—60 Cycles Only—Sessions Synchronous Electric Clock", and was displayed by retail dealers so as to be observed by customers; notwithstanding fact that product involved was not made of mahogany; with result that its customers, chiefly retail, and said retailers' own countless customers bought clocks by reason of such false, deceptive and misleading statement and representation, and prospective sales of products of competitors were thereby diverted from them to it:

*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. T. H. Kennedy* for the Commission.

*Mink & Beach*, of Bristol, Conn., for respondent.

## COMPLAINT

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 having reason to believe that Sessions Clock Company, a corporation, has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sessions Clock Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business at Forestville in said State. It is now and for more than two years last past has been engaged in the manufacture of clocks and in the selling thereof between and among the various States of the United States and in the District of Columbia and has caused and still causes such clocks when sold by it to be transported from its place of business in Connecticut aforesaid to purchasers (chiefly

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retailers) thereof, some located in the State of Connecticut and others located in the various other States of the United States and in the District of Columbia and there has been for more than two years last past and still is a constant current of trade and commerce by respondent in clocks manufactured by it between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is now and for more than two years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of clocks between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent for more than two years last past has by means of catalogs, labels, advertising matter and by other means represented and still represents that the cases of the clocks manufactured and sold by it to be "mahogany" when in truth and in fact such clock cases are and have been made of woods other than mahogany wood; that is to say wood other than that from the tree of the genus *Swietenia* of the tree family *Meliaceae*. There is a preference on the part of a substantial number of retail dealers in clocks and on the part of a substantial portion of the purchasing public for clocks the cases of which are made of mahogany. The aforesaid representation by respondent that the cases of the clocks sold by it are made of mahogany wood has had and still has a capacity and tendency to mislead and deceive and has misled and deceived and still misleads and deceives retailers and the purchasing public into the erroneous belief that the cases of clocks so designated are and have been made of mahogany wood and to purchase respondent's clocks in such erroneous belief. The aforesaid representation by the respondent has placed and still places in the hands of retailers of clocks the means of misleading and deceiving the purchasing public.

PAR. 3. There are among the competitors of respondent mentioned in paragraph 1 hereof, manufacturers of clocks the cases of which are made of mahogany wood who truthfully represent such cases to be made of mahogany wood. By the representations made by respondent as set out in paragraph 2 hereof trade has been and still is diverted to respondent from such competitors. Thereby substantial injury has been done and still is being done by respondent to substantial competition in interstate commerce.

PAR. 4. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent 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.

#### 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 9, 1936, issued its complaint in this proceeding, and on January 11, 1936, said complaint was served upon Sessions Clock Company, the respondent, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent answered said complaint, and in said answer admitted the allegations of the complaint and the facts therein set forth to be true and stated that it waived hearing on the charges set forth in the complaint, that it refrained from contesting proceeding, and that it consented that the Commission make, enter, issue and serve upon it without hearing or other intervening procedure, findings as to the facts and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Sessions Clock Company, is and has been since 1902 a corporation duly organized and existing under the laws of the State of Connecticut, having at all said times its principal factory and place of business at Forestville in said State.

PAR. 2. Respondent is and has been since 1902 engaged in the manufacture of spring and electric clocks. The trade names of said clocks have been and are: "Midland-Electric", "Moline-Electric", "Milan-Electric", "Moffitt-Electric", "No. 81M-Electric", "No. 80M-Electric" and "Westminster 21-Electric", and throughout said period has been and still is engaged in the sale of said clocks to various individuals, firms and corporations, chiefly retailers located in the District of Columbia and in the various States of the United States other than the State of Connecticut, and has caused and still causes its said clocks when so sold by it to be transported, in commerce,

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from its principal factory and place of business at Forestville, Conn., to, into and through said other States and the District of Columbia to the said individuals, firms and corporations, chiefly retailers, to whom the said clocks were sold by the respondent.

PAR. 3. During the times above mentioned and referred to other corporations, firms, and individuals located in the various States of the United States have been engaged in the manufacture and sale of products similar to those of respondent above referred to, which products, when sold, are shipped or caused to be shipped by said competitors to corporations, firms and individuals, chiefly retailers, located in the various States of the United States other than the State or States of origin of such shipments and in the District of Columbia. The respondent during the aforesaid times was and still is in competition in commerce in the sale of its products with said other corporations, firms and individuals likewise engaged in the manufacture, sale and distribution of products similar to those of respondent hereinabove described.

PAR. 4. Respondent has shipped in interstate commerce certain of its clocks in cartons bearing labels upon which the following statement with respect to the clocks contained therein appears:

Midland—Mahogany—60 Cycles Only—Sessions Synchronous Electric Clock.

Respondent's products have been received by retailers in the course of the business transactions of the respondent hereinabove described and have been displayed to the purchasing public in their places of business in the various States of the United States, other than the State of Connecticut and the District of Columbia and the clocks have been displayed to the purchasing public by said retailers in connection with the display of said cartons in such a way that the customers of said retailers observe the statement above referred to appearing on the label of the cartons. The representation is thereby conveyed not only to retailers but to ultimate purchasers and prospective purchasers of respondent's product that the products of respondent and, especially the Midland Electric Clock, are constructed with cases made of mahogany wood. As a matter of fact no mahogany wood is used in the construction of the case of the Midland Electric Clock and the aforesaid representation by the respondent that the case of said clock is made of mahogany wood is untrue.

PAR. 5. As a result of the above-described representation respondent's customers, chiefly retailers and countless customers of said retailers, have purchased respondent's product through the false, deceptive and misleading statement and representation of respondent.

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ent, and prospective sales of respondent's competitors' products have been diverted from respondent's competitors thereby.

## 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 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 come on for final hearing by the Federal Trade Commission upon respondent's answer admitting the allegations of the complaint and the facts therein set forth to be true and stating that said respondent desires to waive hearing on charges set forth in the complaint, that it refrains from contesting the proceeding and that it consents that the Commission may make, enter, issue, and serve upon it without hearing or other intervening procedure findings as to the facts and an order to cease and desist from the methods of competition alleged in the complaint and the Commission having found the facts and arrived at its conclusion drawn therefrom and served and filed said findings as to the facts and said conclusion and being fully advised in the premises;

*It is now ordered*, That respondent, Sessions Clock Company, a corporation, its officers, agents, representatives, and employees in connection with the advertising, offering for sale and sale in interstate commerce of clocks cease and desist from:

Advertising or in any way otherwise representing directly or by implication by means of catalogs, labels, advertising matter, stickers, or labels attached to containers of its products or in any manner or by any means whatsoever that the cases of clocks manufactured or sold by the respondent and not made from wood derived from trees of the genus *Swietenia* of the *Meliaceae* family, otherwise known as mahogany, are mahogany.

*It is further ordered*, That the respondent, Sessions Clock Company, shall within 30 days from the date of service upon it of this order file with the Commission a report in writing setting forth the manner and form in which it has complied with the order herein set forth.

IN THE MATTER OF  
THE GOODYEAR TIRE & RUBBER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

*Docket 2116. Complaint, Mar. 1, 1935<sup>1</sup>—Decision, Mar. 5 1936*

**DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER JUSTIFIED—COST AS CRITERION—ANNUAL SALES VOLUME AS BASIS FOR DISCOUNT**

In arriving at a price on account of quantity sold, some standard of comparison is necessary and that is the relation between price and quantity, and in arriving at this relation, factors that go to make up price because of quantity are to be taken into account and given reasonable weight in determining whether a price discrimination is legal or illegal, and a difference in price is not on account of quantity within the meaning of the proviso in question, unless it is based on a difference in cost and is reasonably related to and approximately no more than such difference, since otherwise the discrimination would create an unjust preference and unfair competitive conditions. Thus, while quantity sales are cheaper than small sales and, to this extent, economically justified, quantity discount based on the amount of annual sales constitutes price discrimination in violation of the provisions of the section unless it can be shown that it represents and fairly approximates lower costs.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER JUSTIFIED—QUANTITIES INVOLVED—WEIGHT—ECONOMIC UTILITY OF LARGE PURCHASES AS DICTATING ULTIMATE BOUNDS**

In weighing the question of quantity under the proviso in question and the effect to be given same, it is clear that said proviso could only have been intended to preserve to the large buyer the inherent economies of large purchases and that quantity discounts are exempted because they involve some economic utility that should be preserved so that a difference in quantity under the proviso does not permit discrimination in price without limit or restraint but constitutes only a factor which must be given reasonable weight in determining whether the discriminatory price is warranted. The quantity proviso, interpreted to mean that a manufacturer could discriminate with respect to quantity to any extent he desired, would render the section meaningless and ineffective.

**DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER JUSTIFIED—COST AS CRITERION—APPLICATION—RULE OF REASON—EQUALITY TO PURCHASERS AS UNDERLYING PRINCIPLE**

In weighing a discount as respects the legality thereof under the quantity proviso, the discount is not to be condemned merely because it does not mathematically accord with cost differences, and such differences, where remote and unsubstantial, may be disregarded. The problem is a practical one

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<sup>1</sup>Amended.

and must depend on the intent and effect of the scheme as a whole, the principle back of the section being one of equality to purchasers, which requires that the difference in price or discount be reasonably related to difference in cost and not a covert means of favoritism, since, if left to the manufacturer, he could easily make the discount so high as practically to be open to the largest dealers only, and thus hand over the entire trade in his line of commerce to a few dealers, or to a single one, or, by making the discount equal to or greater than the usual profit in the trade, eliminate the competition of those who could not secure the same.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—SCOPE AND PURPOSE—DISPROPORTIONATELY LARGE DISCOUNTS TO LARGE AND POWERFUL PURCHASERS—MANUFACTURER'S OBLIGATION**

The practice of giving large and powerful purchasers a disproportionately large discount is not justified, since such a discrimination, when made merely on account of size, tends toward monopoly and the suppression of competition, and a manufacturer under said act is under a duty to comply with the law and may not make his bargains according to his own interest by discriminating as he pleases, however honest and however justifiable such course might be from the standpoint of commercial principles. The giving of a discrimination to one or more of a number of competitors whose selling prices are competitively limited, means increasing by the amount of the discrimination the profit of the favored competitor, while correspondingly prejudicing everyone not thus favored, and large industrial companies, through price discrimination, can control competitive business conditions among their customers to the extent of enriching some and ruining others. Under said act, a manufacturer has no right to put dealers to any such destructive disadvantage by any unjustified discrimination. While a manufacturer has an interest in making attractive offers to secure as much business as possible, such interest can only be consulted and acted upon in subordination to law.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER SECRET OR OPEN**

It is not contemplated by the statute that a discriminatory price made on account of quantity may be a secret price, but the statute contemplates a price open to all of the seller's customers who may desire to purchase a similar quantity at like prices or like terms.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—WHETHER MADE IN GOOD FAITH TO MEET COMPETITION**

The provision in question is available to a concern only if its competitors have already made an equally low and discriminating price to the recipient of the discrimination in question. Thus, if a powerful concern starts a campaign of price cutting in a particular community and to particular customers in violation of the instant act, a competitor does not violate the same by meeting such competition by a corresponding discrimination, since it is such action in good faith for defensive, not offensive, purposes, that is sanctioned. The theory of the law is that, in addition to the cause of action afforded for treble damages against an offensive price discriminator, and in addition to the right to apply to the Commission for cease and desist order, there is an immediate right of self-defense, available, however,

only if the discrimination started with the competitor and if exercised in good faith. Interpreted otherwise the effect of the whole section would be nullified.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—"WHERE THE EFFECT OF SUCH DISCRIMINATION MAY BE TO SUBSTANTIALLY LESSEN COMPETITION", ETC.—QUANTITATIVE COMPETITIVE CRITERIA**

The words "where the effect may be" are obviously used merely to indicate that it is *tendency* and *probable effect*, rather than the *actual results* that are important, so that the words "substantially lessen competition" are not to be taken in a purely quantitative or arithmetical sense requiring a finding that a difference in price—or any other unfair acts, for that matter—will result in, say, five percent or ten percent less competition than there was before. Such interpretation would make the law entirely unworkable, for competition is not a thing that can be measured with a yardstick, and would, moreover, be inconsistent with the intent of Congress as expressed in the act, the purpose of which is to insure fair and honest competition based on efficiency.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—"WHERE THE EFFECT MAY BE TO SUBSTANTIALLY LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY"—SCOPE IN GENERAL**

The words "may be" indicate neither bare possibility nor certainty, but probability to be deduced from intent or inherent character of the acts themselves and must be construed to go with the whole section and be taken all together to indicate generically the distinction between fair and unfair competition, the meaning of the qualification as a whole being simply that the discrimination must have the effect of imposing an unlawful restraint on competition as distinguished from normal competitive methods.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—SCOPE AND PURPOSE—MONOPOLY AND UNFAIR METHODS OF COMPETITION—WHERE PRICE DISCRIMINATION NOT JUSTIFIED ON BASIS OF COST AND EFFICIENCY**

The theory of the law is that monopoly on the whole is an unnatural product which results from unwholesome competitive methods and which will not ordinarily result where methods of competition are fair, and the law is designed to prevent lessening of competition by unfair acts or methods which always tend to monopoly, and, absent which, and given fair methods, competitive conditions will prevail. Price discriminations not justified on the basis of cost and efficiency, according to the hypothesis underlying the section, create unfair competitive conditions, and such discriminations are specifically condemned because they are deemed by the Congress to be unfair and injurious.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER JUSTIFIED—OUTSTANDING TIRE MANUFACTURER'S SECRET PRICE PREFERENCES IN CONSIDERATION OF OUTSTANDING MAIL ORDER-CHAIN STORE CONCERN'S BUSINESS—WHERE MANUFACTURER'S QUANTITY COST SAVINGS FAR EXCEEDED BY CONCESSIONS ACCORDED AND COMPETITIVE EFFECTS DESTRUCTIVE AND FAR-REACHING**

Where the largest manufacturer and distributor of pneumatic rubber tires in the United States, controlling and operating through its variously engaged

subsidiaries, cotton and rubber plantations and textile mills, here and abroad, and engaged in the distribution of its said product to and through independent service-station dealers and wholesalers, chain retail stores and mail-order houses, and through approximately 25,000 local retailers, in competition with other manufacturers and wholesalers of tires—

Secretly and substantially discriminated in price over a period of years, pursuant to secret agreements involving large and important bonuses of cash and stock and beneficiary's business, in favor of a concern reputed to be the largest mail order-chain store operator in the United States, through sale of its said products thereto upon the basis of cost plus 6 percent, and, later, 6½ percent, so that the net average sales price discrimination over the entire period, in favor of said concern over said manufacturer's prices to independent tire dealers, for tires of comparable grade and quality, after deductions from such dealer prices for discounts and allowances and transportation, varied from 25 percent to 40 percent on eight sizes, net price discrimination, after due allowance for selling and transportation costs, ranged from 11 percent to 22 percent on eight popular sizes, and total aggregate net discrimination in favor of said mail order-chain store concern, after deductions for discounts, allowances and transportation, amounted to about \$41,000,000 or about 23 percent of the aggregate net sales price to the independent dealers on a volume comparable to that sold to it;

With the result that said mail order-chain store concern, as a result of such discriminatory prices, which were not offered by said manufacturer to meet prices at which any competitor of financial responsibility ever solicited said concern's business, nor to other dealers for products of comparable quality, nor were available from others to said concern's dealer competitors, was enabled to undersell at a profit all retail tire distributors of said manufacturer's product and of products of latter's competitors; said concern's aggressive competition in persistently, systematically and substantially underselling dealers in pricing and pushing by excessive guarantees, free tube offers and trade-in allowances and in various ways for the consumer market the tires thus purchased by it from said manufacturer at prices ranging, with one exception, from 20 percent to 25 percent lower than prices placed upon tires of comparable grade and quality sold by other retailers, was a major factor in, (a) driving out of business a large number of retailers through reducing their volume of sales or curtailing their profit or both, and in (b) curtailing number of independent tire dealer competitors and in substituting therefor such mass distributors as operators of company chain stores and other large volume dealers, and (c) as the direct and inevitable result of such curtailment and substitution in the driving out of business of numerous small tire manufacturers and the continued reduction of the number of independent manufacturers and dealers; its own percentage of the total industry renewal sales was substantially increased, as was its dominant position therein; and said price discriminations substantially lessened competition between said manufacturer and other manufacturers and wholesale distributors of such products on the one hand, and between said mail order-chain store operator concern, and competitive retail tire distributors, on the other, had the tendency and capacity to create a monopoly in said manufacturer in sale and distribution of such products to wholesale and retail tire dealers owned

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or controlled by it throughout the several States, and tended to create in it and said mail order-chain store concern, a monopoly in the retail distribution and sale thereof:

*Held*, That such price discrimination was not justified on account of differences in grade, quality, or quantity of commodity sold, or by difference in cost of selling or transportation, or by good faith to meet competition, and had the effect of substantially lessening competition and tending to create a monopoly, and that said price discriminations were therefore in violation of the provisions of Section 2 of the Act of Congress approved October 15, 1914.

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

*Mr. Everett F. Haycraft* and *Mr. PGad B. Morehouse* for the Commission.

*Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., *Tolles, Hogsett & Ginn* and *Mr. Grover Higgins* and *Mr. Chapman Rose*, of Cleveland, Ohio, and *Mr. Harold G. Capron*, *Mr. Frederick Wahl* and *Mr. R. E. Sheldon*, of Akron, Ohio, for respondent.

## AMENDED COMPLAINT

This matter having come on to be heard upon the motion of counsel for the Commission that the complaint herein issued on September 13, 1933, be amended as to paragraph 5 thereof to conform to the evidence adduced in the record during the taking of testimony herein, and respondent having answered that without waiving its right to contend on the final argument on the issues of the case that the allegations of the complaint as amended are not supported by the evidence and without waiving any questions of law in respect of such amended allegations, the Federal Trade Commission, being fully advised in the premises, now issues this its amended complaint and charges that respondent, Goodyear Tire & Rubber Co., hereinafter called respondent, has violated and is violating the provisions of Section 2 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 states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Goodyear Tire & Rubber Co., is a corporation organized under the laws of the State of Ohio, having its principal office and place of business located in the city of Akron, in the said State. Respondent now is, and for many years last past has been, engaged in the manufacture and sale of rubber tires, inner tubes and other tire accessories and appliances for use on motor trucks, passenger automobiles, airplanes, motorcycles, and bicycles.



Said respondent has tire factories at Akron, Ohio, Gadsden, Ala., and one operated by a subsidiary corporation at Los Angeles, Calif. In addition, said respondent operates either directly or through subsidiary corporations textile mills, coal mines, cotton plantations, and rubber plantations at various points throughout the world. In 1926, said respondent was, and since that time has continued to be, the largest rubber tire manufacturer in the world. During 1931, said respondent sold over one-fourth of the motor vehicle tires made in the United States.

PAR. 2. Said respondent in the course and conduct of its said business sells and distributes its said products through subsidiary corporations, which have branches in the principal cities of the United States, through which said products are distributed to the consuming public. Sales are made direct to consumers through retail stores located in the principal cities of the United States, which said subsidiaries own and operate, and to approximately 25,000 retail tire dealers located in the various towns and cities in the several States of the United States under one-year "service station agreements" wherein the said dealers agree to actively engage in the sale and distribution of Goodyear rubber tires, inner tubes and other tire accessories for use on motor trucks and passenger automobiles to consumers, and are granted the privilege of purchasing said products at prices established from time to time by the said respondent. Said respondent also sells said products to various wholesalers, chain retail stores, and mail-order houses, who resell the same under their own private brands or trade-marks.

Said respondent transports or causes to be transported the said products, when sold, from their said places of manufacture to the purchasers thereof located in the several States of the United States other than the States wherein they are manufactured, and there is and has been at all times herein mentioned a current of trade and commerce in said rubber tires, inner tubes, and other tire accessories for use on motor trucks and passenger automobiles, between the States wherein respondent's factories are located, and the other various States of the United States.

Said respondent sells and distributes its said products in competition with other manufacturers and wholesale distributors of rubber tires and inner tubes and other tire accessories for use on motor trucks, passenger automobiles, airplanes, motorcycles, and bicycles.

PAR. 3. Sears, Roebuck & Co. is a New York corporation with its principal office and place of business located in the city of Chicago, State of Illinois, and is engaged in selling, among other articles of commerce, rubber tires, inner tubes, and other tire accessories and

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appliances for use on motor trucks and passenger automobiles, direct to consumers in the United States by means of mail orders and catalogs, and also through approximately 300 retail stores owned or controlled by it.

On May 1, 1926, said respondent entered into a special contract in writing with Sears, Roebuck & Co. whereby the said company agreed to buy and respondent agreed to sell a minimum quantity of rubber tires and inner tubes for use on motor trucks and passenger automobiles, over a fixed period of time in return for a special price. Said products thus purchased were then and now are sold by said Sears, Roebuck & Co. to consumers under its own brand names or trade-marks. Said contract was renewed on May 17, 1928, and again on October 5, 1931, with a few minor changes in allowance for adjustments on tires returned, to remain in effect until October 5, 1941, after which date said contract will continue in effect unless a written notice of cancellation is given by either party thereto one year in advance.

PAR. 4. Said respondent in the course and conduct of interstate commerce, as set forth in paragraphs 1, 2, and 3 hereof, has, since May 1, 1926, discriminated in price, and is now discriminating in price, between the different purchasers of its said products, by giving and allowing said Sears, Roebuck & Co. a lower price than given or allowed other purchasers competitively engaged in said line of commerce, and also by giving and allowing said Sears, Roebuck & Co. certain secret rebates or discounts from said price in the form of cash and valuable stock bonuses. Said discrimination in price has not been made, and is not now made, on account of differences in the grade, quality, or quantity of the commodity sold, nor has said discrimination made only due allowance and it does not now make only due allowance for difference in the cost of selling or transportation; nor has said discrimination in price in the same or different communities been made, and it is not now made in good faith to meet competition. The said discrimination in price in favor of Sears, Roebuck & Co. was concealed by said respondent from the said other purchasers of said products from respondent.

PAR. 5. Said discrimination in price made by said respondent, as set forth in paragraph 4 herein, has had, and now has, the effect of substantially lessening competition in the sale and distribution of rubber tires and inner tubes for use on motor trucks and passenger automobiles, between the said respondent and other manufacturers and wholesale distributors of said products, and between the said Sears, Roebuck & Co., and other retail tire dealers, engaged in the sale and distribution of rubber tires and inner tubes in competi-

tion with said Sears, Roebuck & Co., including retail tire dealers engaged in the sale and distribution of Goodyear branded products; and said discrimination also tended and now tends, to create a monopoly in said respondent in a line of commerce, namely, the sale and distribution of rubber tires and inner tubes for use on motor truck and passenger automobiles, to wholesale and retail tire dealers, including those dealers now owned or controlled by the said respondent, located throughout the several States of the United States; and said discrimination also tended, and now tends to create a monopoly in said respondent and the said Sears, Roebuck & Co., and each of them, in a line of commerce, namely, the retail distribution and sale to the public of rubber tires and inner tubes for use on motor trucks and passenger automobiles, throughout the several States of the United States.

#### 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" (38 Stat. 730), the Federal Trade Commission, on September 13, 1933, issued and served its complaint in this proceeding upon the respondent, The Goodyear Tire & Rubber Co., a corporation, hereinafter referred to as Goodyear or respondent, charging it with discriminating in price between different purchasers of tires in violation of Section 2 of said Act.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Everett F. Haycraft and PGad B. Morehouse, attorneys for the Commission, before John W. Bennett, an examiner of the Commission, theretofore duly designated by it; and in defense of the allegations of the said complaint by Covington, Burling, Rublee, Acheson & Shorb, and Tolles, Hogsett & Ginn, attorneys for the respondent; thereafter this matter came on to be heard upon the motion of attorneys for the Commission that the aforesaid complaint be amended in certain particulars to conform to the evidence adduced in the record during the taking of testimony therein, and respondent having consented to said amendment (without waiving its right to contend that the allegations as amended were not supported by the evidence taken), the Federal Trade Commission, on March 1, 1935, issued and served upon respondent its amended complaint herein; respondent filed its answer thereto, and further proceedings were had before the aforesaid

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examiner, and testimony and documentary evidence were offered and received, both in support of and in opposition to the allegations of the amended complaint; and all of the aforesaid testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and amended complaint, the answers thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, 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

SECTION 1.—*Description of Respondent.*

Respondent, the Goodyear Tire & Rubber Co., is a corporation organized under the laws of the State of Ohio on August 23, 1898, with an authorized capital stock of \$100,000. From time to time thereafter said corporation increased its authorized capital stock, until on November 17, 1919, said capital stock was increased to \$200,000,000, \$100,000,000 common and \$100,000,000 7% cumulative preferred stock.

Respondent was reorganized as of May 11, 1921, at which time shares of stock issued were limited to 2,910,000 in number, and were divided into four classes, as follows: (1) 400,000 shares prior preferred stock, par value \$100 per share, with 8% annual cumulative dividends; (2) 10,000 shares of management stock valued at \$1.00 per share, with a contingent preference as to a 6% annual dividend and preference in sharing assets on liquidation; (3) 1,000,000 shares of preferred stock, par value \$100 per share, made junior to prior preference preferred stock (described in (1)) and to management stock as to dividend; (4) 1,500,000 shares of no par value common stock, which may be disposed of at not less than \$1.00 per share, said stock being junior in voting rights to prior preference preferred stock and to management stock, and junior to all other capital stock as to dividends.

Respondent, on May 2, 1930, filed amended articles of incorporation authorizing a capital stock of 6,981,620 shares classified into first preferred, preferred and common stock, of which 996,408 shares are of a par value of \$100 per share, and 5,985,212 shares are without par value. Said first preferred stock, under the amended articles of incorporation, numbered 985,212 shares, no par value, said stock being entitled to annual dividends of \$7.00 per year, before any

dividends could be paid on the said preferred stock or common stock. A sinking fund of 10% of the consolidated net earnings of said corporation, under the terms of the said amended articles of incorporation, is set aside from year to year for the redemption of the said first preferred stock, which sinking fund, however, is junior to first mortgage collateral trust bonds, to 5% corporation first mortgage and collateral trust bonds, and to some other securities and to income taxes.

**SEC. 2.—*Respondent's Business.***

Respondent is engaged principally in the manufacture and sale of pneumatic rubber automobile, bus and truck tires, including casings and inner tubes, solid cushion truck tires, motorcycle tires and tubes, airplane tires, and carriage tires, although it also manufactures and sells other miscellaneous rubber products.

Respondent in 1926 operated tire manufacturing plants in the United States at Akron, Ohio, and through a subsidiary corporation, at Los Angeles, Calif. In 1929 respondent established a tire manufacturing plant at Gadsden, Ala. It also owns a tire factory, through a subsidiary, the Marathon Tire Company, at Cuyahoga Falls, Ohio. In 1933 said respondent also maintained and operated tire manufacturing plants in Canada, Australia, Argentina, and England.

It also owns and operates, through subsidiary corporations, cotton plantations in Arizona; rubber plantations in Sumatra and East Indies; textile mills at Decatur, Ala.; New Bedford, Mass.; St. Hyacinthe, Quebec, Canada; Cedartown, Cartersville, and Rockmart, Ga.; and Los Angeles, Calif.

Prior to 1924 the pneumatic rubber tires manufactured by respondent were classified under two designations—high-pressure cords and high-pressure fabrics. Fabric tires were predominant up to and including 1922 but during the following year high-pressure cords exceeded in volume of sales and held this lead until 1926. Volume of high-pressure fabric tires decreased very rapidly after 1923 and became comparatively negligible in 1928. In the meantime the new balloon tire had been developed. By 1926 it was the dominant tire in volume and rapidly increased its advantage from that time on. Respondent, in all, has made more than 500 different sizes of pneumatic rubber tires. Of this variety approximately ten sizes fit the most popular automobiles and comprise the bulk of tires manufactured and sold by it.

The casing of the pneumatic rubber tire is a complicated structure. It has tread, breaker, cushion, plys, flippers, chafers, beads, gum toe, heel, side wall, and ribs, and the principal ingredients are

rubber and cotton. The inner tubes used inside the casing are entirely of rubber compound construction. The quality of the casing depends upon the quality of the rubber composition which goes into the tread; the strength and resiliency of the cord fabric; workmanship; engineering and other factors. Generically the term "tire" includes both the outer casing and inner tube as a unit ready to be put on the wheel. However, in many instances in actual trade practice, the word "tire" is to indicate a "casing", and the phrase "tire and tube" is used to designate the entire unit. Therefore, herein where the word "tire" is used in conjunction with the word "tube" it indicates the outer casing, and where it is used alone the entire unit is indicated.

In 1926 respondent's crude rubber requirements represented nearly one-seventh of the world's total production and exceeded by nearly fifty percent that of any other manufacturer.

Prior to 1926 the principal competing tire manufacturers were the respondent, Goodyear Tire & Rubber Co., the Firestone Tire & Rubber Co., and the B. F. Goodrich Co., all at Akron, Ohio, and the United States Rubber Co. in New York City. These companies, known in the industry as the "Big 4", represented at that time about forty percent of the total production of tires for renewal purposes in the United States.

Other smaller but well known manufacturer competitors of the respondent as of that same time were the Fisk Tire & Rubber Co., Chicopee Falls, Mass.; Kelly-Springfield Tire & Rubber Co., Cumberland, Md.; General Tire & Rubber Co., Akron, Ohio.; Seiberling Tire & Rubber Co., Akron, Ohio.; Dayton Tire & Rubber Co., Dayton, Ohio.; Mohawk Tire & Rubber Co., Akron, Ohio.; and Norwalk Tire & Rubber Co., Norwalk, Conn. Altogether, respondent then, in the manufacture and sale of tires for resale to the consuming public in the United States, was in competition with more than 100 other manufacturers.

### SEC. 3.—*Respondent's Subsidiaries.*

Respondent owns or controls all or a majority of the capital stock of the following subsidiary corporations engaged in some phase of the tire business:

(1) Goodyear Tire & Rubber Co. of Alabama is a wholly owned subsidiary, organized under the laws of Alabama on December 15, 1928, with principal office and place of business located in the city of Gadsden, Ala. The said corporation owns and operates a tire factory at Gadsden, Ala., and its business is directly controlled

and supervised by the officials and Board of Directors of the respondent corporation.

(2) Goodyear Tire & Rubber Co. of California is a corporation organized under the laws of the State of California on July 10, 1919, with an authorized capital of \$20,000,000 divided into 200,000 shares with a par value of \$100 each, of which 100,000 shares amounting to \$10,000,000 shall be 7% preferred and cumulative stock and \$10,000,000 common stock. Said corporation maintains its principal office and place of business at Los Angeles, Calif., and is operated as a manufacturing subsidiary of respondent for tires sold on the Pacific Coast.

(3) Goodyear Tire & Rubber Co., Inc., is a corporation organized under the laws of the State of Delaware on December 5, 1921, with its principal office and place of business located at Akron, Ohio, and is operated by said respondent as a sales subsidiary, handling all tires manufactured by respondent and its subsidiaries sold east of the Rocky Mountains.

(4) Goodyear Tire & Rubber Co. of California, Inc., is a corporation organized under the laws of the State of Delaware on October 5, 1923, with its principal office and place of business located in Los Angeles, Calif., with a capital stock of \$50,000 divided into 500 shares of \$100 each. It operates as a sales corporation of said subsidiary, Goodyear Tire & Rubber Co. of California, and sells the products manufactured by said Goodyear Tire & Rubber Co. of California in the United States west of the Rocky Mountains.

(5) Goodyear Service, Inc. of Ohio, is a corporation organized under the laws of the State of Ohio on July 16, 1931, and is engaged in the conduct of garages and the buying and selling of tires at retail.

(6) Goodyear Service, Inc., of Alabama, is a corporation organized under the laws of the State of Alabama on March 14, 1932, and is also engaged in the buying and selling of tires, tubes, lubricants, gasoline, and other merchandise at retail.

(7) Goodyear Service, Inc. of California.

#### SEC. 4.—*Respondent's Financial Condition.*

At the close of the year 1926 respondent had issued and outstanding \$80,089,600 in cumulative preferred stock, and 830,734½ shares no par value common stock with a stated value of \$1,000,000. Its funded debt was \$53,977,300 and the funded debt of its subsidiaries was \$9,941,642.63. Its current debts were \$10,537,088.37. It had special raw material reserves amounting to \$2,750,000 and a surplus of \$30,705,014.07 after dividends of \$8,743,444 had been paid. It had

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total assets of \$208,254,088.26 which included property, plants and equipment valued at \$83,128,708.21 after depreciation had been deducted; cash items of \$20,584,362.84; accounts and notes receivable, less reserve, of \$15,615,823.49 and inventories, at market or at cost, which ever is lower, of \$67,915,299.69. Its net sales (returns, discounts, freight allowances and inter-company sales deducted) amounted to \$230,161,356.57.

During 1927, respondent's sales amounted to approximately \$222,000,000 and its total profits for the year amounted to approximately \$18,000,000 and after necessary deductions were made the amount of profits carried to the surplus account amounted to approximately \$13,000,000. The surplus account on December 31, 1927 showed a balance of approximately \$25,500,000, after dividends had been paid. The total sales of tires, respondent's principal product, showed an increase of 15% over 1926.

During 1928, respondent's sales amounted to approximately \$250,700,000 and its total profits for the year were approximately \$15,150,000 and after necessary deductions were made the balance of approximately \$13,300,000 was carried to the surplus account, which on December 31, 1928 amounted to approximately \$19,300,000 after dividends had been paid.

During the year 1928 the common stock of the respondent was increased by the issuance of 207,602 shares at \$50 per share. The proceeds of the sale of said stock was used for the retirement of the company's three year gold notes and to reimburse the treasury in part for the increase of the manufacturing capacity. During this same year, the board of directors authorized the expansion of respondent's manufacturing facilities by the establishment of a manufacturing plant at Gadsden, Ala.

The total unit sales of tires, respondent's principal product, increased more than 32% in 1928 over 1927.

During 1929 respondent's sales amounted to approximately \$256,000,000, the largest in the history of the company, its total profits for the year amounted to approximately \$21,300,000 and after deductions were made, the balance carried to the surplus account amounted to approximately \$18,600,000, also the largest in the history of the company. The surplus account on December 31, 1929, was approximately \$26,600,000.

During 1929, unit sales of tires, respondent's principal product, increased 14.6% over 1928. Expenditures on additions to property during the year were \$29,421,570, principally in connection with increased production capacity in tire factories.



During 1930, respondent's net sales amounted to approximately \$204,000,000 and the profits were approximately \$11,300,000. After necessary deductions were made the balance carried to surplus account amounted to approximately \$10,000,000. The surplus account in December 31, 1930, amounted to approximately \$23,800,000.

During 1931, respondent's net sales amounted to approximately \$150,500,000 and its profits were approximately \$6,700,000. After necessary deductions were made the balance carried to the surplus account amounted to approximately \$1,300,000. The surplus account on December 31, 1931, after dividends had been paid amounted to approximately \$16,000,000.

During 1932, respondent's net sales amounted to approximately \$109,000,000 and its total profits, before interest was charged off, amounted to approximately \$3,000,000. A net loss of approximately \$850,000 was carried to the surplus account. On December 31, 1932, after dividends were paid, the surplus account amounted to approximately \$10,000,000.

During 1933, respondent's net sales amounted to approximately \$109,600,000 and its total profits, before interest and other charges were charged off, amounted to approximately \$7,800,000. The amount carried to earned surplus amounted to about \$6,000,000 after certain adjustments were made. The surplus account in December 31, 1933, amounted to approximately \$14,400,000, after dividends were paid on preferred stock.

SEC. 5.—*Respondent's tire capacity, production, and shipments.*

Respondent began to manufacture and sell automobile tires about 1900. Beginning in 1926, when the transaction giving rise to these proceedings originated, the daily capacity of respondent's factories was approximately 54,000 casings and 62,000 tubes. During that year it operated its factories to about 85% of their capacity. The capacity of the respondent's factories increased in 1927 to approximately 59,600 casings and 66,000 tubes and it operated to approximately 85% of the capacity of its factories. In 1928, respondent further increased the capacity of its plants to approximately 63,000 casings and approximately 68,000 tubes and during that year it operated to practically the full capacity of all its factories. In 1929, respondent further increased the capacity of its existing plants and added a new factory at Gadsden, Ala., so that its total capacity during that year was approximately 90,000 casings and 82,000 tubes and it operated at approximately 85% of its capacity in its factories except at Gadsden, which was only making casings and which operated at 70% of its capacity. In 1930 respondent's capacity re-

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mained about the same although a slight decline is indicated in its Akron casing plants and an increase in its tube plants, its total casing capacity during that year being approximately 88,000 and its tube capacity being approximately 88,500. During that year, it operated at about 88% of its capacity in all its plants except Gadsden where it operated 73% of the plant's capacity.

In 1931, the year the last or current contract was made with Sears, Roebuck & Co., the transaction involved in this proceeding, respondent's total casing capacity was about 84,000 and its tube capacity remained about 88,500. During that year, respondent operated about 65% of its capacity in Akron and 52% in its California plant and 90% of its capacity at Gadsden.

In 1932, the casing capacity of respondent's factories was about 90,000, an increase having been made in the plants at Akron and Gadsden, while the tube capacity was also about 90,000, an increase having been made in the tube plants in California. During that year respondent operated at about 48% in Akron, 38% in California and 53% in its Gadsden plant.

In 1933, the casing capacity of respondent's plants was increased to about 95,000, the tube capacity remaining the same, the increase in casing capacity being in the Gadsden plant. During that year, respondent operated at about 51% of its capacity at Akron, 27% in California and 42% in Gadsden.

The total production of pneumatic casings and tubes, respectively, by the respondent in the several factories owned by it directly or through its subsidiaries during the years 1926 to 1933, both inclusive, is set forth as follows:

*Goodyear and special brands (excepting Sears, Roebuck & Co.)*

	<i>Casings</i>	<i>Tubes</i>
1926.....	11, 409, 259	12, 124, 169
1927.....	12, 339, 565	12, 115, 226
1928.....	15, 002, 582	14, 443, 523
1929.....	15, 610, 297	15, 421, 429
1930.....	12, 337, 582	12, 441, 249
1931.....	11, 392, 462	10, 539, 558
1932.....	8, 616, 931	7, 867, 512
1933.....	9, 609, 019	8, 923, 025

The following statement sets forth the sales and shipments of tires and tubes by respondent to its renewal customers including independent dealers and special brand customers except Sears, Roebuck & Co.:

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	<i>Casings</i>	<i>Tubes</i>	<i>Dollars</i>
1926-----	5, 699, 455	6, 461, 403	90, 941, 970. 26
1927-----	6, 890, 261	7, 599, 806	94, 458, 224. 22
1928-----	8, 280, 549	8, 397, 940	102, 338, 158. 95
1929-----	8, 802, 041	9, 064, 551	102, 250, 269. 93
1930-----	8, 170, 986	8, 667, 149	90, 238, 769. 61
1931-----	7, 685, 151	7, 228, 745	71, 159, 158. 12
1932-----	6, 533, 407	6, 048, 241	53, 112, 901. 59
1933-----	5, 806, 013	4, 986, 657	47, 293, 886. 12

The difference between the volume of production and the volume of sales and shipments as indicated in the foregoing tables is accounted for by sales to automobile manufacturers and dealers for original equipment on new cars sold to the public, said tires not being for resale or renewal purposes are not taken into consideration in this case.

*SEC. 6.—Respondent's sales policy with its dealers.*

Respondent maintains a sales department under the supervision of a vice president who also has the title of sales manager. This vice president has an assistant sales manager and several managers or superintendents of the different products being sold. Respondent maintains, through its sales subsidiary, Goodyear Tire & Rubber Company, Inc., a number of distributing branches in charge of managers and assistant managers, which branches employ a large force of salesmen who call upon the retail tire dealers in their respective territories. In 1926, there were 114 such branches, which employed in 1927, 448 general line salesmen.

Prior to 1914 respondent sold its rubber tires and tubes through dealers and direct to consumers. Beginning in 1914 it adopted a policy of making all its renewal sales of tires through dealers only, and this policy has been followed since that time with exceptions which will be hereinafter noted.

In conducting its business respondent entered into contracts with its service station dealers to engage actively in the sale and distribution of Goodyear merchandise and to render Goodyear tire service to the consumer. Service station dealers were required by their contracts with respondent to carry Goodyear automobile casings, tubes and accessories in stock in sufficient quantities to insure prompt service, and not to substitute or attempt to substitute any other merchandise when the consumer requested Goodyear products. Under these contracts the Goodyear service station dealers were allowed to purchase Goodyear automobile casings, tubes and accessories at prices specified in lists designated as Goodyear price lists.

From October 1924 until October 1929 the prices listed in the Goodyear price lists were dealer prices, that is, prices paid by deal-

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ers. In connection with these prices, respondent issued sheets indicating the prices at which the service station dealers and others should sell tires and tubes to consumers in order to realize a margin of 20% or 25% on the selling price. Subsequent to October 1929 the Goodyear price lists contained recommended consumer prices, the dealers being allowed to purchase at fixed trade discounts from these suggested consumer prices. The regular trade discounts allowed varied with the grade or type of tire sold—for instance on Goodyear "All Weather" brand, a standard first line tire, a trade discount of 25% was allowed all service station dealers, and a trade discount of 22½% was allowed on the Goodyear "Pathfinder" brand, a standard second line tire. In addition to the consumer price lists, respondent issued net billing prices to all service station dealers from time to time reflecting the market billing changes and containing respondent's net prices to said dealers.

The president of respondent, in February 1930, in his report to stockholders for the year 1929, said:

The great body of Goodyear dealers, through which Goodyear tires are marketed, constitutes unquestionably, we think, the most efficient medium of distribution and service available to the tire consuming public the world over.

During the years indicated below respondent had the following number of sales contracts with service station dealers who were furnished tires by the various factories of respondent:

1927-----	26,071 contracts.
1928-----	28,161 contracts.
1929-----	27,166 contracts.
1930-----	24,946 contracts.
1931-----	25,621 contracts.
1932-----	24,644 contracts.
1933-----	25,000 contracts (approximately).

The exact total number of service station dealers in the entire United States in 1926 is not known, but the most reliable estimate is 100,000.

When respondent sells tires to its service station dealers as hereinbefore described, it ships the tires by freight, express and truck from the respective factories located at Akron, Ohio, Los Angeles, Calif., and since 1929 at Gadsden, Ala., either direct to the customer or to branch warehouses located in the principal distributing centers of the United States from which said tires are distributed to the respective customers located in the territory contiguous to these branch warehouses, and there has been and now is a continuous course of interstate commerce in tires flowing from the factories of respondent.

ent to respondent's customers located throughout the several States of the United States.

Respondent's competitors, hereinbefore named, in 1926, and prior thereto, followed generally the same system of sale and distribution as followed by the respondent as described herein, recognizing the independent retail tire dealer as the most efficient medium of distribution and service available for the tire consuming public, although respondent and some of its competing manufacturers had at that time made a few sales to wholesalers and jobbers under private brands.

*SEC. 7.—Respondent's dealer quantity bonuses.*

Respondent, in addition to the regular trade discounts hereinbefore described, also allowed its service station dealers so-called bonuses, which were paid to the dealers after settlement at the end of the year in consideration of the entire volume of purchases of respondent's products. These bonuses were on a sliding scale and were changed from year to year due to changes in competitive conditions. For instance, in 1926 there were seven grades of bonuses sent out by the respondent in its printed circulars to service station dealers. These bonuses were open to all of respondent's dealers and varied from 1 to 7%, depending upon the annual volume of purchases. The minimum bonus was for purchases of \$1,000 to \$2,500 and the maximum for purchases of \$25,000 to \$50,000. It was indicated on the printed circular that a further bonus might be allowed the dealer if his annual purchases were in excess of \$50,000.

During 1927 and 1928, respondent increased its bonus grades to ten, the minimum bonus remaining the same but the maximum bonus being changed to 10% which was allowed on a \$75,000 volume of annual purchases. During 1928, extra bonuses were also allowed for truck and bus tire business.

During 1929, respondent allowed the maximum bonus of 10% on an annual purchase of \$50,000 and over. Respondent made very few changes in the amount of bonuses granted during the succeeding years until 1933 when the maximum bonus of 10% was allowed on annual purchases of \$25,000 or over until September 30, 1933, when a maximum bonus of 15% was allowed on an annual volume of \$15,000 and over for the remainder of that year.

In November 1933, respondent designated certain of its service station dealers as key dealers who were entitled to receive a guaranteed 10% bonus regardless of the quantity of their purchases for certain distributing services rendered. They were also entitled to earn an additional bonus of 5% on a quantity basis. These key

dealers, as a matter of course, were allowed to sell to sub-dealers or any tire dealers within a certain designated area and usually no other Goodyear service station dealer was allowed to sell respondent's products in such territory.

SEC. 8.—*Sears, Roebuck & Co.'s business.*

Sears, Roebuck & Co., in favor of whom respondent discriminated in price in the sale of tires, is a corporation organized under the laws of the State of New York on June 16, 1906, to succeed an Illinois corporation which had been in business since 1895. It is a merchant corporation selling, through mail order, and since 1926, through chain store channels, a complete general line of merchandise, including automobile and truck tires and tubes. Its mail order sales are said to be the largest in the United States. Its principal office and store are located at Chicago, Ill. It has branches in Seattle, Wash.; Dallas, Tex.; Kansas City, Mo.; Philadelphia, Pa.; Los Angeles, Calif.; Memphis, Tenn.; Boston, Mass.; and Atlanta, Ga.

Its total retail sales, through mail order and chain store channels, during the years 1925 to 1933, were as follows:

1925-----	\$253, 342, 000
1926-----	272, 699, 000
1927-----	282, 927, 000
1928-----	346, 974, 000
1929-----	443, 453, 000
1930-----	390, 282, 000
1931-----	347, 209, 000
1932-----	295, 723, 000
1933-----	289, 290, 000

During the year 1925 Sears, Roebuck & Co. began to sell merchandise, including tires, at retail through three of its Chicago retail stores. Beginning in the year 1926, Sears, Roebuck & Co. began to open in other cities retail stores through which it sold a general line of merchandise, including tires, which were designated as "A" stores. Beginning in 1928, Sears, Roebuck & Co. also began to establish a number of retail stores in various cities of the United States known as "B" stores handling only hardware, including tires and accessories; and in 1929 began to establish in various cities of the United States a number of stores handling only tires and automobile accessories, known as "C" stores.

Prior to the year 1928, 18 "A" stores had been established and 4 "B" stores. During 1928, 9 more "A" stores were opened and 104 "B" stores were opened. Sears, Roebuck & Co. increased its retail establishments in 1929 by 23 "A", 79 "B" and 21 "C" stores; in 1930, by 29

"C" stores; so that by 1933 there were in operation 375 retail stores where tires were sold, comprising 61 of the "A" type, 233 of the "B" type, and 81 of the "C" type. The "B" and "C" stores were opened in locations where they would attract the attention of motorists.

Before 1926 Sears, Roebuck & Co. sold tires to the public under the brand or trade name of "Justice". These were of a quality inferior to the brands of tires then on the market, known as "standard" brands, manufactured by the respondent and other leading manufacturers for sale to the consumer by independent retail tire dealers. At the beginning of 1926 Sears, Roebuck & Co. was purchasing most of its tires from Murray Tire & Rubber Company, of Trenton, N. J., under a contract, although it had also been buying some tires from other small manufacturers. In the year 1925 Sears, Roebuck & Co. had sold approximately 700,000 tires and its principal mail order competitor, Montgomery Ward & Co., sold approximately 2,000,000 tires. Sears, Roebuck & Co. officials for some time had been dissatisfied with the financial condition of its principal supplier of tires, as well as the quality of the product, and early in 1926 sought a more satisfactory and dependable source of supply. As far back as 1922 or 1923, respondent had sold Sears, Roebuck & Co. two orders of Ford size tires. Subsequently, respondent was offered one or two other small orders by Sears, Roebuck & Co., but the president of respondent refused to accept such orders for the reason that it appeared that the only time respondent could get any business from Sears, Roebuck & Co. was when there was an emergency, and respondent did not want such business because it always came at a time when respondent was at its peak of production.

SEC. 9.—*Respondent's tire contracts with Sears, Roebuck & Co.*

In January 1926 representatives of Sears, Roebuck & Co.'s tire department called upon the tire sales manager of respondent and stated that they would like to make arrangements to buy a portion (50%) of Sears, Roebuck & Co.'s requirements of tires from respondent. Thereafter negotiations took place between officials of Sears, Roebuck & Co. and respondent which culminated in the execution of the first cost plus contract between a major manufacturer of nationally advertised tires and a mass distributor.

On March 8, 1926, a contract was entered into between the Goodyear Tire & Rubber Co., Inc., a Delaware corporation, the selling subsidiary of respondent, and Sears, Roebuck & Co., in the form of a letter or memorandum addressed to the Goodyear Tire & Rubber Co., Inc., by Sears, Roebuck & Co., signed by Max Adler, vice president, and accepted by the Goodyear Tire & Rubber Co., Inc., signed by

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P. W. Litchfield, vice president (later president), and attested by F. R. Wahl, assistant secretary. This contract reads as follows:

## COMMISSION'S EXHIBIT 9

MARCH 8, 1926.

THE GOODYEAR TIRE &amp; RUBBER COMPANY, INC.,

Akron, Ohio.

GENTLEMEN: Confirming our verbal understanding, it is agreed that we are to purchase from you and your California Company for a period of three (3) years, beginning May 1st, 1926, our entire requirements of casings and tubes, with the exception of such casings and tubes as we are committed for under existing contracts, which will be terminated at the earliest possible date and not later than January 1st, 1927.

It is our understanding that you will provide us with our entire requirements of casings and tubes during the life of this agreement at cost of manufacture, which shall include all costs of shipping and handling and a profit of Six (6%) Percent net, but no selling or advertising expense.

We are to supply you with estimates of our requirements from time to time and at proper periods to enable you to furnish the required casings and tubes, same to be of such types, qualities and sizes as set forth in the specifications hereto attached and such other types, qualities and sizes as may be agreed upon in the future.

You are to provide us a schedule setting forth the present prices of all the casings and tubes that you are to supply at the outset, and it is understood that the prices of the respective sizes and types of casings and tubes shall be your cost of the product loaded on cars plus a profit sufficient to assure you Six (6%) Percent net of the price.

You shall on January 1st, April 1st, July 1st, and October 1st in each calendar year calculate all prices to as nearly as possible to approximate the cost including Six (6%) Percent profit and the price then set shall be the maximum price we shall pay for all casings and tubes delivered to us during the ensuing three (3) months.

Within thirty (30) days after the end of each calendar year and also as soon as practical after the conclusion of this contract, there shall be a recalculation and re-determination of the price upon the then actually determined factors and bases, and an adjustment by way of payment either from us to you or from you to us as such re-determination shows that we may have under or over paid.

Within thirty (30) days after the submission to us of such re-determined prices if for any reason we question the correctness thereof, then such re-determined prices shall be submitted to Messrs. Price, Waterhouse & Company of New York City, certified public accountants, who shall determine the prices which shall prevail for the purpose of such adjustment.

In determining the cost of casings and tubes, it is understood that all elements that enter into the cost shall be the same as prevail in your own product, providing that the prices shall not include any rubber on hand and in your factory, purchased or contracted for by you prior to March 15th, 1926.

At the close of your books each year, you are to determine the cost of all products supplied us and in no case shall the maximum amount that we pay



you exceed the maximum price set up for each period and return to you a greater net profit than Six (6%) percent.

Payment for all shipments of casings and tubes and any other commodities that we may in the future purchase from you shall be made on the 15th day of the calendar month following date of invoice.

This agreement carries with it an initial order on our part of a minimum of 1800 casings per day and 1800 tubes per day, which you agree to provide in accordance with the terms of our understanding, and such additional quantities as may be ordered in writing by us from time to time. (Sundays and legal holidays excluded.) It being understood that you are to be allowed at least thirty (30) days' time in which to increase the daily requirements by One Thousand (1000) casings and One Thousand (1000) tubes, and thereafter thirty (30) day period for each additional Six Hundred (600) casings and Six Hundred (600) tubes per day. Provided further that we shall maintain with you a reserve mold equipment in sizes and types which will enable you to produce our requirements of casings and tubes to the extent increased.

We are likewise to have the right to reduce our requirements in the same ratio and in the same manner.

There shall be no more than one such increase or decrease in any thirty (30) day period and any decrease shall not go below the minimum of Eighteen hundred (1800) casings and Eighteen Hundred (1800) tubes per day.

You are at all times to maintain a minimum stock on hand for our requirements equal to at least one (1) month's production at the rate per day then required by us, to the extent that the then existing mold capacity permits.

You are to make delivery of said casings and tubes in accordance with our shipping instructions daily or weekly f. o. b. point of manufacture; the casings to be wrapped and tubes to be boxed and placed in packing cases in accordance with your general practice in making shipments.

It being understood also at such times as we may ask you to arrange for local shipments direct to our customers, that you will be prepared to handle such part of our business in that manner, providing however that we are to defray all expenses incurred by you in connection therewith.

It is understood that you shall be relieved of performance under this agreement in event of fire, flood or other acts of God, war, riot, embargo, strikes or any unavoidable casualty beyond your control.

It is also understood that we will hold you harmless from damages or loss which may arise out of the use of any name, brand, design, trademark or other mark furnished by us and used in connection with the manufacture and sale of casings and tubes.

You are at no time to manufacture for or sell to any other person or company any casings or tubes having the same name or tread design as those you manufacture for us.

It is understood that our duly authorized representative shall at any and all reasonable times be given access to the factory or factories where such casings and tubes are being produced for us, for the purpose of inspecting the character of raw materials purchased and used in the manufacture thereof.

It is agreed by you that all casings and tubes manufactured and sold to us under this agreement shall be free from defects in workmanship and material. Any defective casing or tube furnished us or any casing or tube not manufactured in accordance with specifications in effect by virtue hereof at the time of its manufacture, may within nine (9) months from date of shipment thereof

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be returned to you, and if such casing or tube has not been used on any motor vehicle and is undamaged, you are to credit us with a sum equal to the amount for which we were charged for same, plus an amount equal to the transportation charges and the delivery thereof to us and its return to you.

In all cases where we shall make an adjustment on, or shall replace any casing or tube supplied by you in accordance with our agreement after the same has been put into use on a motor vehicle, we may return such casing or tube to you and shall mark the same so as to show the defect claimed and the basis on which such adjustment was made. If such adjustment was made by us on a basis of defective workmanship or material, you are to make an adjustment with us with respect to such defective casing or tube on the same basis as we made to our customer.

It is understood that an amount not to exceed One and One-half ( $1\frac{1}{2}\%$ ) percent shall be considered a part of the cost of production to be applied on all such adjustments, but in no event shall any profit be computed on this item.

It is further understood that you are not to be held liable for any adjustment made by us for any reason other than defects in workmanship or material.

It is distinctly understood and agreed that all casings and tubes which may be classified as "seconds", hence not of the quality contemplated to be purchased by us, may be disposed of by you, provided that before selling or disposing of same you shall buff off or otherwise obliterate any name, brand, design, trademark other than the tread placed upon the casing.

We agree not to make any reference either written or printed to your Company or to any of your affiliated companies in connection with our sale of casings and tubes.

Any failure on our part to make payment in accordance with the agreement herein set forth, entitles you to adopt whatever measures you may see fit on future shipments.

This agreement shall be effective from May 1st, 1926, to May 1st, 1929; it being provided that on or about May 1st, 1928, a further understanding shall be arrived at as to the continuance of the contract beyond May 1st, 1929; and that in event of the contract being terminated May 1st, 1929, we shall not be required to purchase from you, nor will you be obliged to supply more than Fifty (50%) percent of our normal requirements for the last six months' period of this agreement or approximately two-thirds ( $\frac{2}{3}$ ) of our requirements for the third quarter and one-third ( $\frac{1}{3}$ ) of our requirements for the last quarter of the period.

Upon the termination of this agreement, it is understood that we shall purchase from you all casings and tubes manufactured in accordance herewith at the prices then fixed under the terms of this agreement.

It is understood that this agreement cannot be assigned by either of us without the written consent of the other.

SEARS, ROEBUCK AND CO.,  
By MAX ADLER, *Vice President.*

Accepted:

THE GOODYEAR TIRE & RUBBER COMPANY, INC.,

By P. W. LITCHFIELD, *Vice President.*

Attest:

F. R. WAHL, *Asst. Secy.*

Pursuant to the provisions of this contract, respondent began to manufacture and sell tires and tubes to Sears, Roebuck & Co. on or

about May 1, 1926. These tires and tubes were manufactured by respondent from its own materials and by its own workmen in its own factories, from its own formulae of rubber compound and fabric specifications prepared by its own engineers on estimates made from year to year, quarter to quarter and month to month by Sears, Roebuck & Co. as to its requirements, Sears Roebuck & Co. specifying the sizes and types of tires, including the tread design, and also in a general way, the type and quality of materials to be used in the manufacture of the tires so as to obtain a tire of uniform and high quality. Respondent wrapped and prepared the tires for shipment, and on Sears, Roebuck & Co.'s order from time to time shipped the tires to the various warehouses and retail stores of Sears, Roebuck & Co. located throughout the several States of the United States. Respondent at all times kept in its factory warehouses an adequate inventory of Sears, Roebuck & Co.'s brands of tires to supply Sears, Roebuck & Co.'s requirements for 30 days at the current rate of demand. One exception to this practice was in June 1932, when an agreement was made between respondent and Sears, Roebuck & Co., hereinafter set forth in more detail (p. 273), and which was brought about on account of the excise tax being placed on the tires. Sears, Roebuck & Co. bought a large number in advance of the time when the tax went into effect to avoid the payment of the tax.

Sears, Roebuck & Co. ordinarily paid respondent for the tires purchased by it on the 10th of the month, in the month following the shipment and billing of the tires to Sears, Roebuck & Co. The tires and tubes were billed to Sears, Roebuck & Co. at estimated prices usually approximately 5-10% higher than estimated costs, and final settlement making all adjustment for the year's business was made thirty days after the end of each year (45 days in later contracts). In this settlement the matter of adjustments upon defective goods where the defects had not developed, or had not been developed at the time of the final settlement, were not included. In such settlement Goodyear always rebated to Sears, Roebuck & Co. the difference between the billing price and cost plus 6% profit on the price, pursuant to the terms of the contract.

SEC. 10.—*Respondent's second tire contract with Sears, Roebuck & Co.*

The first or original contract hereinbefore described dated March 8, 1926, was superseded by a second contract dated May 17, 1928, between respondent herein and Sears, Roebuck & Co., signed by P. W. Litchfield, as president of respondent, attested by W. D. Shilts, and also by R. E. Wood, president, and John Higgins, secretary of

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Sears, Roebuck & Co. This said second contract was authorized by the directors of respondent on May 21, 1928, but was not signed by General Wood until on or about June 20, 1928. General Wood declined to sign it until he had been given definite assurance by Mr. Litchfield as to the erection of a new plant by respondent in the southeastern part of the United States to take care of Sears, Roebuck & Co.'s requirements in that territory, and permission to secure a supply of 200,000 tires a year or more from an outside source in the Middle West.

The aforesaid second tire contract between respondent and Sears, Roebuck & Co. reads as follows:

## COMMISSION'S EXHIBIT 10

THIS AGREEMENT, made and entered into this 17th day of May, A. D. 1928, by and between the GOODYEAR TIRE & RUBBER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, hereinafter for convenience called "GOODYEAR," party of the first part, and SEARS, ROEBUCK AND CO., a corporation organized and existing under and by virtue of the laws of the State of New York, hereinafter for convenience called "BUYER," party of the second part,

## WITNESSETH:

## QUANTITY

FIRST: Goodyear hereby agrees to manufacture and sell to the Buyer, and the Buyer hereby agrees to buy from Goodyear, for and during the term of this agreement, and on the terms and conditions hereinafter set forth, the Buyer's requirements of pneumatic automobile, truck and motorcycle tires and tubes hereafter collectively referred to as "Product," up to the amount that Goodyear is hereinafter obligated to sell to the Buyer.

Goodyear shall in each calendar year of this contract, be obligated to sell to the Buyer such part of Buyer's requirements of the "product" as is equivalent to 25%, but not more than 25%, of the productive capacity for said year (less any reduction in such productive capacity because of any of the contingencies referred to in Paragraph Seventh of this contract), of the plants of Goodyear and its subsidiaries in the United States; provided, however, that Goodyear may by written notice to Buyer prior to any such calendar year, obligate itself to sell to Buyer for said year, more of Buyer's requirements, and in said written notice Goodyear shall state the amount of Buyer's requirements in excess of 25% of the productive capacity of the plants of Goodyear and its subsidiaries in the United States that it so elects to obligate itself to sell to Buyer in said year. The Buyer, except as otherwise herein provided, shall not in any year of this agreement, order less than sixty-six and two-thirds per cent (66⅔%) of the Buyer's purchases from Goodyear during the preceding year of this agreement.

In the event the Buyer's requirements in any year shall exceed the maximum quantity which Goodyear is obligated or has elected to become obligated

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as aforesaid to sell to Buyer hereunder, the Buyer shall have the right to purchase such excess of its requirements for said year from sources other than Goodyear (which said purchases are herein also referred to as "outside purchases"); and if in the succeeding year Goodyear is obligated or has elected to become obligated to sell Buyer the latter's requirements or more of the "product" than in the prior year, nevertheless the Buyer shall have the right during the eighteen months next ensuing, beginning with the first of such succeeding year, to make "outside purchases" in the following proportions, to-wit: during the first six months of said eighteen month period, one-third, during the next six months one-fourth, and during the next and last six months one-sixth, of the "outside purchases" made by the Buyer during the preceding year; and the amount of "product" Buyer shall be required to purchase from Goodyear during said eighteen months' period shall be reduced by the amount of such "outside purchases" during that period; provided that anything herein to the contrary notwithstanding, the "outside purchases" in such succeeding year shall not exceed the "outside purchases" of the preceding year or the excess of the Buyer's requirements for such year as aforesaid, whichever shall be greater.

## QUALITY, SIZE, AND TYPE

SECOND: The "product" to be sold to the Buyer herein shall be manufactured by Goodyear in accordance with the specifications hereto attached, made a part hereof, and initialed by the parties hereto, and shall be of the sizes, types and grades selected from such specifications by the Buyer as hereinafter provided. Said specifications may be modified and changed by mutual agreement from time to time to meet the changing requirements of the Buyer, and by like mutual agreement the specifications for other types and sizes of "product" required by Buyer shall be attached hereto from time to time.

## PRICE

THIRD: The price to be paid by Buyer for the "product" bought hereunder shall be Goodyear's cost of such "product," an allowance for adjustments on such "product" as hereinafter provided, and a profit to Goodyear as hereinafter set forth.

Goodyear's cost of said "product" shall be determined as nearly as circumstances will permit, according to methods usually employed by Goodyear, unless such methods are inconsistent with sound accounting principles, in which event such sound accounting principles shall be used in determining cost; said cost shall include all proper items of cost (including shipping, warehousing and packing expense), but shall not include selling, advertising expense, interest on borrowed moneys or loss due to manufacturing of "product", which in the course of manufacture are classified as "seconds", which loss due to seconds shall be in excess of one-half of one percent of selling price.

The allowance for adjustments shall be one and one-half per cent ( $1\frac{1}{2}\%$ ) of the selling price of said "product" except on pneumatic truck tires of six inches in diameter and over, and as to such tires, such allowance for adjustments shall be four per cent (4%) of Goodyear's price to Buyer, plus any actual loss on adjustments thereof up to an additional four per cent (4%) of Goodyear's price to Buyer, which said actual loss on adjustments thereof up to an additional four percent (4%) of Goodyear's price to Buyer, shall be paid to Goodyear when and as determined after the end of each year, whether or not this contract may then be in effect.

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The profit to Goodyear shall be a percentage of the price of said "product" to the Buyer (excluding, however, from such price for the purpose of figuring said profit, the allowance for adjustments), and such percentage shall be six percent (6%) whenever the price of crude rubber included in the cost of said "product" averages twenty-five cents or more per pound for the then current quarter, and shall be six and one-half per cent when such price of crude rubber averages less than twenty-five cents per pound for said current quarter; and if at any time it shall be proposed by either Goodyear or the Buyer that Goodyear make changes in methods and/or types of equipment used in the manufacture of "product" for the Buyer hereunder which would involve greater investment on the part of Goodyear than the methods and/or types of equipment employed by it hereunder as at the commencement of the term hereof, and which would reduce the ratio (as at the commencement of the term hereof) of Goodyear's profit hereunder to its investment by ten or more percent of such ratio, then such changes shall not be made unless Goodyear and the Buyer agree that such changes are mutually advantageous and unless the parties hereto agree that the profit provided herein be revised (Goodyear giving the Buyer access to its books of account before such revision of prices is made) so as to yield Goodyear not more than substantially the same ratio of return on such greater investment as the profit provided herein represented on the investment employed by Goodyear hereunder at the commencement of the term hereof.

## REDETERMINATION OF PRICES

FOURTH: For the purpose of this agreement, the word "quarters" shall be deemed to mean the quarter yearly periods beginning the first day of January, April, July, and October, respectively, of each year of this agreement.

Ten days before the first of each quarter, Goodyear shall furnish the Buyer an estimate of prices for the purpose of billing said "product" to the Buyer during the ensuing quarter. Within forty-five days after the end of each calendar year, and also as soon as practicable after the termination of this agreement, there shall be a recalculation and redetermination of the prices, giving effect to factors and bases entering into said prices then actually determined; and in the event the payments made by or due from Buyer to Goodyear on account of "product" delivered during the periods with respect to which such redetermination of prices is made, exceeds the aggregate amount to which Goodyear would be entitled on the basis of said redetermined prices, then Goodyear shall pay to Buyer such excess.

As soon as practicable after June 30th of each year of this agreement, Goodyear will make a provisional recalculation and redetermination of the prices of said "product" sold to the Buyer during the preceding six months, and to the extent warranted by said provisional recalculation and redetermination, Goodyear shall make a provisional payment to the Buyer against any moneys that may be estimated to become due Buyer at the time of the final redetermination of prices at the end of the year as hereinbefore provided. If on such final redetermination at the end of the year, the provisional payment made by Goodyear to the Buyer in such provisional recalculation and redetermination of prices shall be in excess of the amount due the Buyer from Goodyear as found in said final redetermination of said prices, then the Buyer shall repay to Goodyear such part thereof, if any, as is shown in the said final redetermination to be due Goodyear.

In the event the Buyer shall question Goodyear's said redetermination of prices, it shall on notice to Goodyear have the right within thirty days after the submission to it of such redetermined prices, to refer them to Messrs. Price, Waterhouse & Company of New York City, certified public accountants, whose determination of the prices which should prevail hereunder shall be final. For the purpose of any such determination Goodyear agrees to make available all pertinent books, papers and records to the accountants. In the event Price, Waterhouse & Company are unable to act in the capacity above set forth, then the parties hereto shall select some other certified public accountants for said purpose, and if they fail to agree upon such selection, then the Auditor of the State of Illinois shall designate such accountant to act in the place of said Price, Waterhouse & Company.

#### TERMS

FIFTH: All "product" sold hereunder shall be F. O. B. the plant where such "product" has been manufactured. The Buyer shall on the tenth day of each calendar month during this agreement, pay to Goodyear for all "product" delivered by Goodyear to the Buyer hereunder during the preceding calendar month.

#### ESTIMATES AND QUANTITY OF PRODUCTION

SIXTH: The Buyer shall annually, within ninety (90) days before the first day of each calendar year, and also before that part of the year of 1929 beginning May 1st and ending December 31st, furnish Goodyear an estimate of the quantity of "product" it will require hereunder during the ensuing calendar year, and in the case of the year 1929, for that part thereof beginning May 1st and ending December 31st. The Buyer shall also furnish Goodyear at least thirty (30) days prior to the first day of each calendar month during this agreement, a statement of the quantities of "product" which Goodyear is to manufacture during each of the ensuing three calendar months, which statement shall be in detail as to items, sizes and types of said "product" for the first ensuing calendar month. Such statements shall be subject, however, to revision from time to time, and the statement for each succeeding month shall be deemed to automatically revise the statement of the preceding month as to the quantities of "product" which Goodyear is to manufacture during the period set forth in the said statement of said preceding month. Based upon such statements, Goodyear shall manufacture approximately the quantities therein set forth, subject, however, to the following conditions:

(a) Goodyear may, but shall in no event be required to, manufacture in any one month of any year more than eleven per cent (11%) (with reasonable division among the various types and sizes) of the quantities of said "product" which are to be furnished hereunder by Goodyear during such year, according to the Buyer's annual estimate revised with reference to the actual sales up to such time and the sales outlook for the remainder of said year.

(b) Goodyear shall not be required to manufacture for the Buyer in any one day more than twenty-five thousand (25,000) tires and tubes, unless Goodyear shall from time to time because of increased capacity or other changed conditions of its plants, agree to a specification by Buyer of a larger maximum daily quantity.

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(c) Increases and decreases in the daily rate of production shall be arranged from time to time by mutual agreement by the parties hereto with a view to efficient and economical manufacturing operations.

(d) Goodyear will at all times endeavor to maintain at its plant at least one month's inventory of "product" for the Buyer, based on the then current rate of shipments to the Buyer.

## EXCEPTIONS

SEVENTH: Neither party to this contract shall be held liable or deemed in default hereunder if prevented from performing the obligations of this agreement by reason of fire, flood, drought, acts of God, war, riot, strikes, lockouts, embargo, unavoidable causes or circumstances beyond its control, failure of transportation, or inability to secure raw material, supplies or equipment.

## MARKINGS, TRADE-MARKS, AND TRADE NAMES

EIGHTH: It is understood that trade names, trade marks, tread designs and other markings and embellishments appearing exclusively on "product" furnished hereunder are the property of the Buyer. The Buyer agrees to save and hold Goodyear harmless from any liability, suit or damages for infringement or alleged infringement arising out of Goodyear's manufacture or use hereunder of any such name, brand, design, tread, trade mark or other embellishment. Goodyear agrees not to sell any "product" bearing the name, brand, trade marks, trade names or tread designs belonging to the Buyer to anyone other than the buyer, except that as to "products" which in the course of manufacture are classified as "seconds", Goodyear shall have the right after buffing off or otherwise removing the Buyer's name and trade marks, to sell "products" so classified as "seconds."

The Buyer agrees not to make any reference to Goodyear and/or the subject matter of this contract either orally or in writing, except in communication to or with Goodyear and to this end specifically covenants that it will exert its utmost efforts to prevent its employees from in any wise referring to or disclosing the fact that "product" sold to the Buyer hereunder is manufactured by Goodyear.

## SHIPMENTS

NINTH: Shipment of all "product" hereunder shall be to the Buyer as the Buyer may direct, and the "product" sold hereunder shall be packed in such manner as the Buyer may request.

## INSPECTION

TENTH: The Buyer, by its duly authorized representatives, shall at any and all reasonable times have access to the factory or factories in which "product" is being manufactured hereunder for the Buyer, for the purpose of inspecting the manufacture thereof.

## WARRANTIES AND ADJUSTMENTS

ELEVENTH: "Product" sold to the Buyer hereunder, is warranted by Goodyear to be free from defects in workmanship and material.



Any "product" furnished hereunder which shall be defective in workmanship or material or not in accordance with the specifications in effect by virtue hereof at the time of manufacture, may, within eighteen months from the date of manufacture thereof, be returned to Goodyear and if such "product" shall not have been used or damaged the Buyer shall be credited therefor at the current price charged hereunder for "product" of the same grade, type and size, plus an amount equal to the charges for transportation of the "product" from the plant where purchased to the Buyer and from the Buyer back to Goodyear. Goodyear may thereafter dispose of such "product" as "seconds."

Whenever any "product" sold hereunder, which has been put into use, shall prove defective in either workmanship or material, the Buyer may return such "product" to Goodyear at Goodyear's expense, and in that case shall furnish such information in respect thereof as Goodyear may reasonably require and thereupon Goodyear shall make a reasonable adjustment by way of credit to the Buyer. Such adjustment shall be on the basis of the then current (or the last, as the case may be) price charged by Goodyear to the Buyer for "product" of the same grade, size and type, and in respect of service rendered by the defective "product" shall be based upon the warranties in respect thereof made by the Buyer to its customer. Such warranties shall, however, be no more favorable to the consumer than those which the Buyer has in effect at the date of execution hereof. Goodyear shall in no wise be liable in respect of any adjustment made by the Buyer with its customers except it shall be on account of a defect in workmanship and material herein warranted against.

#### DURATION AND TERMINATION

**TWELFTH:** This contract shall begin May 1, 1929, and shall continue thereafter until terminated, as hereinafter provided. Either party may elect to terminate this contract by giving notice in writing to the other party during December of any year beginning with the year 1931, that it desires to terminate this contract as of the 31st day of December of the year following. Such notice of termination if given by Goodyear hereunder shall be addressed to the Buyer at its place of business at Homan Avenue and Arthington Street, Chicago, Illinois, Attention Manager of Tire Department, and if given by the Buyer to Goodyear, at Goodyear's place of business at Akron, Ohio. Upon the giving of said notice by either party hereto, this contract shall terminate on the 31st day of December of the year following the year in which said notice is given.

During the last year of this agreement, the Buyer shall not be obligated to purchase or Goodyear to furnish, more than 56¼% of the total quantity of "product" as estimated by the Buyer in its annual estimate which would have been bought and sold under this agreement during such year but for the impending termination of this agreement, as follows: 37½% of such total quantity during the first six months of such year and 12½% of such total quantity during the third quarter of such year, and 6¼% of such total quantity during the fourth quarter of such year.

On termination of this agreement, if Goodyear shall have any investment in molds or other equipment, purchased at the order of the Buyer and relating especially to operations under this contract and not required for its operations irrespective of this contract, and if said investment shall not have been amortized over and recovered through manufacture and sale of "product" hereunder, then the Buyer shall pay to Goodyear the amount of such unrecovered capital

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expenditures, and thereafter such molds and other equipment shall belong to the Buyer.

On termination of this agreement the Buyer shall forthwith purchase and accept delivery of any "product" theretofore specified by Buyer for manufacture under this contract, which Goodyear may then have on hand, or which may then be in process at prices hereinbefore provided.

THIRTEENTH: Any waiver by either party of any condition of this agreement or obligation incumbent upon the other party in any particular instance shall not be deemed a waiver of such condition in any succeeding instance or instances.

FOURTEENTH: This contract contains the entire agreement between the parties and shall not be modified or enlarged by any understandings, customs or practices whatsoever. This agreement can be modified or enlarged only by agreements supplemental hereto executed by the parties in like manner to the execution hereof.

FIFTEENTH: This contract shall be binding upon and inure to the successors and assigns of the respective parties hereto. Neither party, however, shall have the right to assign this contract without the consent of the other.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quadruplicate at Chicago, Illinois, by their respective officers duly authorized so to do, and their respective corporate seals to be hereunto affixed the day and year first above written.

THE GOODYEAR TIRE & RUBBER COMPANY,  
By P. W. LITCHFIELD, *President*.

Attest:

W. D. SHILTS, *Secretary*.  
SEARS, ROEBUCK AND CO.,  
By R. E. WOOD, *President*.

Attest:

JNO. HIGGINS, *Secretary*.

SEC. 11.—*Respondent's third or current tire contract with Sears, Roebuck & Co.*

Respondent continued to sell and ship tires and tubes to Sears, Roebuck & Co. during 1929, 1930, and 1931, pursuant to the conditions and terms of said second tire contract, until it was cancelled and superseded by the third and current tire contract executed by the same parties on October 5, 1931.

In July 1931, Gen. R. E. Wood, President of Sears, Roebuck & Co., verbally notified P. W. Litchfield, President of the respondent, that Sears, Roebuck & Co. expected to give Goodyear written notice sometime during December 1931, of its intention to terminate the aforesaid second contract as of December 31, 1932.

Pursuant to further negotiations hereinafter described, the third and current tire contract between respondent and Sears, Roebuck & Co. was entered into on October 5, 1931, being signed by P. W. Litchfield as president of respondent, and by R. E. Wood, as president of Sears, Roebuck & Co. This contract reads as follows:

## COMMISSION'S EXHIBIT 11

THIS AGREEMENT, made and entered into this 5th day of October, A. D. 1931, by and between the GOODYEAR TIRE & RUBBER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, hereinafter for convenience called "GOODYEAR", party of the first part, and SEARS, ROEBUCK AND CO., a corporation organized and existing under and by virtue of the laws of the State of New York, hereinafter for convenience called "BUYER", party of the second part;

## WITNESSETH:

## QUANTITY

FIRST: GOODYEAR hereby agrees to manufacture and sell to BUYER, and BUYER hereby agrees to buy from GOODYEAR for and during the term of this agreement and on the terms and conditions hereinafter set forth, BUYER'S requirements of pneumatic automobile truck and motorcycle tires and tubes (except a quantity not in excess of two hundred thousand (200,000) of said tires and tubes annually to and including December 31, 1934), and also BUYER'S requirements of bicycle tires and tubes from January 1, 1932, during the remainder of the term of this contract, all hereinafter collectively referred to as "product", up to the amount that GOODYEAR is hereinafter obligated to sell to BUYER. From December 31, 1934, GOODYEAR may, at its option, include said quantity not in excess of two hundred thousand (200,000) of said pneumatic automobile truck and motorcycle tires and tubes annually in this contract during the remainder of the term thereafter.

GOODYEAR shall in each calendar year of this contract, be obligated to sell to the BUYER such part of BUYER'S requirements of the "product" as is equivalent to 25%, but not more than 25%, of the productive capacity for said year (less any reduction in such productive capacity because of any of the contingencies referred to in Paragraph Seventh of this contract), of the plants of GOODYEAR and its subsidiaries in the United States; provided, however, that GOODYEAR may by written notice to BUYER prior to any such calendar year, obligate itself to sell to BUYER for said year, more of BUYER'S requirements, and in said written notice GOODYEAR shall state the amount of BUYER'S requirements in excess of 25% of the productive capacity of the plants of GOODYEAR and its subsidiaries in the United States that it so elects to obligate itself to sell to BUYER in said year. The BUYER, except as otherwise herein provided, shall not in any year of this agreement, order less than sixty-six and two-thirds per cent (66⅔%) of the BUYER'S tonnage purchases from GOODYEAR during the preceding year of this agreement.

In the event the BUYER'S requirements in any year shall exceed the maximum quantity which GOODYEAR is obligated or has elected to become obligated as aforesaid to sell to BUYER hereunder, the BUYER shall have the right to purchase such excess of its requirements for said year from sources other than GOODYEAR (which said purchases are herein also referred to as "outside purchases"); and if in the succeeding year GOODYEAR is obligated or has elected to become obligated to sell BUYER the latter's requirements or more of the "product" than in the prior year, nevertheless the BUYER shall have the right during the eighteen months next ensuing, beginning with the

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first of such succeeding year, to make "outside purchases" in the following proportions, to-wit: during the first six months of said eighteen month period, one-third, during the next six months one-fourth, and during the next and last six months one-sixth, of the "outside purchases" made by the BUYER during the preceding year; and the amount of "product" BUYER shall be required to purchase from GOODYEAR during said eighteen months' period shall be reduced by the amount of such "outside purchases" during that period; provided that anything herein to the contrary notwithstanding, the "outside purchases" in such succeeding year shall not exceed the "outside purchases" of the preceding year or the excess of the BUYER'S requirements for such year as aforesaid, whichever shall be greater.

## QUALITY, SIZE AND TYPE

SECOND: The "product" to be sold to the BUYER herein shall be manufactured by GOODYEAR in accordance with the specifications hereto attached, made a part hereof, and initialed by the parties hereto, and shall be of the sizes, types and grades selected from such specifications by the BUYER as hereinafter provided. Said specifications may be modified and changed by mutual agreement from time to time to meet the changing requirements of the BUYER, and by like mutual agreement the specifications for other types and sizes of "product" required by BUYER shall be attached hereto from time to time.

## PRICE

THIRD: The price to be paid by BUYER for the "product" bought hereunder shall be GOODYEAR'S cost of such "product", an allowance for adjustments on such "product" as hereinafter provided, and a profit to GOODYEAR as hereinafter set forth.

GOODYEAR'S cost of said "product" shall be determined as nearly as circumstances will permit, according to methods usually employed by GOODYEAR, unless such methods are inconsistent with sound accounting principles, in which event such sound accounting principles shall be used in determining cost; said cost shall include all proper items of cost (including shipping, warehousing and packing expense), but shall not include selling, advertising expense, interest on borrowed moneys, or loss in excess of one-half of one per cent of selling price due to manufacturing of product which in the course of manufacture is classified as "seconds." Determination as to what is a first or second of said "product" shall be in accordance with the standard classification of GOODYEAR and as applied by GOODYEAR to its own tires. If a classification other than the above standard is in writing ordered or specified by BUYER, any loss above one-half of one per cent of the selling price occasioned solely by BUYER'S said order or specification for such modification of said standard shall be borne by BUYER.

BUYER will pay GOODYEAR as allowance for adjustments a sum equal to three-fourths of one percent of the basic selling price of GOODYEAR to BUYER of said "product" plus any actual loss on adjustment thereof up to but not in excess of an additional one-fourth of one per cent of said basic selling price of GOODYEAR to BUYER, provided, however, that on pneumatic truck tires of six inches in diameter and over, allowance for adjustments shall be four per cent of the basic selling price of GOODYEAR to BUYER

plus any actual loss on adjustment thereof up to but not exceeding an additional four percent of GOODYEAR'S basic price to BUYER, said three-fourths of one per cent and four per cent, respectively, to be included in estimated prices as hereinafter provided, any additional allowances for actual loss on adjustment to be paid to GOODYEAR when and as determined after the end of each year whether or not this contract may then be in effect. In the event actual losses on adjustments are determined after the termination of this contract, the relation thereof to selling price for the determination of BUYER'S liability to pay said allowance for adjustment shall be based upon the aggregate selling prices and the aggregate actual losses on adjustment over the term of this contract as hereby provided or the last five years of its effectiveness, whichever shall be shorter.

The profit to GOODYEAR shall be a percentage of the price of said "product" to the BUYER (excluding, however, from such price for the purpose of figuring said profit, the allowance for adjustments), and such percentage shall be six percent of the selling price to BUYER of said "product" (excluding, however, from such selling price for the purpose of figuring said profit the allowance for adjustments) whenever the price of crude rubber included in the cost to BUYER of said "product" averages twenty-five cents (25¢) or more per pound for the then current quarter, and shall be six and one-half per cent when the price of said crude rubber averages less than twenty-five cents per pound for said current quarter; and if at any time it shall be proposed by either GOODYEAR or the BUYER that GOODYEAR make changes in methods and/or types of equipment used in the manufacture of "product" for the BUYER hereunder which would involve greater investment on the part of GOODYEAR than the methods and/or types of equipment employed by it hereunder as at the commencement of the term hereof, and which would reduce the ratio (as at the commencement of the term hereof) of GOODYEAR'S profit hereunder to its investment by ten or more percent of such ratio, then such changes shall not be made unless GOODYEAR and the BUYER agree that such changes are mutually advantageous and unless the parties hereto agree that the profit provided herein be revised (GOODYEAR giving the BUYER access to its books of account before such revision of prices is made) so as to yield GOODYEAR not more than substantially the same ratio of return on such greater investment as the profit provided herein represented on the investment employed by GOODYEAR hereunder at the commencement of the term hereof.

#### REDETERMINATION OF PRICES

FOURTH: For the purpose of this agreement, the word "quarters" shall be deemed to mean the quarter yearly periods beginning the first day of January, April, July and October, respectively, of each year of this agreement.

Ten days before the first of each quarter, GOODYEAR shall furnish the BUYER an estimate of prices for the purpose of billing said "product" to the BUYER during the ensuing quarter. Within forty-five days after the end of each calendar year, and also as soon as practicable after the termination of this agreement, there shall be a recalculation and redetermination of the prices, giving effect to factors and bases entering into said prices then actually determined; and in the event the payments made by or due from BUYER to

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GOODYEAR on account of "product" delivered during the periods with respect to which such redetermination of prices is made, exceeds the aggregate amount to which GOODYEAR would be entitled on the basis of said redetermined prices, then GOODYEAR shall pay to BUYER such excess.

As soon as practicable after June 30th of each year of this agreement, GOODYEAR will make a provisional recalculation and redetermination of the prices of said "product" sold to the BUYER during the preceding six months, and to the extent warranted by said provisional recalculation and redetermination, GOODYEAR shall make a provisional payment to the BUYER against any moneys that may be estimated to become due BUYER at the time of the final redetermination of prices at the end of the year as hereinbefore provided. If on such final redetermination at the end of the year, the provisional payment made by GOODYEAR to the BUYER in such provisional recalculation and redetermination of prices shall be in excess of the amount due the BUYER from GOODYEAR as found in said final redetermination of said prices, then the BUYER shall repay to GOODYEAR such part thereof, if any, as is shown in the said final redetermination to be due GOODYEAR.

In the event the BUYER shall question GOODYEAR'S said redetermination of prices, it shall on notice to GOODYEAR have the right within thirty days after the submission to it of such redetermined prices, to refer them to Messrs. Price, Waterhouse & Company of New York City, certified public accountants, whose determination of the prices which should prevail hereunder shall be final. For the purpose of any such determination GOODYEAR agrees to make available all pertinent books, papers and records to the accountants. In the event Price, Waterhouse & Company are unable to act in the capacity above set forth, then the parties hereto shall select some other certified public accountants for said purpose, and if they fail to agree upon such selection, then the Auditor of the State of Illinois shall designate such accountant to act in the place of said Price, Waterhouse & Company.

## TERMS

**FIFTH:** All "product" sold hereunder shall be F. O. B. the plant where such product has been manufactured. The BUYER shall on the tenth day of each calendar month during this agreement, pay to GOODYEAR for all "product" delivered by GOODYEAR to the BUYER hereunder during the preceding calendar month.

## ESTIMATES AND QUANTITY OF PRODUCTION

**SIXTH:** The BUYER shall annually, within ninety (90) days before the first day of each calendar year, furnish GOODYEAR an estimate of the quantity of "product" it will require hereunder during the ensuing calendar year. The BUYER shall also furnish GOODYEAR at least thirty (30) days prior to the first day of each calendar month during this agreement, a statement of the quantities of "product" which GOODYEAR is to manufacture during each of the ensuing three calendar months, which statement shall be in detail as to items, sizes and types of said "product" for the first ensuing calendar month. Such statements shall be subject, however, to revision from time to time, and the statement for each succeeding month shall be deemed to automatically

revise the statement of the preceding month as to the quantities of "product" which GOODYEAR is to manufacture during the period set forth in the said statement of said preceding month. Based upon such statements, GOODYEAR shall manufacture approximately the quantities therein set forth, subject, however, to the following conditions:

(a) GOODYEAR may, but shall in no event be required to, manufacture in any one month of any year more than eleven percent (11%) (with reasonable division among the various types and sizes) of the quantities of said "product" which are to be furnished hereunder by GOODYEAR during such year, according to the BUYER'S annual estimate revised with reference to the actual sales up to such time and the sales outlook for the remainder of said year.

(b) GOODYEAR shall not be required to manufacture for the BUYER in any one day more than twenty-five thousand (25,000) tires and tubes, unless GOODYEAR shall from time to time because of increased capacity or other changed conditions of its plants, agree to a specification by BUYER of a larger maximum daily quantity.

(c) Increases and decreases in the daily rate of production shall be arranged from time to time by mutual agreement by the parties hereto with a view to efficient and economical manufacturing operations.

(d) GOODYEAR will at all times endeavor to maintain at its plant at least one month's inventory of "product" for the BUYER, based on the then current rate of shipments to the BUYER.

#### EXCEPTIONS

SEVENTH: Neither party to this contract shall be held liable or deemed in default hereunder if prevented from performing the obligations of this agreement by reason of fire, flood, drought, acts of God, war, riot, strikes, lockouts, embargo, unavoidable causes or circumstances beyond its control, failure of transportation, or inability to secure raw material, supplies or equipment.

#### MARKINGS, TRADE-MARKING, AND TRADE NAMES

EIGHTH: It is understood that trade names, trade marks, tread designs and other markings and embellishments appearing exclusively on "product" furnished hereunder are the property of the BUYER. The BUYER agrees to save and hold GOODYEAR harmless from any liability, suit or damages for infringement or alleged infringement arising out of GOODYEAR'S manufacture or use hereunder of any such name, brand, design, tread, trade mark or other embellishment. GOODYEAR agrees not to sell any "product" bearing the name, brand, trade marks, trade names or tread designs belonging to the BUYER to any one other than the BUYER, except that as to "products" which in the course of manufacture are classified as "seconds", GOODYEAR shall have the right after buffing off or otherwise removing the BUYER'S name and trade marks, to sell "products" so classified as "seconds".

The BUYER agrees not to make any reference to GOODYEAR and/or the subject matter of this contract either orally or in writing, except in communication to or with GOODYEAR and to this end specifically covenants that it will exert its utmost efforts to prevent the employees from in any wise referring to or disclosing the fact that "product" sold to the BUYER hereunder is manufactured by GOODYEAR.

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## SHIPMENTS

NINTH: Shipment of all "product" hereunder shall be to the BUYER as the BUYER may direct, and the "product" sold hereunder shall be packed in such manner as the BUYER may request.

## INSPECTION

TENTH: The BUYER, by its duly authorized representatives, shall at any and all reasonable times have access to the factory or factories in which "product" is being manufactured hereunder for the BUYER, for the purpose of inspecting the manufacture thereof.

## WARRANTIES AND ADJUSTMENTS

ELEVENTH: "Product" sold to the BUYER hereunder, is warranted by GOODYEAR to be free from defects in workmanship and material.

Any "product" furnished hereunder which shall be defective in workmanship or material or not in accordance with the specifications in effect by virtue hereof at the time of manufacture, may, within eighteen months from the date of manufacture thereof, be returned to GOODYEAR and if such "product" shall not have been used or damaged the BUYER shall be credited therefor at the current price charged hereunder for "product" of the same grade, type and size, plus an amount equal to the charges for transportation of the "product" from the plant where purchased to the BUYER and from the BUYER back to GOODYEAR. GOODYEAR may thereafter dispose of such "product" as "seconds".

Whenever any "product" sold hereunder, which has been put into use, shall prove defective in either workmanship or material, the BUYER may return such "product" to GOODYEAR at GOODYEAR'S expense, and in that case shall furnish such information in respect thereof as GOODYEAR may reasonably require and thereupon GOODYEAR shall make a reasonable adjustment by way of credit to the BUYER. Such adjustment shall be on the basis of the then current (or the last, as the case may be) price charged by GOODYEAR to the BUYER for "product" of the same grade, size and type, and in respect of service rendered by the defective "product" shall be based upon the warranties in respect thereof made by the BUYER to its customer. Such warranties shall, however, be no more favorable to the consumer than those which the BUYER has in effect at the date of execution hereof. GOODYEAR shall in no wise be liable in respect of any adjustment made by the BUYER with its customers except it shall be on account of a defect in workmanship and material herein warranted against.

## DURATION AND TERMINATION

TWELFTH: This contract shall begin from the date hereof, and shall continue thereafter until terminated, as hereinafter provided. Either party may elect to terminate this contract by giving notice in writing to the other party during the month of December of any year beginning with the year 1941 that it desires to terminate this contract as of the 31st day of December of the year following. Such notice of termination, if given by GOODYEAR hereunder shall be addressed to the BUYER at its place of business at Homan Avenue and Arthington Street, Chicago, Illinois, attention Manager of Tire Depart-



ment, until another address is in writing designated by BUYER by its President or Vice-President for such notice, and then to such other address, and if given by BUYER to GOODYEAR at GOODYEAR'S place of business at Akron, Ohio. Upon the giving of said notice by either party hereto, this contract shall terminate on the 31st day of December of the year following the year in which said notice is given.

During the last year of this agreement, the BUYER shall not be obligated to purchase or GOODYEAR to furnish, more than  $56\frac{1}{4}\%$  of the total quantity of "product" as estimated by the BUYER in its annual estimate which would have been bought and sold under this agreement during such year but for the impending termination of this agreement, as follows:  $37\frac{1}{2}\%$  of such total quantity during the first six months of such year and  $12\frac{1}{2}\%$  of such total quantity during the third quarter of such year, and  $6\frac{1}{4}\%$  of such total quantity during the fourth quarter of such year.

On termination of this agreement, if GOODYEAR shall have any investment in molds or other equipment, purchased at the order of the BUYER and relating especially to operations under this contract and not required for its operations irrespective of this contract, and if said investment shall not have been amortized over and recovered through manufacture and sale of "product" hereunder, then the BUYER shall pay to GOODYEAR the amount of such unrecovered capital expenditures, and thereafter such molds and other equipment shall belong to the BUYER.

On termination of this agreement the BUYER shall forthwith purchase and accept delivery of any "product" theretofore specified by BUYER for manufacture under this contract, which GOODYEAR may then have on hand, or which may then be in process at prices hereinbefore provided.

**THIRTEENTH:** Any waiver by either party of any condition of this agreement or obligation incumbent upon the other party in any particular instance shall not be deemed a waiver of such condition in any succeeding instance or instances.

**FOURTEENTH:** This contract contains the entire agreement between the parties and shall not be modified or enlarged by any understandings, customs or practices whatsoever. This agreement can be modified or enlarged only by agreements supplemental hereto executed by the parties in like manner to the execution hereof.

**FIFTEENTH:** The BUYER agrees that in the event of its consolidation or merger with any other corporation or corporations or the transfer by it of its business of selling "product", the BUYER will by appropriate legal action make provision so that the corporation resulting from such consolidation or merger or the transferee of such business (herein called "Successor") shall succeed to this agreement and all of the rights and obligations of the BUYER hereunder, except that the said Successor's requirements of "product" to be purchased from GOODYEAR hereunder in addition to the requirements of the BUYER hereinbefore set forth shall be deemed to be the aggregate of the following during the remainder of this agreement:

(a) All of the Successor's additional actual requirements of "product", the sale of which to the Successor is not covered by a binding contract with some party other than GOODYEAR at the time of said consolidation, merger or transfer, and except as provided in Article First hereof the Successor shall make no further contract for the purchase of "product" from any party other than GOODYEAR during the term of this agreement;

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(b) All of the Successor's additional actual requirements of "product", the sale of which to the Successor is covered by a binding contract or contracts with some party or parties other than GOODYEAR at the time of said consolidation, merger or transfer, after said contract or contracts shall terminate, expire or be cancelled, and the Successor shall not by its act or failure to give notice extend any such contract for the purchase by it of "product" and at the earliest date permitted thereby shall cancel all of said contracts which are legally subject to termination or cancellation.

Any such Successor and each successive Successor thereto shall be in all respects substituted for the BUYER as the party of the second part to this agreement and shall succeed to all of the rights and, except as above limited, to all of the obligations of the BUYER hereunder.

This contract shall be binding upon and inure to the successors and assigns of the respective parties hereto; neither party, however, shall have the right to assign this contract nor shall it inure to any successor of either of the parties hereto without, in either such case, the prior written consent of the other.

SIXTEENTH: By mutual agreement the contract between the parties hereto dated May 17, 1928, is hereby cancelled and annulled, and this agreement is hereby substituted in lieu thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quadruplicate at Chicago, Illinois, by their respective officers duly authorized so to do, and their respective corporate seals to be hereunto affixed the day and year first above written.

THE GOODYEAR TIRE & RUBBER COMPANY,  
By P. W. LITCHFIELD, *President*.

Attest:

W. D SHILTS, *Secretary*.  
SEARS, ROEBUCK AND CO.,  
By R. E. WOOD, *President*.

Attest:

E. H. POWELL, *Secretary*.

SEARS, ROEBUCK AND CO.

EXECUTIVE OFFICES

CHICAGO

October 7, 1931

THE GOODYEAR TIRE AND RUBBER Co.,  
*Akron, Ohio.*

GENTLEMEN: With reference to the agreement for product entered into between us as of the 5th of October, 1931, and referring particularly to article third thereof, this letter will evidence our understanding that the allowance for adjustments on bicycle tires and tubes will be a sum equal to 1% of the basic selling price of Goodyear to us as buyer of such bicycle tires and tubes. And the said contract may be deemed by you to be amended in this respect.

Very truly yours,

SEARS, ROEBUCK AND CO.,  
(Signed) R. E. WOOD, *President*.

The said third tire contract is now in operation and being carried out by the parties thereto. Respondent is now manufacturing the

entire tire requirements of Sears, Roebuck & Co. at its factories, and is selling and shipping said tires to Sears, Roebuck & Co. conformably with the said contract at prices as provided for therein.

SEC. 12.—*Secret consideration or bonus agreement.*

On the same day the third tire contract was entered into between respondent and Sears, Roebuck & Co., viz, October 5, 1931, a secret agreement was entered into by and between the same parties, which reads as follows:

THIS AGREEMENT, made this 5th day of October, 1931, between THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio corporation, hereinafter called "GOODYEAR", party of the first part, and SEARS, ROEBUCK AND CO., a New York corporation, hereinafter called "SEARS", party of the second part;

WITNESSETH:

WHEREAS, the parties hereto on the 17th day of May, 1928, entered into a written contract for the manufacture and sale by GOODYEAR and the purchase by SEARS from GOODYEAR of SEARS' requirements of pneumatic automobile, truck and motorcycle tires and tubes; and

WHEREAS, the Twelfth paragraph of said contract provided that either party may elect to terminate said contract by giving notice in writing to the other party during December of any year, beginning with the year 1931, that it desires to terminate said contract as of the 31st day of December of the year following; and

WHEREAS, SEARS has signified its intention to terminate said contract as of December 31, 1932, by giving notice in writing to GOODYEAR during December, 1931, that it desires to terminate said contract, as aforesaid; and

WHEREAS, GOODYEAR has requested SEARS to enter into a new contract in lieu of the above contract of May 17, 1928, which said new contract will not be terminable until December 31, 1942;

NOW, THEREFORE, in consideration of the execution simultaneously herewith by SEARS of said new contract, and for other good and valuable considerations from SEARS, the receipt and sufficiency of which is hereby acknowledged by GOODYEAR, IT IS AGREED AS FOLLOWS:

FIRST: GOODYEAR hereby covenants and agrees that it will issue, assign, transfer and/or deliver to SEARS simultaneously with the execution of this contract eighteen thousand (18,000) shares of common capital no par value stock of GOODYEAR fully paid, non-assessable and to be the sole property of SEARS, and at said time also to pay to SEARS in cash the sum of Eight hundred thousand dollars (\$800,000.00) to be used by SEARS to purchase a minimum of thirty-two thousand (32,000) additional shares of the common capital no par value stock of GOODYEAR, all to be the sole property of SEARS, and SEARS agrees to acquire a minimum of thirty-two thousand (32,000) shares by purchase in the market not later than December 15, 1931.

SECOND: SEARS in consideration of the aforesaid covenants and agreements of GOODYEAR and the delivery of the shares of stock and the payment to be made by GOODYEAR, as aforesaid, agrees to execute simultaneously herewith said new contract for the manufacture and sale by GOODYEAR and the purchase by SEARS from GOODYEAR of SEARS' requirements of pneumatic

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automobile, truck and motorcycle tires and tubes (except two hundred thousand (200,000) thereof annually to and including December 31, 1934), and also SEARS' requirements from January 1, 1932, of bicycle tires and tubes during the remainder of the term of said contract, to-wit, until the same is terminated as set forth in said contract after December 31, 1941. SEARS further agrees that it will not, except to a successor of SEARS under paragraph "Fifteenth" of said contract of October 5, 1931, sell, transfer or otherwise dispose of any of said 18,000 shares nor of said 32,000 additional shares of common capital stock of GOODYEAR provided for in this contract during the period of ten (10) years from the date hereof, except with the prior consent of GOODYEAR.

This contract shall be binding upon and inure to the successors and assigns of the respective parties hereto, neither party, however, shall have the right to assign this contract without the prior written consent of the other.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate at Chicago, Illinois, by their respective officers duly authorized so to do and their respective corporate seals to be hereunto affixed the day and year first above written, in accordance with resolution of their respective Board of Directors and/or Executive Committee.

THE GOODYEAR TIRE & RUBBER COMPANY,  
By P. W. LITCHFIELD, *President*.

Attest:

W. D. SHILTS, *Secretary*.

SEARS, ROEBUCK AND CO.,  
By R. E. WOOD, *President*.

Attest:

E. H. POWELL, *Secretary*.

The said secret consideration or bonus agreement was ratified by the board of directors of the respondent at a special meeting held on October 6, 1931, but no action with respect thereto was ever taken by the stockholders of said respondent and no notice was ever given to said stockholders of its existence. The said agreement was duly performed by the assignment from respondent to Sears, Roebuck & Co., between the dates of October 5, 1931, and January 1, 1932, of 18,000 shares of Goodyear Treasury stock of the stated valuation of \$450,000 (previously bought in by respondent at a cost of approximately \$1,000,000), and by respondent's payment to Sears, Roebuck & Co. of \$800,000 in cash on or about October 5, 1931. This money was used by Sears, Roebuck & Co. to purchase 32,000 additional shares of Goodyear common stock, which stock Sears, Roebuck & Co. now owns.

SEC. 13.—*Immediate delivery contract.*

On June 16, 1932, respondent and Sears, Roebuck & Co. entered into a further agreement respecting immediate transfer of title and constructive possession of all tires manufactured and on hand prior to June 21, 1932, the effective date of the "Manufacturer's Sales" tax, which agreement reads as follows:

## Findings

MEMORANDUM OF AGREEMENT, made and entered into this 16th day of June, A. D. 1932, by and between THE GOODYEAR TIRE & RUBBER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, hereinafter for convenience called "Goodyear", Party of the First Part, and SEARS, ROEBUCK & CO., a corporation organized and existing under and by virtue of the laws of the State of New York, hereinafter for convenience called "the Buyer", Party of the Second Part.

## WITNESSETH

The parties hereto are parties to a certain agreement dated the 5th day of October, 1931, and having to do with the purchase and sale of certain "product" (pneumatic automobile, truck, and motorcycle tires and tubes and bicycle tires and tubes). All said product now in Goodyear's possession or which is hereafter manufactured prior to June 21, 1932, by or for Goodyear for the Buyer shall be delivered to the Buyer at warehouses located at the point of manufacture at Akron, Ohio, Gadsden, Alabama, or Los Angeles, California, as the case may be, and on and after such delivery such product shall be at the sole risk of the Buyer, Title thereto, as well as possession thereof, passing to the Buyer immediately upon such delivery.

Goodyear will, immediately upon such delivery, bill the Buyer for such product and the Buyer shall promptly pay therefor.

Goodyear agrees when, as and if requested by the Buyer to store said product and to pack, load and ship the product from said warehouses to such other destinations as the Buyer may select, on the same basis as if done prior to delivery of the product to the Buyer. Such packing, shipping and loading shall, however, be at the sole risk and under the sole direction and control of the Buyer.

Except to the extent that this agreement may be inconsistent with any of the terms and provisions of said agreement of October 5, 1931 (in the event of such inconsistency this agreement controlling), said agreement of October 5, 1931, shall remain in full force and effect according to its terms.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective corporate names by their officers duly authorized thereto the day and year first above written.

THE GOODYEAR TIRE & RUBBER COMPANY,  
By R. S. WILSON, *Vice President*.

Attest:

W. M. METTLER, *Ast. Secretary*.

SEARS, ROEBUCK AND COMPANY,  
By D. M. NELSON, *Vice President*.

Attest:

E. H. POWELL, *Secretary*.

#### SEC. 14.—Price comparisons.

During the period from April 1, 1926, through December, 1933, respondent sold Sears, Roebuck & Co. under said contracts 19,239,194 tire casings, 17,388,806 tubes, 508,073 bicycle tire casings and 42,867 bicycle tubes at a total billing price of \$129,252,984.69. After annual settlement was made each year and respondent rebated to Sears, Roebuck & Co. the difference between billing price and final settlement price, amounting to approximately \$9,000,000, to make the

## Findings

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transaction come within the terms of the contracts, and after deducting excise tax, losses on replacements and adjustments, the net amount received by respondent as a result of its sales of tires to Sears, Roebuck & Co. was \$116,359,367.85.

Respondent received from its service station dealers on a corresponding volume of business, in gross sales \$182,598,399.59, and in net sales \$157,576,156.33, the net sales figure being obtained by deducting from the gross sales price figure allowances for factory shipments, dealers' quantity discounts, discounts on special price sales, cash discounts on sales, freight on sales, excise tax, commissions, allowances, trade-in allowances, extra discounts and commissions and losses on replacements amounting to \$25,022,243.26 in the aggregate. The difference between these two net sales items, \$157,576,156.33 net amount of dealer sales and \$116,359,367.85 net amount of Sears, Roebuck & Co. sales, is \$41,216,788.48, which is the aggregate amount of discrimination in net sales price in favor of Sears, Roebuck & Co. and against the Goodyear service station dealers, and which is 26.15% of the total dollar net sales to the service station dealers over the 7½-year period.

As the foregoing aggregate discrimination in net sales takes into account transportation cost differences, it is apparent that such aggregate amount of discrimination in total net sales made due allowance for differences in the cost of transportation. The question of due allowance for differences in the cost of selling will be taken up later herein under an appropriate heading (p. 279).

The aforesaid percentage of aggregate discrimination in net sales price (26.15%) is recognized as a weighted average percentage of discrimination over the 7½-year period which cannot be and is not representative of the price discrimination existing in actual individual sales of tires to Sears, Roebuck & Co. on the one hand and to the independent retail dealers on the other, with respect to which price discrimination the retail dealer customers of respondent are most concerned. Therefore, consideration must be given to the documentary evidence in the record dealing specifically with selected representative sizes of tire casings sold respectively to Sears, Roebuck & Co. and to dealers, and to a comparison of the net billing prices of respondent to its service station dealers and to Sears, Roebuck & Co. for tire casings of comparable size, grade and quality. The record contains two sources for such comparison: (1) so-called margin sheets (Com. Exh. 230 and 617) prepared by respondent's accountants and (2) net sales price tabulations prepared by the Commission's accountants from the sales records of respondent (Com. Exh. 693 to 705).

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The so-called margin sheets are statements showing a comparison of margins on sales prices of four representative and popular sizes of tire casings sold through both channels of distribution. These were (1) for Fords and Chevrolets, size 4.50-21; (2) for Plymouths and Whippets, size 4.75-19; (3) for Dodges and Nashes, size 5.25-21; and (4) for Buicks and Hudsons, size 6.00-21. The following chart sets forth in detail the net billing prices to Sears, Roebuck & Co. on its "All State" brand and to the independent service station dealers on the Goodyear "All Weather" brand, both being "first line" tire casings, comparable in grade and quality. The said prices are listed quarterly from the first quarter in 1927 through 1933 and show that the net billing price to Sears, Roebuck & Co. on these sizes ranged from 31.4% to 55.9% per quarter, lower than the net billing prices to the dealers, such percentages being based on the dealer prices.

Chart comparing billing prices of Goodyear All Weather brand and Sears, Roebuck & Co. All State brand

Date	Size	Net billing price to dealers "Goodyear All Weather"	Net billing price to Sears, Roebuck & Co. "All State"	Difference between Goodyear price to dealers and to Sears, Roebuck & Co.	Sears, Roebuck & Co. price under dealers price
<b>1927</b>					<i>Percent</i>
First quarter.....	5.25-21 4-ply.....	\$16.45	\$9.81	\$6.64	40.4
Do.....	6.00-21 4-ply.....	19.90	11.73	8.12	40.9
Second quarter.....	4.75-19 4-ply.....	11.60	7.60	4.00	34.5
Do.....	5.25-21 4-ply.....	16.45	9.66	6.79	41.4
Do.....	6.00-21 4-ply.....	19.90	11.89	8.01	40.8
Third quarter.....	4.75-19 4-ply.....	11.60	7.80	3.80	32.8
Do.....	5.25-21 4-ply.....	16.45	9.96	6.49	39.5
Do.....	6.00-21 4-ply.....	19.90	12.26	7.64	38.4
Fourth quarter.....	4.75-19 4-ply.....	10.45	7.29	3.16	30.3
Do.....	5.25-21 4-ply.....	14.87	10.05	4.82	32.6
Do.....	6.00-21 4-ply.....	17.96	12.14	5.82	32.4
<b>1928</b>					
First quarter.....	4.50-21 4-ply.....	9.64	5.81	3.83	39.8
Do.....	4.75-19 4-ply.....	10.45	6.09	4.36	41.7
Do.....	5.25-21 4-ply.....	14.87	9.58	5.29	35.6
Second quarter.....	4.50-24 4-ply.....	9.64	5.73	3.91	40.6
Do.....	4.75-19 4-ply.....	10.45	5.85	4.60	55.9
Do.....	5.25-21 4-ply.....	14.87	9.06	5.81	39.1
Do.....	6.00-21 6-ply.....	20.71	12.45	8.26	39.9
Third quarter.....	4.50-21 4-ply.....	8.46	5.26	3.20	37.9
Do.....	4.75-19 4-ply.....	9.17	5.31	3.86	42.1
Do.....	5.25-21 4-ply.....	12.26	8.42	3.84	31.4
Do.....	6.00-21 6-ply.....	17.10	10.73	6.37	37.3
Fourth quarter.....	4.50-21 4-ply.....	8.03	5.11	2.92	36.4
Do.....	4.75-19 4-ply.....	8.69	5.21	3.48	40.1
Do.....	5.25-21 4-ply.....	11.64	7.26	4.38	37.7
Do.....	6.00-21 6-ply.....	16.25	10.81	5.44	33.5
<b>1929</b>					
First quarter.....	4.50-21 4-ply.....	7.63	4.67	2.96	38.8
Do.....	4.75-19 4-ply.....	8.46	4.66	3.80	45.0
Do.....	5.25-21 4-ply.....	11.33	6.72	4.61	40.7
Do.....	6.00-21 6-ply.....	16.23	9.77	6.46	39.9
Second quarter.....	4.50-21 4-ply.....	7.43	4.52	2.91	39.2
Do.....	4.75-19 4-ply.....	8.24	4.63	3.61	43.9
Do.....	5.25-21 4-ply.....	11.03	6.54	4.49	40.7
Do.....	6.00-21 6-ply.....	15.80	9.68	6.12	38.8

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Chart comparing billing prices of Goodyear All Weather brand and Sears, Roebuck & Co. All State brand—Continued

Date	Size	Net billing price to dealers "Goodyear All Weather"	Net billing price to Sears, Roebuck & Co. "All State"	Difference between Goodyear price to dealers and to Sears, Roebuck & Co.	Sears, Roebuck & Co. price under dealers price
<i>1929</i>					
Third quarter.....	4.50-21 4-ply.....	\$7.43	\$4.73	\$2.70	Percent 36.4
Do.....	4.75-19 4-ply.....	8.24	4.90	3.34	40.6
Do.....	5.25-21 4-ply.....	11.03	6.84	4.19	38.0
Do.....	6.00-21 6-ply.....	15.80	10.24	5.56	35.3
Fourth quarter.....	4.50-21 4-ply.....	7.25	4.70	2.55	35.2
Do.....	4.75-19 4-ply.....	8.03	4.96	3.07	38.3
Do.....	5.25-21 4-ply.....	10.75	6.64	4.11	38.3
Do.....	6.00-21 4-ply.....	15.36	9.50	5.86	37.7
<i>1930</i>					
First quarter.....	4.50-21 4-ply.....	7.25	4.25	3.00	41.4
Do.....	4.75-19 4-ply.....	8.03	4.66	3.37	42.0
Do.....	5.25-21 4-ply.....	10.75	6.20	4.55	42.4
Do.....	6.00-21 6-ply.....	15.36	8.67	6.69	43.6
Second quarter.....	4.50-21 4-ply.....	6.89	3.86	3.03	43.9
Do.....	4.75-19 4-ply.....	7.64	4.15	3.49	45.7
Do.....	5.25-21 4-ply.....	10.20	5.93	4.27	41.9
Do.....	6.00-21 6-ply.....	14.96	7.99	6.97	46.6
Third quarter.....	4.50-21 4-ply.....	6.89	3.89	3.00	43.6
Do.....	4.75-19 4-ply.....	7.64	4.37	3.27	42.9
Do.....	5.25-21 4-ply.....	10.20	5.77	4.43	43.5
Do.....	6.00-21 6-ply.....	14.25	7.70	6.55	46.0
Fourth quarter.....	4.50-21 4-ply.....	6.89	4.05	2.84	41.3
Do.....	4.75-19 4-ply.....	7.64	4.58	3.06	40.1
Do.....	5.25-21 4-ply.....	10.20	6.45	3.75	36.8
Do.....	6.00-21 6-ply.....	14.25	8.59	5.66	39.7
<i>1931</i>					
First quarter.....	4.50-21 4-ply.....	5.89	3.31	2.58	43.5
Do.....	4.75-19 4-ply.....	6.41	3.52	2.89	45.2
Do.....	5.25-21 4-ply.....	8.55	4.91	3.64	42.6
Do.....	6.00-21 6-ply.....	12.76	7.01	5.75	45.06
Second quarter.....	4.50-21 4-ply.....	5.89	3.24	2.65	45.0
Do.....	4.75-19 4-ply.....	6.41	3.34	3.07	49.5
Do.....	5.25-21 4-ply.....	8.55	4.57	3.98	46.5
Do.....	6.00-21 6-ply.....	12.76	6.27	6.49	50.9
Third quarter.....	4.50-21 4-ply.....	5.89	3.50	2.39	40.6
Do.....	4.75-19 4-ply.....	6.41	3.58	2.83	44.2
Do.....	5.25-21 4-ply.....	8.55	4.94	3.61	42.3
Do.....	6.00-21 6-ply.....	12.76	6.62	6.14	48.2
Fourth quarter.....	4.50-21 4-ply.....	5.29	3.62	1.67	31.6
Do.....	4.75-19 4-ply.....	5.78	3.74	2.04	35.3
Do.....	5.25-21 4-ply.....	7.69	4.95	2.74	35.7
<i>1932</i>					
First quarter.....	4.50-21 4-ply.....	5.29	3.15	2.14	40.5
Do.....	4.75-19 4-ply.....	5.78	3.23	2.55	44.1
Do.....	5.25-21 4-ply.....	7.69	4.47	3.22	41.9
Do.....	6.00-21 6-ply.....	11.49	5.97	5.52	48.1
Second quarter.....	4.50-21 4-ply.....	5.29	3.26	2.03	38.4
Do.....	4.75-19 4-ply.....	5.78	3.41	2.37	41.1
Do.....	5.25-21 4-ply.....	7.69	4.33	3.36	43.7
Do.....	6.00-21 6-ply.....	11.49	5.29	6.20	53.9
Third quarter.....	4.50-21 4-ply.....	5.29	3.44	1.85	35.0
Do.....	4.75-19 4-ply.....	5.78	3.57	2.21	38.3
Do.....	5.25-21 4-ply.....	7.69	4.51	3.18	41.4
Do.....	6.00-21 6-ply.....	11.49	5.69	5.80	50.4
Fourth quarter.....	4.50-21 4-ply.....	5.29	3.62	1.67	31.6
Do.....	4.75-19 4-ply.....	5.78	3.74	2.04	35.3
Do.....	5.25-21 4-ply.....	7.69	4.95	2.74	35.7
<i>1933</i>					
First quarter.....	4.50-21 4-ply.....	5.12	3.49	1.63	31.9
Do.....	4.75-19 4-ply.....	5.58	3.63	1.95	35.0
Do.....	5.25-21 4-ply.....	7.69	4.47	3.22	41.9
Do.....	6.00-21 6-ply.....	11.49	5.97	5.52	48.1
Second quarter.....	4.50-21 4-ply.....	5.29	3.26	2.03	38.4
Do.....	4.75-19 4-ply.....	5.78	3.41	2.37	41.1
Do.....	5.25-21 4-ply.....	7.69	4.33	3.36	43.7
Do.....	6.00-21 6-ply.....	11.49	5.29	6.20	53.9
Third quarter.....	4.50-21 4-ply.....	5.29	3.44	1.85	35.0
Do.....	4.75-19 4-ply.....	5.78	3.57	2.21	38.3
Do.....	5.25-21 4-ply.....	7.69	4.51	3.18	41.4
Do.....	6.00-21 6-ply.....	11.49	5.69	5.80	50.4
Fourth quarter.....	4.50-21 4-ply.....	5.29	3.62	1.67	31.6
Do.....	4.75-19 4-ply.....	5.78	3.74	2.04	35.3
Do.....	5.25-21 4-ply.....	7.69	4.95	2.74	35.7
<i>1934</i>					
First quarter.....	4.50-21 4-ply.....	5.12	3.49	1.63	31.9
Do.....	4.75-19 4-ply.....	5.58	3.63	1.95	35.0
Do.....	5.25-21 4-ply.....	7.69	4.47	3.22	41.9
Do.....	6.00-21 6-ply.....	11.49	5.97	5.52	48.1
Second quarter.....	4.50-21 4-ply.....	5.29	3.26	2.03	38.4
Do.....	4.75-19 4-ply.....	5.78	3.41	2.37	41.1
Do.....	5.25-21 4-ply.....	7.69	4.33	3.36	43.7
Do.....	6.00-21 6-ply.....	11.49	5.29	6.20	53.9
Third quarter.....	4.50-21 4-ply.....	5.29	3.44	1.85	35.0
Do.....	4.75-19 4-ply.....	5.78	3.57	2.21	38.3
Do.....	5.25-21 4-ply.....	7.69	4.51	3.18	41.4
Do.....	6.00-21 6-ply.....	11.49	5.69	5.80	50.4
Fourth quarter.....	4.50-21 4-ply.....	5.29	3.62	1.67	31.6
Do.....	4.75-19 4-ply.....	5.78	3.74	2.04	35.3
Do.....	5.25-21 4-ply.....	7.69	4.95	2.74	35.7



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The arithmetical average percentages of gross discrimination for the entire period of time on the respective sizes of tire casings included in the foregoing chart are as follows:

Size 4.50-21	39.33%
4.75-19	40.33%
5.20-21	38.76%
6.00-21	38.2%

The gross price discrimination percentages disclosed in the foregoing tabulation (representing a comparison of net billing prices before deductions have been made on account of discounts, allowances and for all other considerations), indicate the disadvantage under which the independent service station dealers were basing their prices to consumers and are important in considering the effect upon the competition between these dealers and Sears, Roebuck & Co., the favored customer.

The figures contained in the net sales price tabulations (Com. Exh. 693 to 705) are summarized in the following Table I which contains a comparison of the discrimination in billing and net sales prices on similar sizes and grades of tire casings in favor of Sears, Roebuck & Co. as against service station dealers, in annual weighted average percentages for the entire period from April 1, 1926, through December 31, 1933, and a comparison of the discrimination found in net sales prices after all deductions have been made from dealer prices for such items as cash discounts, dealer bonuses, trade-in allowances, freight on sales and replacement losses, on eight popular sizes of tires of the two leading brands sold, viz, Goodyear All Weather brand to service station dealers and Sears, Roebuck & Co. All State brand to Sears Roebuck.

The difference, between the amount of gross discrimination found in the foregoing chart and in the following table on the same sizes, is accounted for by the difference in method of calculation and the periods covered, the foregoing chart representing arithmetical averages on a quarterly basis whereas the following table represents weighted averages on an annual basis for the same period of time.

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## GOODYEAR BRANDS VERSUS SEARS, ROEBUCK &amp; CO. BRANDS

TABLE I.—Table showing gross and net discrimination on eight popular sizes of tires during the period from April 1, 1926, to December 31, 1933

Sizes	Unit gross sales basis		Difference in unit price, "gross sale"	Ratio of difference in price to A. W. price	Unit net sales basis		Difference in unit price, "net sale"	Ratio of difference in price to A. W. price
1	2	3	4	5	6	7	8	9
	A. W.	A. S.	(Col. 2—Col. 3)	(Col. 4 + Col. 2)	A. W.	A. S.	(Col. 6—Col. 7)	(Col. 8 + Col. 6)
				Percent				Percent
4.40 by 21.....	\$8.34	\$5.10	\$3.24	38.85	\$7.37	\$4.87	\$2.50	33.92
4.50 by 21.....	6.99	4.16	2.83	40.49	5.99	3.83	2.16	36.06
4.75 by 19.....	6.31	4.06	2.25	35.66	5.34	3.71	1.63	30.52
5.25 by 17.....	5.84	3.58	2.26	38.70	4.77	3.13	1.64	34.38
2.25 by 21.....	12.86	7.54	5.32	41.37	11.81	6.88	4.93	39.17
5.50 by 18.....	8.31	5.22	3.09	37.18	7.02	4.78	2.24	31.92
6.00 by 21.....	18.87	9.56	7.11	42.65	14.75	8.76	5.99	40.61
6.50 by 17.....	10.24	6.81	3.43	33.50	8.80	6.28	2.52	28.64

NOTE.—"A. W." signifies "All Weather" brand of Goodyear. "A. S." signifies "All State" brand of Sears, Roebuck & Co.

In the first column of the foregoing table, appears a description of the sizes of the tire casings considered, the same being the popular sizes hereinbefore described. In the second column, are the average prices received for Goodyear All Weather brand casings actually sold by Goodyear, to service station dealers. In the third column, appear the average prices received by Goodyear on All State tires actually sold to Sears, Roebuck & Co. In the fourth column, appear the differences between the average prices received on Goodyear All Weather brand casings, as set forth in column No. 2, and the average prices received on Sears, Roebuck & Co. All State brand casings, as set forth in column No. 3. In the fifth column, appear the ratios or percentages that the differences in the unit price, as disclosed in column No. 4, bear to the Goodyear All Weather brand price, as set forth in column No. 2. In column No. 6, appear the average net prices received by Goodyear for each respective size of tire after deductions have been made as hereinbefore described. In column No. 7, appears the net price received for each size of Sears, Roebuck & Co. All State brand casings after deductions have been made as hereinbefore described. In column No. 8, appear the differences between the net prices received, as indicated in column No. 6 on Goodyear All Weather brand casings, and the net prices received for Sears, Roebuck & Co. All State brand casings as indicated in column No. 7. In column No. 9, appear the ratios or percentages that the amount of the differences between the unit prices on a net sales basis, as set forth in column No. 7, are to the unit net sales prices received by Goodyear on its All Weather brand casings, as indicated in column No. 6.

The net sales figures, taken from respondent's books, which served as the basis for the foregoing Table I (p. 278), were attacked by respondent as inexact because they omitted certain sales made from the Los Angeles plant of the respondent; "were not representative"; and because they failed to give proper weight to certain items of cost and expense. It is determined, however, that the eight samples used are representative and the figures shown in the Commission's exhibits, which served as a basis for the foregoing table, are sufficiently comprehensive to make the exhibits informative upon the point of gross and net discrimination as practiced by respondent in its sales to Sears, Roebuck & Co. on the one hand and the independent retail dealers on the other. The Los Angeles volume does not constitute more than 10% of the total volume of sales of these sizes of tires. The eight sizes used are reasonably representative, being approximately 37% of the total volume of sales of all sizes of Goodyear's All Weather brand and 35% of the total volume of sales of all sizes of Sears, Roebuck & Co. All State brand.

The percentage figures themselves are even more convincing in showing the average discrimination from year to year than those in the margin sheets and are equally as important, as they reflect the percentage of discrimination on independent dealer prices compared with the Sears, Roebuck & Co. prices, after all discounts and allowances have been made.

It is, therefore, apparent from the foregoing table that the respondent in the sale of these popular sizes and leading brands of tire casings to Sears, Roebuck & Co. and independent service station dealers, has discriminated in price on the average over the period covered, from approximately 33% to approximately 42%, when comparison is made between invoice prices to Sears, Roebuck & Co. and independent dealers; and that after all allowances have been made for dealers' bonus, cash discounts, other special discounts, commissions, trade-in allowances and freight on sales (transportation), from the amount of dealer sales and the rebates allowed Sears, Roebuck & Co., as calculated, at the end of the year, from the amount of Sears, Roebuck & Co.'s sales, the net average discrimination still remaining varies from approximately 29% to approximately 40%, depending upon the size of tire casing being compared.

SEC. 15.—*Due allowance for differences in cost of selling.*

As hereinbefore indicated, the foregoing table, showing the difference in price at which respondent sold tire casings to Goodyear service station dealers and to Sears, Roebuck & Co., makes due allowance for differences in cost of transportation but does not make due

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allowances for differences in cost of selling or distribution, although some of the deductions from the selling price represent items which might be termed distribution expenses such as trade-in allowances, special discounts and quantity discounts.

The following table contains a comparison of the average net billing prices on four popular sizes in equal grades of tire casings during the entire period from 1927 to 1933 inclusive, also a comparison of the average factory costs, distribution and selling expenses and the net operating profit realized by the respondent, in the sale of these tire casings as roughly allocated on the books of the respondent as between Sears, Roebuck & Co. and service station dealer customers, during the same period of time on the same grades and sizes of tire casings, all as set forth in margin sheets prepared by respondent's accountants:

TABLE II.—*Margin sheet comparison of net billing prices, factory costs, and distribution expenses, Goodyear All Weather brand versus Sears, Roebuck & Co. All State brand*

## ALL WEATHER

	4.50 by 21	4.75 by 19	5.25 by 21	6.00 by 21
Net billing price.....	\$6.66	\$7.71	\$10.68	\$14.75
Factory cost.....	3.39	3.89	5.57	7.55
Distribution expense.....	2.29	2.53	3.38	4.91
Total cost.....	5.68	6.42	8.95	12.46
Net operating profit.....	.98	1.29	1.73	2.29

## ALL STATE

	4.50 by 21	4.75 by 19	5.25 by 21	6.00 by 21
Net billing price.....	\$4.04	\$4.60	\$6.54	\$9.11
Factory cost.....	3.51	4.01	5.76	8.06
Distribution expense.....	.28	.30	.37	.48
Total cost.....	3.79	4.31	6.13	8.54
Net operating profit.....	.25	.29	.41	.57

In the foregoing table, the net billing price items represent the prices at which respondent billed the respective sizes of tire casings to its service station dealers on the Goodyear All Weather brand and the prices at which respondent billed All State tire casings to Sears, Roebuck & Co.; the factory cost item represents the cost of said tire casings through the factory; the distribution expense item in the case of the Goodyear All Weather brand tire casing includes all distribution expenses, including advertising, selling expenses and administrative overhead expenses, also trade-in allowances, dealer

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bonuses, cash discounts and freight on sales, extra allowances and commissions, replacement losses and warehousing and shipping. As to the Sears, Roebuck & Co. All State brand, the only items included under the caption "Distribution Expenses" are warehousing and shipping, replacement losses and administrative overhead expense.

The following table, entitled "Table of Discrimination on Samples", contains a comparison of the selling prices to Sears, Roebuck & Co. and service station dealers on comparable tire casings as set forth in the foregoing table and also a comparison of the differences in distribution and selling expenses as well as transportation and finally the differences not accounted for by differences in distribution and selling expenses. Said table represents a comparison of the average of discrimination on the respective sizes of tire casings and the average distribution expenses for the same period of time.

TABLE III.—Table of discrimination on samples

Size	All Weather net billing price	All State net billing price	Differences in net billing price	Differences in distribution and selling expenses	Differences not accounted for by differ- ences in distribution expenses
4.50 by 21.....	\$6.66	\$4.04	\$2.62	\$2.01	\$0.61
4.75 by 19.....	7.71	4.60	3.11	2.23	.88
5.25 by 21.....	10.68	6.54	4.14	3.01	1.13
6.00 by 21.....	14.75	9.11	5.64	4.43	1.21

The exhibits (margin sheets) which served as the basis for the foregoing tabulations were prepared by the officials of the respondent and respondent's own accountants, and represented by respondent to the Commission as presenting a reasonably accurate comparative picture of the situation. They show the existence of discrimination on the respective sizes of tire casings included in those exhibits, after taking into consideration all of the various items which would be listed as items of selling expense from the books of the respondent corporation where sales were made pursuant to the provisions of the foregoing contracts between respondent and Sears, Roebuck & Co.

Respondent later objected to the use of its own margin sheets to show the amount of dollar and cent discrimination or percentages, it being urged that the samples shown on the margin sheets were too meager to be representative and the sizes used were not popular sizes and had no specially large sales; that respondent made 190 sizes and grades for Sears, Roebuck & Co. and about 500 sizes and

grades for Goodyear dealers. The sizes included in the margin sheets which served as a basis for the foregoing tables were 16.13% of the Goodyear brand of tires made by respondent and 12.33% of the tires made for Sears, Roebuck & Co.

Respondent further urged that the margin sheets were not accurate as to cost and expense; that the costs were estimated costs and the net billing prices were somewhat above the prices realized by respondent on the Sears, Roebuck & Co., business after adjustments had been made at the end of the year; that the prices by Goodyear to the dealer were not accurate in that they were net billing prices and failed to reflect cash discounts, bonuses and allowances of similar character made dealers in settlement of their accounts or at the end of the year.

These objections to the aforesaid margin sheets are for the most part valid if the figures in the foregoing Tables II and III were to be used to determine the *exact amount* of the discrimination on each size of tire. However, since the figures are not considered for that purpose but only to determine the *existence* of price discrimination on the four sizes, compared after due allowance has been made for selling and distribution expenses, the objections do not apply.

There is a more informative comparison of net sales price figures and differences in distribution expenses set forth in the following Table IV on page 283 herein, which is a continuation of Table I, page 278 *supra*, and contains not only a summary of discrimination in net sales prices on eight popular sizes and grades of tire casings sold to service-station dealers and Sears, Roebuck & Co., but also a summary of the differences in distribution expenses, including advertising and selling, and the amount of the average net discrimination per tire casing on eight popular sizes, remaining after due allowance has been made for said differences in distribution costs, together with the ratio that said net discrimination per tire casing bears to the average net dealers sales price on each size.

The item "Difference in Expenses 'Dealers minus Sears'", in column 6 in the following table, is a computation of the differences in distribution expenses incurred by Goodyear on the two classes of business, as shown by a profit and loss statement submitted by the respondent, which does not allocate to Sears, Roebuck & Co. any part of Goodyear's advertising and selling expenses on Goodyear brands of tires but which does charge Sears, Roebuck & Co. with its proportionate share on a cost-of-sales basis of administrative and other overhead expenses, in accordance with the Commission's finding in respect thereto.

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TABLE IV.—Table showing net discrimination on eight sizes of tire casings during the period from April 1, 1926, to December 31, 1933, resulting from deduction of the amount of difference between the selling expense from the difference between the net sales figures

Tire	Unit net sale basis per Commission's exhibits 698 to 705		Difference in unit price, "net sale"	Ratio of difference in price to A. W. price	Difference in expenses "Dealers" minus "Sears"	Net discrimination	Percent of "net sales price" of All Weather
	A. W.	A. S.	Col. 2—col. 3	Col. 4—col. 2		Col. 4—col. 6	Percent col. 7 of col. 2
1	2	3	4	5	6	7	8
No. 1—	\$7.37	\$4.87	\$2.50	<i>Percent</i> 33.92	\$1.30	\$1.20	16.28
No. 2—	5.99	3.83	2.16	36.06	1.06	1.10	18.36
No. 3—	5.34	3.71	1.63	30.52	.94	.69	12.92
No. 4—	4.77	3.13	1.64	34.38	.84	.80	16.77
No. 5—	11.31	6.88	4.43	39.17	2.01	2.42	21.40
No. 6—	7.02	4.78	2.24	31.91	1.23	1.01	14.39
No. 7—	14.75	8.76	5.99	40.62	2.62	3.37	22.85
No. 8—	8.80	6.28	2.52	29.20	1.54	.98	11.14

NOTE.—No. 1—4.40 by 21 size.  
 No. 2—4.50 by 21 size.  
 No. 3—4.75 by 19 size.  
 No. 4—5.25 by 17 size.  
 No. 5—5.25 by 21 size.  
 No. 6—5.50 by 18 size.  
 No. 7—6.00 by 21 size.  
 No. 8—6.50 by 17 size.

The items in column 7 entitled "Net Discrimination", represent the difference between the amount of sales price discrimination found in column 4 and the items just described in column 6 and thus represent the amount of net discrimination on each size of tire casing remaining after due allowance has been made for differences in the cost of selling and transportation. In column 8, appear the percentages that the amounts set forth in column 7, for each size of tire casing, are of the net sales figure in column 2 (Goodyear All Weather brand net sales price) and represent the net percentage of discrimination on each size of tire casing, after due allowance has been made for differences in the cost of selling and transportation. The percentages in this column, while not absolutely accurate, fairly approximate the percentage of discrimination in each instance as the figures in the table are based upon actual transactions and are the result of computation made from figures set forth in respondent's books of account and as set forth in exhibits in the record.

Respondent contended the apparent price differences were justified by differences in costs of selling and offered in evidence profit and loss statements which were to take the place of the aforesaid margin sheets and were to serve as a basis for a comparison between the two classes of business to determine the aggregate amount of discrimination in price. Counsel for respondent stated with respect thereto:

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One profit and loss statement in respect of the renewal of Good-year brand business. Another profit and loss statement will be offered covering Goodyear's activities in connection with Sears Roebuck.

Such profit and loss statements will in effect be a universal margin sheet reflecting the weighted averages and giving effect to all items of expense of exact results of the two classes of business.

\* \* \* \* \*

It is our contention that the profit and loss statements which we propose to introduce in evidence will serve as universal margin sheets covering all of the tires, and in addition covering the appropriate weight of the averages and the appropriate adjustment to meet expenses which could not be shown in the so-called margin sheets.

Upon the basis of respondent's contention that comparative profit and loss statements would best serve as universal margin sheets to show the net aggregate dollar discrimination over the period, it is necessary, in order to determine from a comparison of profit and loss statements whether price discrimination still exists after making due allowances for differences in cost of selling, to consider the factors or elements that go to make up prices at which respondent sells tires to Sears, Roebuck & Co. These elements are costs and profit. As hereinbefore set forth (p. 274), when a comparison is made between the net sales prices of the total volume of tires sold to Sears, Roebuck & Co. and a corresponding volume sold to Goodyear service station dealers, the aggregate amount of net discrimination amounts to \$41,216,788.48. Inasmuch as Goodyear has charged Sears, Roebuck & Co. with the actual factory costs (which were the same or higher than manufacturing costs of the comparable service station dealer tire), the price discrimination lies in the allocation of distributing costs and the amount of net profit received from sales to Sears, Roebuck & Co. Under the contracts between respondent and Sears, Roebuck & Co. the latter is not charged with any advertising or selling expenses or interest on borrowed money. A profit and loss statement as prepared by respondent carrying out the terms of these contracts and restricted to a comparison of Sears, Roebuck & Co.'s business and a corresponding volume of dealer business and restricted to expenses actually incurred in connection with the dealer business and not including expenses incurred in connection with respondent's company-owned stores and bus and taxi business, shows that Goodyear realized on its sale of tires to Sears, Roebuck & Co. during the entire period of time from April 1, 1926, through December 31, 1933, a total net profit of \$7,715,794.56 and from the sale of an equal volume of tires to service station dealers a net profit of



\$20,425,807.21, or a difference of \$12,710,012.65, which difference in net profits would be an aggregate net price discrimination not accounted for by differences in costs of transportation and selling, computed according to respondent's own calculations and based upon the method which it itself suggested.

Respondent's aforesaid profit and loss statements fail to show that the price discrimination in favor of Sears, Roebuck & Co. and against independent service station dealers, as hereinbefore set forth, was justified by differences in costs of transportation or selling.

SEC. 16.—*Secrecy as to prices and terms and secret rebate of \$1,250,000.*

Respondent concealed the prices and terms at which it was selling tires to Sears, Roebuck & Co. from its own sales organization and from the trade generally, and at no time did the sales officials or representatives of respondent offer or give to any dealer or group of dealers prices on Goodyear brands or tires which were comparable with prices at which respondent was selling tires of equal or comparable quality to Sears, Roebuck & Co.

The series of contracts hereinbefore described between respondent and Sears, Roebuck & Co., under which respondent manufactured and sold tires to Sears, Roebuck & Co., were carefully guarded in the files of respondent and only a few officials were permitted to inspect them.

The respondent also carefully concealed the existence of, as well as the terms and conditions set forth in, the consideration or bonus agreement hereinbefore described, which was executed by officials of the respondent at the same time as the third tire contract was executed, viz, October 5, 1931, not only from the trade, but also from investigators of the Federal Trade Commission at the time the Commission's preliminary investigation was made. The existence and terms of said consideration or bonus agreement were also concealed from the stockholders and sales officials of the respondent. No reference to the payment of this bonus is contained in any annual or semi-annual report to stockholders of respondent. Said contract was kept among respondent's confidential records and access to it was strictly limited to certain executive officers of the respondent corporation.

The assignment by respondent of 18,000 shares of its common treasury stock and the payment by respondent of \$800,000 in cash to Sears, Roebuck & Co. on October 5, 1931, at the time it entered into the said third sales contract, as hereinbefore described, without making similar assignments of stock or payment of cash to its regular customers, service station dealers, is a discrimination in price; also since said amount is not included or computed as a cost in the prices

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at which respondent sold tires to Sears, Roebuck & Co., a further discrimination in price is indicated. Said amount is not included in the foregoing margin sheet statements or tables based on net sales prices on eight sizes of tires which are based on respondent's records.

The assignment by respondent of 18,000 shares of its common treasury stock and the payment of \$800,000 in cash to Sears, Roebuck & Co. on October 5, 1931, as hereinbefore described, and the concealment of said assignment and said payment from the trade generally, from the employees of respondent, other than those officials who took part in the negotiations, and the representatives of the Federal Trade Commission, as hereinbefore set forth, constituted a secret rebate or discount from respondent's regular prices to Sears, Roebuck & Co. in the form of cash and valuable stock bonuses in the amount of at least \$1,250,000, which was equal to a reduction in profit to Goodyear of approximately 2% on the aggregate price of the tires sold to Sears, Roebuck & Co. However, the profit and loss statements in the record, upon which the finding of \$12,700,000 aggregate amount of price discrimination is based, contain an allocation of one-tenth of the amount of \$1,250,000, \$125,000 in each of the years 1932 and 1933, as a part of the costs of selling tires to Sears, Roebuck & Co. during those years.

Such allocation and distribution of this item, in a profit and loss statement prepared for the purpose of comparing results of business with Sears, Roebuck & Co. and dealer customers, is approved.

SEC. 17.—*Differences in quantity.*

Respondent claims that the said discrimination in price was on account of differences in the respective quantities sold to Sears, Roebuck & Co. on the one hand and to its several dealers on the other hand, within the proviso of Section 2 of said Clayton Act. The burden of proof is upon the respondent to bring itself within the quantity proviso. The evidence submitted on behalf of respondent tended to show, principally by the testimony of its President, Mr. Litchfield, that Sears, Roebuck & Co. was given the favorable contract and the discriminatory price on account of the volume of business involved, that

Any additional volume always tends to decrease the cost and to distribute the overhead.

Further, respondent's contention is that the testimony tended to show that the Sears, Roebuck & Co. volume was from 13 to 36 times as large as the business of its next largest dealer customer; that the controlling factor motivating the entry by respondent into its contractual relations with Sears, Roebuck & Co. pursuant to which the

tires were sold at said discriminatory prices, was the volume of business thereby to be obtained; that the prognostication by respondent's executives of the size of Sears, Roebuck & Co. purchases was borne out by the facts; that the volume thereby obtained had value to respondent in removing hazards and insuring stability by avoiding the fluctuation of profit inevitable in respondent's other business, and by casting on Sears, Roebuck & Co. the risks which respondent normally bore of raw material price declines and credit losses, which advantages may not be translated into precise terms of dollars and cents benefit; and that quantity discounts in the tire business have been customary since 1924.

Although there was some conflicting testimony by practical and technical economists as to the advantage of dealing with a large customer on the basis of hazard and other factors not translated into any dollar and cents advantage or disadvantage to the respondent, from all of the testimony it is determined, as a matter of fact, that the alleged hazards and other similar factors in this case were too speculative, intangible and remote to justify, or to be reasonably related to, the price discrimination.

It is determined that any and all quantity advantages, as well as other tangible and intangible comparative advantages, to respondent growing out of the Sears, Roebuck & Co. business are necessarily reflected in the comparison of a profit and loss statement showing the results of respondent's business, from a profit and loss standpoint, with Sears, Roebuck & Co., and the results of its business with its dealers. Such a comparison is set forth herein supra, and shows that a very substantial aggregate discrimination remained after making due allowances for differences in quantity sold Sears, Roebuck & Co. and respondent's other customers.

It is further determined that said discrimination was not a quantity discount as customarily understood in the trade; that the quantity discounts usual in the tire industry are relatively small and based upon certain definite and known volumes of purchases with a fixed saturation point at a normal maximum of 10% (abnormal maximum, 15%), and every dealer is in a position to know the price he would have to pay for the tires he purchased on a quantity basis; further that in the case of the usual quantity discount the difference in price bears some approximate and reasonable relation to the difference in quantity, which is not true of the difference in price and the difference in quantity in this case. Individual sales and shipments of tires by respondent to Sears, Roebuck & Co. were often of quantities similar to those shipped to dealers at the higher prices and frequently consisted of only four or five tires; also the quantities of

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tires sold to Sears, Roebuck & Co. varied from month to month and from year to year without any variation in price due to changes in quantity. This price discrimination was not a quantity discount as construed by respondent in handling its dealer business.

In some cases respondent denied to its dealers that it made and sold tires to Sears, Roebuck & Co. at all, and in other cases, after complaint and inquiry by the dealers, it denied to them that Sears, Roebuck & Co. had any more favorable terms than the dealers themselves could obtain and were obtaining. The respondent's dealers asked respondent for means to combat intensive Sears, Roebuck & Co. competition and respondent did not tell the dealers that it was making Sears, Roebuck & Co. a favorable price on account of quantity but told them that Sears, Roebuck & Co.'s competitive advantage was due to Sears, Roebuck & Co.'s economical methods of distribution, and that if the dealers were willing to do business at a like narrow margin their principal difficulty would be solved. In truth and in fact Sears, Roebuck & Co. had a gross margin of 40% to 60% while the dealer in meeting Sears, Roebuck & Co. competition obtained a much less gross margin.

The testimony of the expert economists pro and con has been weighed and it is determined that the aforesaid price discrimination was not in accordance with the ordinary and usual principles recognized in the merchandising field, and that so-called quantity discounts not justified on approximate savings are in that field ordinarily considered as a form of price cutting, and that a comparison of the price advantage given to Sears, Roebuck & Co. with the price advantage given Goodyear's next largest (dealer) customers shows a resulting differential too large to be classified as a quantity discount judged by the standards of ordinary and usual principles in the field of merchandising, and in fact it amounts to an unfair preferential advantage.

It is further determined that the respondent's present contention that said discrimination is justified by the quantity of Sears, Roebuck & Co. purchases is discredited by the fact that the prices at which respondent sold tires to Sears, Roebuck & Co. were treated with great secrecy, while the prices to the respondent's dealers were published and disseminated throughout the trade; that the bonus contract of October 5, 1931, providing for the transfer of \$800,000 in cash and 18,000 shares of stock to Sears, Roebuck & Co. was entered into without the knowledge or consent of the Goodyear stockholders, to whom the officers of the company reported a long-term contract with Sears, Roebuck & Co., saying nothing about the "bonus contract"; that respondent's branch managers, salesmen and

dealers were denied all information concerning the price at which respondent sold Sears, Roebuck & Co.; and that respondent's dealers never knew the Sears, Roebuck & Co. price, and never had an opportunity to buy at that price, although in one instance some tire dealers leagued together and attempted to do so; and that the series of contracts between respondent and Sears, Roebuck & Co. under which respondent manufactured and sold tires to Sears, Roebuck & Co. were carefully guarded in the files of respondent and only a few certain officials having business with them were allowed to inspect them; and that respondent led its dealers to believe that the quality of the tires sold to Sears, Roebuck & Co. was inferior to tires of comparable size, grade and quality sold to dealers, when such was not the fact.

Respondent made no showing by its proof as to the comparative quantities sold under single invoices from day to day or the exact comparative quantities shipped in any one shipment, nor was any testimony adduced by it showing comparative advantage or disadvantage in dollars and cents to respondent of shipping and invoicing in one quantity rather than in another.

With respect to the alleged absorption of Goodyear overhead, it is determined that the proper accounting method is to allocate overhead expenses impartially to all tire units passing through the factory; that the much larger volume of business obtained from Goodyear independent dealers as a group is just as important to the respondent as the volume from Sears, Roebuck & Co. To arbitrarily attribute more importance to one than another customer's contribution to total volume and consequent per unit reduction in overhead is shown by the evidence to constitute one means of creating the unfair preferential advantage given by Goodyear to Sears, Roebuck & Co. As a matter of fact, in the years 1931 and 1932 respondent actually charged Sears, Roebuck & Co. as an additional cost in the manufacture of tires, for losses sustained during certain months because Sears, Roebuck & Co. took proportionately more tires during the high production months when manufacturing costs were high.

Sears, Roebuck & Co. ordered tires in anticipation of sharp rises and declines in production through the entire time so as to take advantage of periods of low cost of production in peak months, usually placing most orders in the summer months when respondent was at the highest point of production on its Goodyear brands, and refrained from ordering tires during the months of November and December, the months of lowest production of Goodyear brands, thus requiring increased capacity in the plants to take care of the peak production for Sears, Roebuck & Co. and the sustaining of losses in manufactur-

ing costs during the months of November and December, the slack months of the year when Goodyear needed increased production to keep down its overhead costs.

Respondent has failed to satisfy its burden of proof to bring it within the excepting proviso as to quantity. The substantial factual evidence that the discriminatory price to Sears, Roebuck & Co. was not on account of quantity far outweighs the statement of Mr. Litchfield that it was on account of quantity, and the testimony of the economists and accountants called by respondent who testified as to the value resulting from the quantity sales in terms of elimination of so-called hazards and the theoretical absorption of overhead. There is not a sufficient factual foundation in the record to bring respondent within the excepting proviso as to quantity. The discrimination found between Sears, Roebuck & Co. on the one hand, and independent dealers on the other, in the sale of its pneumatic tires and tubes by respondent to these respective classes of distributors was not on account of the differences in quantities of the commodity sold.

Savings or economies to the respondent on account of selling large quantities to Sears, Roebuck & Co., as compared to small quantities sold to individual independent tire dealers are allowed and accounted for in the Findings under Section Fifteen entitled "Due Allowances for Differences in Cost of Selling".

SEC. 18.—*Differences on account of quality.*

It has been conceded by the respondent, for the purposes of this case, that corresponding grades of Goodyear and Sears, Roebuck & Co.'s tires, such as the Goodyear "All Weather" brand and the "Companion" and Sears, Roebuck and Co.'s "All State" brand and the "Pathfinder", respectively, may be considered as comparable in quality.

The tires sold by respondent to Sears, Roebuck & Co. on the one hand and to its service station dealers on the other hand were, and are, in fact comparable commodities, grade for grade, and size for size, and that said discrimination set forth herein was not made on account of differences in the grade or quality of the tires sold to Sears, Roebuck & Co.

SEC. 19.—*Discrimination not made in good faith to meet competition.*

At the time and before the first tire contract was entered into between respondent and Sears, Roebuck & Co., March 8, 1926, there was no competition with respect to Sears, Roebuck & Co.'s requirements for respondent to meet. The officials of Sears, Roebuck & Co. had neither solicited nor received bids for their requirements of tires

from any major manufacturer other than respondent. At that time and for some time prior thereto, Sears, Roebuck & Co. had been purchasing tires from a number of small manufacturers and had a contract with the Murray Tire & Rubber Co. of Trenton, N. J., which it was necessary for Sears, Roebuck & Co. to cancel during the year 1926 in order to comply with the terms of its first contract with the respondent.

Officials of Sears, Roebuck & Co. were dissatisfied with the quality of tires that they had been buying and, because of the high quality of Goodyear tires and the financial responsibility of respondent, they approached the sales officials of Goodyear and asked for prices on a tire of the highest quality. The reason that prompted Sears, Roebuck & Co. to seek to purchase tires from respondent, and not approach other major tire manufacturers before doing so, was that from their previous experience with respondent they were satisfied that respondent had the facilities to make tires of satisfactory and uniform quality at a reasonable cost, and also that the financial standing of respondent was such that it could carry out the contract for Sears, Roebuck & Co.'s requirements of tires.

When negotiations were entered into with respect to the renewal of this first tire contract in May, 1928, the officials of both respondent and Sears, Roebuck & Co. were satisfied with the results of the first tire contract, and it was decided to make the second one for five years instead of terminating it in three years. Sears, Roebuck & Co. agreed to allow respondent an extra  $\frac{1}{2}\%$  of profit in case rubber went below 25¢ per pound. Other minor changes were made in the terms of the second contract but there was no more genuine competition with respect to the making of the second tire contract than there was with respect to the first. Sears, Roebuck & Co. was satisfied with the quality of the tires it had been getting from respondent and was also satisfied with the margin of profit it was able to get from the sale of the tires. The second tire contract was negotiated by General R. E. Wood, President of Sears, Roebuck & Co., and, before signing it, he insisted upon an assurance that respondent would establish a factory in the southeastern part of the country to take care of Sears, Roebuck & Co.'s tire requirements in that area, and also that respondent would allow Sears, Roebuck & Co. to purchase a limited number of tires (200,000) from a small factory located in Iowa to take care of Sears, Roebuck & Co.'s requirements in that area. There was no intention on the part of Sears, Roebuck & Co.'s officials to consider the Lake Shore Tire & Rubber Co., the small Iowa manufacturer, to replace respondent as to supplier of tires to Sears, Roebuck & Co. There was some vague mention by General Wood to

Mr. Litchfield, the president of respondent, of a group of small manufacturers that might be developed into an adequate source of supply, but no definite steps had been taken by Sears, Roebuck & Co. in this direction, and Sears, Roebuck & Co.'s experience with minor sources of supply was well known to the President of the respondent.

General Wood, President of Sears, Roebuck & Co., and formerly associated with Montgomery Ward & Co., negotiated with the President of respondent for the third, or current, tire contract, which was signed October 5, 1931. During these negotiations, although Sears, Roebuck & Co.'s sale of tires purchased from respondent had been profitable to Sears, Roebuck & Co., General Wood demanded a bonus of fifty thousand shares of respondent's stock as a consideration for signing the new contract without opening it to competition. He had announced, about July 1931, that otherwise he would give notice of termination of the second contract so that it would expire December 31, 1932. At that time General Wood told Mr. Litchfield, President of the respondent, that he "was satisfied" that he could do better than Sears, Roebuck & Co. was doing under the said contract; that better terms might be secured from some of the large companies, or he might get together several small companies as sources of supply.

The basis for General Wood's statement was a conversation that he had with the President of the United States Rubber Company some time in 1930, long prior to the time negotiations were being conducted with respect to the third tire contract. At the time of the negotiations between General Wood and Mr. Litchfield, in the summer of 1931, leading up to the execution of the said third tire contract, it was common knowledge in the tire industry that the United States Rubber Company had a contract with the Montgomery Ward Company to furnish its entire requirements of tires, which had been executed in January of 1931, and was also furnishing half of the requirements of the Atlas Tire & Rubber Co. since late in 1930.

Neither the Firestone Company nor the Goodrich Company, the other two major manufacturers, had solicited or offered bids to Sears, Roebuck & Co. for its tire requirements. In fact no actual tenders or bids were received by Sears, Roebuck & Co. from any reliable source and no names of prospective or available sources were submitted to Mr. Litchfield by General Wood. Mr. Litchfield knew of a rumor that the General Tire & Rubber Co. had offered to buy the Kelly Springfield plant and operate it for Sears, Roebuck & Co., but he had no facts to support the rumor. The President of the General Tire & Rubber Co. testified that he had talked with General Wood but had made it very plain that he could not



produce a low cost tire, and had informed General Wood that the price of tires would be higher than he understood they were then paying respondent.

There is no evidence that any competitor, able to meet the requirements of Sears, Roebuck & Co. as to quantity, quality of tires, and substantial financial responsibility, had ever solicited Sears, Roebuck & Co.'s tire business by offering Sears, Roebuck & Co. tires at prices which were as low as the prices Sears, Roebuck & Co. was then paying respondent for tires; or that officials of Sears, Roebuck & Co. had made known to the officials of the respondent the existence and nature of any competing offers from such competitors; or that the price discriminations then being granted by respondent to Sears, Roebuck & Co. were granted pursuant to any knowledge thus received, and were no more than necessary to meet the threatened competition. Specifically, no competitor ever offered Sears, Roebuck & Co. a cash or stock bonus of more than one million dollars in value for the privilege of selling tires to Sears, Roebuck & Co. on a cost plus 6% profit basis. The secret payment of \$1,250,000 in cash and Goodyear stock to Sears, Roebuck & Co. by respondent on October 5, 1931, was for the purpose, and had the effect of, preventing competition on the Sears, Roebuck & Co.'s tire contract for at least eleven years.

It is quite clear that, when once signed, each of the said tire contracts gave respondent a monopoly on the Sears, Roebuck & Co.'s requirements of tires and all competition was rigidly shut out during the respective periods covered by the said contracts; and that under the contracts themselves there was and could have been no competition for Sears, Roebuck & Co.'s business between respondent and other manufacturers in the actual sale of tires at any time since the execution of the first tire contract in 1926. All Sears, Roebuck & Co.'s purchases of tires from the Lake Shore Co., during 1929 and subsequent years, were with the consent of respondent. This permission is now withdrawn.

Said discrimination in price set forth herein was not made in good faith to meet competition.

*SEC. 20.—Effect on competition between Sears, Roebuck & Co., and independent tire dealers.*

Prior to May, 1926, the independent tire dealers had not found Sears, Roebuck & Co. a serious competitive factor in the retail tire field and for a short time thereafter they felt no great interest in the developments which followed the making of the first tire contract between respondent and Sears, Roebuck & Co. The independent deal-

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ers, not knowing the price at which respondent was selling tires to Sears, Roebuck & Co., nor the actual quality of the tires, had little to guide them at first in evaluating the effect of this new competitive factor in the retail tire field. Montgomery Ward & Co., principal competitor of Sears, Roebuck & Co., had been more of a factor, although it had not been a menace to any acute degree. Other mass distributors were responsible for some competition, but the effect was not serious upon the independent retail tire dealers. With the exception of the metropolitan area around New York City, the great bulk of independent tire dealers, prior to 1926, had been able to sell tires at the suggested consumers' sales prices of respondent and other leading manufacturers. Most of the independent dealers had margins of from 20% to 25% over net billing prices and found these margins sufficient to enable them to do business on a satisfactory basis. Prices rose and fell gradually. They were usually able to adjust themselves to the declines in the market prices of tires.

Prior to 1926 it had been customary in the retail tire industry for the independent dealer to be able to dispose of the used tires received in trade-in transactions at a profit to himself, or at least at a figure which did not involve any loss in the sale of a new tire, upon which the trade-in was made. Trade-ins became more numerous as types of tires changed, such as the change from the clincher type to the balloon type, but in the bulk of these trade-ins, the value of the old tire taken in was always considered in making the trade-in allowance. This allowance was usually at the value of the old tire or less.

Prior to 1926 it had been customary for the independent dealers, from time to time as the occasion demanded, to give away free merchandise such as free tubes, but it was not a general practice in the industry.

Prior to 1926 there were so-called "gyp" dealers in the retail tire business selling tires usually of unknown quality, manufactured by the smaller independent tire manufacturers, and their activities in the metropolitan area around New York City had made it difficult for dealers in that area to prosper in the tire business, but they were not nearly so important a factor in the rest of the tire distribution territory. These dealers were without great financial responsibility, and their bargains were, for that reason, not attractive to the average customer.

Sears, Roebuck & Co. at the time it made its first tire contract with respondent, because of the low prices at which it bought its tires, adopted a policy of a major effort toward the expansion of its tire business. As hereinbefore stated, during the year 1925, Sears, Roe-

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buck & Co. sold about 700,000 tires in the United States, as against about 2,000,000 tires sold by Montgomery Ward, its principal mail-order rival. As part of its program of tire sales expansion, Sears, Roebuck & Co. adopted a plan of very extensive consumer advertising of its goods, among other things featuring a naming contest to determine the name of the new tire being purchased from respondent (the name "All State" was eventually selected as a result of this contest). Sears, Roebuck & Co., in its advertising campaign, made its tires a leading feature in advertisements in millions of catalogs, national magazines and the leading daily newspapers throughout the United States, featuring the high quality of its new tire and the low price which it maintained systematically at 25% below the lowest price of standard first line tires then on the market.

In addition to these features of its program, Sears, Roebuck & Co. also began, in 1926, to establish retail stores in the principal cities of the United States through which it sold its general merchandise, but always featuring its new brand of tires in its advertising matter. Retail stores handling tires and other automobile accessories exclusively, or hardware and other similar products, were established at an accelerated pace during 1928 and 1929, and by 1933 Sears, Roebuck & Co. had established more than four hundred stores in the principal cities of the several States of the United States, all of which aggressively advertised and sold tires at the opening of the stores and regularly thereafter. In many of these advertisements featuring tires, the source of supply was described as "the leading tire manufacturer", or "the world's foremost tire manufacturer." The high quality and low prices were emphasized. Details of construction were featured paralleling to a considerable extent the construction features advertised by respondent in its general advertising campaign. In many advertisements representations were made that advantageous contracts and mass purchases had put Sears, Roebuck & Co. in a position to make a price about 25% below the price at which tires of comparable quality could be secured from any other source.

Among other representations featured by Sears, Roebuck & Co. in its advertising matter, were extraordinary guarantees backed by the prestige and high standing of Sears, Roebuck & Co. as a merchandiser. In 1926 and 1927, for instance, Sears, Roebuck & Co. was the first to advertise a mileage guarantee of 12,000 miles for its first line, Sears, Roebuck & Co.'s All State brand, and 8,000 miles for its second line tire, Dearborn. Sears, Roebuck & Co.'s All State brand of tires was later guaranteed for 25,000 miles on the heavy

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duty quality. These guarantees were followed by "the strongest tire guarantee ever written", a service guarantee against defects, unlimited as to time or mileage, which guarantee was in force in October, 1931.

As a result of this aggressive advertising due to the low price of tires purchased from respondent, and also the experience on the part of the tire users that Sears, Roebuck & Co. was selling a tire of high quality at a price 25% below prices of standard products, the volume of tire sales by Sears, Roebuck & Co. increased very rapidly. During 1926 Sears, Roebuck & Co.'s unit sales passed the million mark and thereafter grew at a constantly accelerated rate until 1929 when it reached the peak figure of approximately 4,500,000 tires.

By 1927 the competition arising from the combination of high quality and low price, and the aggressive advertising and sales campaign which Sears, Roebuck & Co. was enabled to conduct because of the low buying prices from respondent, began to be felt in the retail tire field. This was especially true in places where Sears, Roebuck & Co. had established retail stores, although Sears, Roebuck & Co. had followed its custom of issuing its regular catalogs twice a year, in the Spring and Fall, and its mid-winter and summer fliers featuring its low prices. By 1928 and certainly in 1929, the independent retail tire dealers were feeling the full force of the Sears, Roebuck & Co. competition with the Goodyear-made tire of high quality combined with a price differential of approximately 25%, in some cases reaching as high as 35% on tires for popular size cars. The strength of the Sears, Roebuck & Co.'s competition is indicated by the statement in its advertising matter, in 1931, that in less than four years its All State brand of tire, its first line product, had risen in volume as compared with other nationally advertised tires, from sixteenth to first place.

Testimony was adduced on behalf of the Commission from 140 tire dealers showing the present and past competitive situation resulting from the Goodyear-Sears, Roebuck & Co. contracts over a territory of 24 States and the District of Columbia, generally, and in 59 cities, particularly. Of these dealer witnesses, 66 either were, or had been, engaged in the sale and distribution of Goodyear brand tires under dealers' franchises for the respondent. Many of them had discontinued handling the Goodyear line by reason of the fact that through the aforesaid contracts Goodyear had placed Sears, Roebuck & Co. in a position to furnish them with their most severe and injurious competition. These dealers represented approximately 42 different brands of tires, including the leading brands of Good-

year, General, Goodrich, United States, Firestone, and Fisk, and some brands which are no longer on the market.

Many independent dealers testified that Sears, Roebuck & Co. was their principal competitor in the retail tire market in their communities. Dealer witnesses, called by counsel for the Commission, attributed Sears, Roebuck & Co.'s ability to compete injuriously with them, to the discriminatory prices made by respondent to Sears, Roebuck & Co. Such dealers testified that soon after the contract had been made between Sears, Roebuck & Co. and respondent, that fact became known to the trade and somewhat later to a large proportion of the purchasing public; and that Sears, Roebuck & Co.'s aggressive advertising campaign featuring a first quality tire at low prices after the middle of 1928 had resulted in largely increased sales of Sears, Roebuck & Co.'s brand of tires in the towns where such advertising was done and had taken much business from retail dealers.

These dealer witnesses also testified that Sears, Roebuck & Co.'s brand of tires were sold at a price approximately 25% under the prices of other brands of competitive tires of comparable grade and quality. Such dealers testified that Sears, Roebuck & Co.'s prices to the consuming public were approximately the same as or below the prices charged by respondent to its service station dealers for tires of the same grade and quality. This the dealers characterized as an impossible competitive situation.

Many dealer witnesses, called by counsel for the Commission, testified that dealers attempted to meet the Sears, Roebuck & Co.'s competition by several expedients. They adopted diversification by adding other lines of merchandise.

Many such dealer witnesses testified that their dollar sales fell off; some dealers went into bankruptcy; many dealers were eliminated entirely.

Dealer witnesses called by counsel for the Commission testified generally that the effect of the depression, which helped to bring down the price of tires, was heightened materially by Sears, Roebuck & Co.'s competition which had demoralized the tire market before the force of the depression was felt. These dealer witnesses complained that where the Sears, Roebuck & Co.'s competition had not actually driven dealers out of business it had reduced their profits so that they had to diversify or go into other lines of business with which they were not familiar in order to survive, with the result that the former independent tire dealers could no longer depend upon the sale of tires for a living. In this statement, these dealer witnesses were supported by many of the respondent's dealer witnesses.

The activities of Sears, Roebuck & Co. which the Commission's dealer witnesses almost uniformly cited as being the principal factors in making it possible to meet Sears, Roebuck & Co.'s competition, were Sears, Roebuck & Co.'s advertising of trade-ins and free merchandise with a quality product; selling its first line tire at dealers' second line tire prices; and the persistent and radical differential in consumer price between the dealer and Sears, Roebuck & Co. caused by respondent's discrimination in price in favor of Sears, Roebuck & Co., and "pair" prices and price wars caused by Sears, Roebuck & Co.

In an effort to meet Sears, Roebuck & Co.'s competition upon the price and quality basis which Sears, Roebuck & Co. was offering, independent retail tire dealers resorted to trade-in allowances which, in some cases, amounted to a price cut of about 10% of the sales price of the tire. Independent dealers also, in some cases, as a sales inducement, offered free merchandise such as tubes at a nominal price in connection with the sale of tires.

Following the policy of keeping its price upon its tires substantially lower than the price offered by any competitor upon similar or comparable products, Sears, Roebuck & Co. met such trade-in allowances by still more liberal trade-in allowances, extensively advertised and nation-wide in scope; Sears, Roebuck & Co. also resorted to the practice of offering tires in pairs at prices substantially lower than the prices at which single tires were sold, and also the offering of free tubes with the purchase of tires. Thus the efforts of independent retail dealers to meet or more nearly approach Sears, Roebuck & Co.'s prices upon comparable quality tires led to still further reductions in Sears, Roebuck & Co.'s prices. Because of its advantageous supply contract and the low prices which it paid for its tires, Sears, Roebuck & Co. was able to conduct its sales of tires even with liberal trade-in allowances, free tubes and pair prices, at a substantial gross profit to itself sometimes as high as 60%, while independent retail dealers in most instances were unable to meet said prices and still have sufficient margin to make their tire business self sustaining.

The increased business thus acquired by Sears, Roebuck & Co. was taken from the independent tire dealer who had been selling tires manufactured by respondent and other tire manufacturers then in business. The potential tire market is limited and cannot be extended by any tire manufacturer or distributor. It depends:

1. Upon the number of motor vehicles from year to year which are equipped with pneumatic rubber tires;
2. Upon the wearing quality of the tires being sold;
3. Upon the volume of spare tires being sold with new cars; and
4. Upon general business conditions.

From September, 1929, until the present time, all these limitations have been operating. The number of car registrations has remained practically stationary, the quality of tires has improved, the persistent depression since 1929 has inclined consumers to be more conservative in their purchases. All these factors must be taken into consideration in evaluating the importance of the Sears, Roebuck & Co.'s competition in its effect upon retail tire dealers. This narrowing of the potential market naturally made the contest among manufacturers and distributors more strenuous for the remaining volume.

The remarkable increase in volume of sales by Sears, Roebuck & Co. from April 1926, to the end of the year 1929, and the going out of business of large numbers of independent dealers upon whom other manufacturers than respondent depended for the sale of their tires, caused said other manufacturers, beginning in the year 1928 and continuing through the succeeding years, to adopt means to meet the Sears, Roebuck & Co.'s competition. Several of the manufacturers including the Firestone Tire & Rubber Co., the nearest in size to respondent, brought out so-called second line tires priced at the same price as Sears, Roebuck & Co.'s first line tire, All State. In addition, Firestone established its own retail store outlets as fast as its independent dealers became crippled or impotent. Such line of action was open only to manufacturers who had extensive financial resources such as respondent and Firestone. Firestone actually spent between 25 and 30 million dollars in the establishment of company-owned stores and in their operation as retail sales agencies has sustained losses of some seven million dollars during the period from 1928 to 1933. Respondent's experience was quite similar. It likewise invested in a string of retail chain stores taking over in the process its larger independent retail dealers in the period between 1927 and 1933, and during that time established more than two hundred retail stores. Respondent suffered a loss of about \$9,500,000 in the operation of its retail stores.

Price wars for commercial business developed seriously after respondent and Firestone began to establish their own retail stores and independent retail dealers who became involved in these price wars had to be protected by the manufacturers. This protection usually came in the form of extended or increased quantity bonuses, although in many instances dealers were reimbursed by manufacturers for the losses sustained on the sales during price wars. The tires sold at cut prices were replaced at such price concessions as to keep the stock intact without financial loss to the dealer. Concessions of this sort can only be made by manufacturers who are strong financially. Some manufacturers required to make these concessions

in 1933 are now in financial difficulties and others have passed out of the picture entirely.

The price wars, which were started upon commercial business periodically by the large manufacturers operating their own retail stores, were the direct result of the demoralization which had come into the price field initially because of the price policy of Sears, Roebuck & Co. in maintaining a very substantial price differential between its sales and the sale by independent retail dealers of comparable commodities, and while said price wars were more or less temporary, lasting but a few days or few weeks at a time, they had very considerable effect upon the fortunes of independent tire dealers.

Sears, Roebuck & Co. with its price advantages in buying, due to the contractual arrangement it had with respondent, was an important initial factor, if not the chief factor, in initiating and perpetuating the price demoralization which characterized the competitive situation from the latter part of 1928 until the close of 1933, and it continued as such up to March, 1934, at the time the testimony was being taken in this case. Its persistent underselling and its initiation of the major chain store developments in the retail tire distribution field were the main tangible instruments which it employed. As a consequence of that competitive situation thus created, numbers of independent retail tire dealers in the several States of the United States were forced out of business. Small manufacturers who had depended on such dealers as channels of distribution for their product were also forced out of business. These two results are inextricably interwoven—each a repercussion from the other. The importance of its activities in evaluating the effect of its discriminatory contract with respondent upon independent retail tire dealer competition was even greater in the competitive force which it brought into the consumer tire market than in its direct effect upon prices. Not only did Sears, Roebuck & Co. initiate a situation which gave the independent dealer, the mail order house and the mail order chain stores to contend with, but it also brought in the company-owned store as an added competitive difficulty.

Beginning in the year 1930, additional private brand tires entered the market through other mass distributors. In January, 1931 (Montgomery Ward & Co., Sears, Roebuck & Co.'s principal mail order and chain store rival), entered into a cost plus contract with the United States Rubber Co. for its supply of tires. The United States Tire & Rubber Co. and the Goodrich Tire & Rubber Co., as a defensive measure, also began to sell tires to a subsidiary of the Standard Oil Co., the tires to be sold through Standard Oil Co. and other gasoline stations under the brand name, Atlas. A few experi-



mental sales had been made in a limited New England territory in 1929 through the Colonial Beacon Co., another subsidiary of the Standard Oil Co. In 1930 there was a further entry made into the New York and Pennsylvania territory, and in 1931 extensive distribution of the Atlas brand through the Standard Oil Co. filling stations, as well as independently owned filling stations, was begun and continued through 1933. The volume of this distribution increased rapidly from a comparatively negligible amount in 1929 to more than 1,600,000 tires in 1931, as the numerous small stations began to take on the distribution of these tires. The volume of Atlas sales declined somewhat in 1932 to about 1,200,000, while in 1933 it increased again to about 1,700,000 tires distributed through about 30,000 stations.

The Standard Oil Co. venture in the retail tire field brought in several other gasoline distributing companies. These oil companies functioned rather by using their chains of filling stations and their filling station connections in distributing several of the standard brands of tires made by leading manufacturers, some of these gasoline distributing companies handling respondent's tires as well as those of Goodrich and Firestone, which tires are sold at the same prices to the consumer as the independent dealers are able to obtain.

Oil company filling stations as a rule do not carry stocks of tires at all comparable with the stocks carried by independent retail tire dealers. The Standard Oil Co. distributing stations depend upon the company's warehouses to supply them from day to day. They may carry a very few of the tires in sizes and brands most generally called for at their stations as a piece of emergency equipment. Other gasoline filling station distributing units depend for their supplies from day to day upon the branch warehouse or the large dealers representing the company whose product they distribute. They carry comparatively meager stocks of tires in immediate demand for emergency equipment, or no stocks at all. While service such as the mounting of tires is given by these gasoline filling stations their leading business is the distribution of gasoline and automobile lubricating oils. Their merchandising of tires is distinctly a side issue and on the whole is of the "pick up" character. Naturally, because they are not dependent upon pneumatic rubber tires for continuing their business, they are able to do business upon a closer margin of profit than is possible for the continued existence of the independent retail tire dealer.

The Atlas tire, the Standard Oil Co. product, was priced about 10% below the price of standard first line tires and about 10% to 15% above Sears, Roebuck & Co.'s "All State", except in the year 1933. As a rule this differential was maintained. The entry into the

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field of gasoline distributing companies and the distribution of tires to their filling stations without doubt added materially to the difficulties of independent retail tire dealers.

The record does not contain satisfactory and definite evidence as to the actual number of independent retail tire dealers in business in 1933, as compared with those in business in 1926, but there was a substantial decline during that period.

The total annual sales of independent retail dealers during the period from 1926 to 1933, inclusive, and the percentages those sales were of the total industry renewal sales are set forth as follows:

*Independent dealer sales*

	<i>Amount</i>	<i>Percent of total</i>
1926-----	\$36,005,271	89.8
1927-----	41,986,298	89.1
1928-----	42,720,257	84.5
1929-----	34,274,676	74.1
1930-----	26,578,583	69.3
1931-----	25,121,122	66.3
1932-----	21,529,831	64.5
1933-----	21,963,509	63.8

Subsequent to the year 1929, the independent retail tire dealers who went out of business were replaced by approximately an equal number of "outlets", including particularly gasoline stations and small sub-dealers and auto supply chain stores. These, however, cannot be classified as independent retail tire dealers.

In March 1933, Sears, Roebuck & Co.'s prices on its "All State" brand of tires were only 10% below that of the leading manufacturers' first line tire prices, and Sears, Roebuck & Co., from March to September 1933, tried to follow the same trade-in allowances as the independent dealers, and it was principally due to these two facts as well as the increased activity of independent dealers and the increasing competition furnished by the Atlas tire, that the volume of Sears, Roebuck & Co.'s sales declined from 2,525,892 units in 1932 to 1,842,724 units in 1933. In November 1933, Sears, Roebuck & Co. began to take steps to recoup losses sustained in the volume of sales during the year and inaugurated its 25% trade-in allowance plan which it was enabled to put into full effect about January 1, 1934.

Montgomery Ward & Co., Sears, Roebuck & Co.'s principal competitor in the mail-order and chain store field, in the year 1926 sold approximately 1,700,000 units or 4.33% of the total industry renewal sales, which volume declined in 1927 to 1,550,000 units or 3.31% of the total industry renewal sales; while at the same time the total

volume of Sears, Roebuck & Co.'s sales had increased from 1,087,923 units or 2.77% of the total industry renewal sales in 1926 to 1,791,570 units or 3.8% of the total industry renewal sales in 1927. In 1928 Montgomery Ward & Co.'s volume of sales increased to 2,046,000 or 3.91% of the total industry renewal sales; while Sears, Roebuck & Co.'s volume of sales increased to 3,247,463 units or 6.2% of the total industry renewal sales. In 1929 Montgomery Ward & Co. increased its volume of sales to 2,756,000 units, which at that time was approximately 6% of the total industry renewal sales; whereas Sears, Roebuck & Co. increased its volume of sales to 4,379,667 units or 9.6% of the total industry renewal sales.

During the depression years Montgomery Ward & Co.'s volume of tire sales showed a steady decline. Its volume of sales in 1932 was 1,844,000 units or 5.5% of the total industry renewal sales, as compared with 2,525,892 units by Sears, Roebuck & Co., or 7.5% of the total industry renewal sales. In 1933 Montgomery Ward & Co.'s volume of sales amounted to 1,451,000 units or 4.36% of the total industry renewal sales, as against Sears, Roebuck & Co.'s volume of sales of 1,842,724 units, or 5.5% of the total industry renewal sales.

The discrimination in price by respondent in the sales of its pneumatic rubber tires to Sears, Roebuck & Co. on the one hand and in those to independent service station dealers on the other, has been and now is a major causative factor in bringing about a lessening of the number of strictly independent retail tire dealers in competition with one another, with Sears, Roebuck & Co., and with the respondent in the sale of such tires at retail through its own stores, and has lessened this type of competition. Prior to the time of the issuance of the Commission's complaint said discrimination had not lessened, but had rather increased the severity of the price competition in the sales of tires in the retail market, but had shifted and still tends to shift the ruling factor in such competition to Sears, Roebuck & Co. and to other mass distributors such as chain stores and mail order houses. Said discrimination has inaugurated a system of distribution for pneumatic rubber tires from which retail independent tire dealers are being excluded.

Therefore, the execution and carrying out of the contractual relationship between respondent and Sears, Roebuck & Co., hereinbefore described, resulting in the said price discrimination between Sears, Roebuck & Co. and Goodyear independent dealers, was and still is a substantial causative factor in the said competitive situation in the retail tire industry. Such a competitive condition was and is a normal expectation in such an industry where there was a substantial discrimination in price and it is a common experience when a new com-

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petitor begins to gain a position in the market, that those already in the field will adopt some means of overcoming this new competition. The new measures adopted by competitors described herein have had the effect of temporarily checking the growth of Sears, Roebuck & Co. in the industry; but competitive forces take a considerable period of time to work themselves out. Respondent and its mass distributor, Sears, Roebuck & Co., is engaged in a competitive battle with other manufacturers and distributors not so fortunately situated and from which the organization with the lowest costs and the best financial resources will survive. Respondent with its strong financial position, its rubber plantations, cotton factories, favorable rubber position, and its large dealer organization handling its regular Goodyear brands at a profit to itself, with its long term so-called cost plus contract with Sears, Roebuck & Co. with which it may remove small independent dealer competition, has an advantage over all its competitors in the competitive battle now being waged.

The record shows that small independent tire manufacturers which furnish competition to respondent and other large tire manufacturers rely upon independent retail outlets, and any injury to such independent outlets directly affects the distribution of tires in interstate commerce.

*Sec. 21.—Effect on Goodyear dealers.*

Beginning in 1913 or 1914, respondent definitely selected the retail dealer as its channel of retail tire distribution. It had decided that "public preference" for its tires was its most valuable asset, such public preference depending, from its standpoint, upon wide availability, geographically, by product, by classification; in other words, widely distributed availability to meet needs—leading to large volume of sales. For securing that availability geographically, leading to great volume, respondent developed its widely distributed retail dealer organizations. Its salesmen were instructed to secure Goodyear dealers in each town where ten cars or more were registered. It goes without saying that this meant thousands of necessarily small dealers widely distributed. It was against this class of dealers that respondent with its discriminatory price to Sears, Roebuck & Co. set up competition, first of the mail order variety, then of the chain store brand. Its bonus system which gave some relief to large dealers, helped these small dealers very little—in many cases not at all.

For instance, 61% of Goodyear dealers received a bonus in 1925, while 39% did not. In 1927 the respective figures were 57% for those who received a bonus and 43% for those who received none. In 1928 the bonus participants had dwindled to 54% of the entire

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number of contract dealers, leaving 46% to receive no bonus. For 1929 the figures were 52% for recipients and 48% for non-recipients. For 1930 the figures were 50-50. In 1931, 39% received a bonus, while 61% were without it. In 1933, 38% received a bonus, while 62% had none. Many of the recipients of bonuses indicated in the percentages just given received bonus benefits of very trifling sums. This is indicated by a tabulation of those who received no bonus, plus those who received bonuses of 3% or less in the Goodyear organization. In 1926 the recipients of no bonus or a bonus of not more than 3% were 96% of the total number of Goodyear dealers; in 1927, 92%; in 1928, 83%; in 1929, 82%; in 1930, 83%; in 1931, 89%; in 1932, 93%; in 1933, 79%.

Since the dealers receiving no bonus or receiving a bonus of but 3% or less were small dealers having a limited volume of annual sales, the percentage of respondent's sales volume in dollars and cents which received no bonus was comparatively small as compared with its total volume of sales to dealers, despite the fact that respondent's dealers in overwhelming numbers received no bonus. The percentages of no bonus sales to total sales to dealers by respondent during the period since May 1, 1926, were as follows:

1926.....	17%
1927.....	14%
1928.....	14%
1929.....	13%
1930.....	13%
1931.....	12%
1932.....	19%
1933.....	35%

The percentages of sales receiving no bonus or a bonus of 3% or less during the same period as compared with the total sales of respondent to dealers were as follows:

1926.....	50%
1927.....	47%
1928.....	32%
1929.....	30%
1930.....	29%
1931.....	31%
1932.....	40%
1933.....	53%

Prior to and including 1931 the bonus figures included bonuses paid to respondent's company-owned stores co-mingled with the dealer bonus. In 1932 and 1933 the percentages were for independent retail dealers only, the bonuses paid to company-owned stores of respondent for these years having been excluded. That will explain

the higher percentages in 1932 and 1933 as compared with the period from 1928 to 1931.

The great majority in numbers of respondent's retail independent dealers were subjected to the Sears, Roebuck & Co.'s price competition on the basis of their trade discounts plus anything that they might have had in the way of cash discounts and possible small bonus allowances.

With respect to price discrimination by respondent, as reflected in the consumer or retail prices made respectively by independent retail dealers handling Goodyear brands and by Sears, Roebuck & Co., the consumer prices recommended by the respondent to the retail dealers were the prices usually used by said dealers in selling to the public. The great weight of testimony is to the effect that the prices at which said independent dealers sold their tires to the public during the years 1926 and 1927 were approximately the dealer-consumer recommended prices, but that thereafter, due to the competition of Sears, Roebuck & Co., said dealers were unable to obtain said suggested retail prices from the consuming public.

Respondent's bonus policy as to key dealers, hereinbefore referred to, giving them purchase price concessions beyond the regular trade discounts of 10% later extended to 15% and still later to a maximum of 22½%, indicates the extent of the differential or trade discount which the independent retail tire dealer was finally obliged to meet. A major percentage of respondent's independent retail tire dealer customers did not have such generous concessions made to them to enable them to meet the Sears, Roebuck & Co. and other competition subsequent to 1926.

Respondent had a tire bearing the brand "Pathfinder" which it priced at approximately the Sears, Roebuck & Co.'s "All State" brand price, and in circulars and through its salesmen and branch managers and other selling employees and officers recommended that the dealers use this tire in competition with Sears, Roebuck & Co. and other mail order houses. This tire was distinctly inferior in quality to the Sears, Roebuck & Co.'s "All State" brand tire with which, at the suggestion of respondent, it was placed in competition, and with which it was urged as a competitive tire. The differential in price between the Goodyear "All Weather" brand tire, which was respondent's first line tire comparable with the Sears, Roebuck & Co.'s "All State" brand tire, and its "Pathfinder" tire, which it placed in competition with the Sears, Roebuck & Co.'s "All State" brand, amounted to approximately the dealer trade discount upon "Pathfinder" tires of 22½%.

The record does not contain specific figures with respect to the operating expenses of the average independent retail tire dealer, but it is estimated by respondent's assistant tire sales manager, who testified in the case and qualified as an expert, that the operating cost varied from 20% to 25% in 1926 and 1927; 22% in 1928; 23½% in 1929; 25% in 1930; 29% in 1931; 32% in 1932; and 30% in 1933. Estimates by dealer witnesses vary from 24% to 33%. Said respondent's assistant tire sales manager also testified that he estimated that the average retail tire dealer realized a net profit on sales of tires of 4% in 1928; 4% in 1929; 3% in 1930; 2% in 1931; 1% in 1932; and 2% in 1933.

The gross margin of profit which Sears, Roebuck & Co. enjoyed as a result of the said discriminatory prices it was getting from respondent, varied on the average each year from approximately 40% to 60%. The sales officials of Sears, Roebuck & Co., recognized the advantage Sears, Roebuck & Co. enjoyed in this large margin of profit and during the period of time prior to the year 1932, urged the branch or chain store managers to push the sale of tires. The following quotation taken from a letter written on August 5, 1931, by the tire sales manager of Sears, Roebuck & Co. to the branch store manager at Dallas, Tex., and in evidence as Commission's Exhibit 253, is illustrative:

The tremendous gross profit which is being made by this division under our present cost prices, which cost prices have been reduced 8% for the third quarter, is such that it should be very prominently brought to the attention of each of your Store managers, and in particular your Sales Promotion Manager.

(1) *Large gross profit.*

*Gross profit of All State, Super All State and Companion tires (weighted to basis of national sales)*

Cost of average tire and tube.....	\$5.30
Selling price of average tire and tube.....	\$8.97
Average gross profit on tires.....	39.71%
Average gross profit on tubes.....	47.43%
Average gross profit on tires and tubes combined.....	40.91%

(These figures include national freight. They are based on national sales by sizes. Your gross profit may be above or below these figures as you sell more or less larger and SUPER tires.)

And besides, these gross profits do not include the tire rebate which comes to your stores as a credit at the end of the year and amounts to approximately 5% of the cost of the merchandise. So actually this additional profit may be added to the above profit, because the anticipated rubber rebate this year should be about what it was last year.

How's that for profit?

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You, as a District Manager, cannot overlook the tremendously high gross profit being made by the Tire Division at the present time, and you certainly cannot overlook the other merchandising advantages which go along with this exceptionally high gross profit.

The differential between the price actually received by Sears, Roebuck & Co. for the tires it purchased from respondent and sold under the Sears, Roebuck & Co.'s "All State" brand and the price received by Goodyear dealers for the standard Goodyear "All Weather" brand tire of comparable quality was approximately 20% to 25% during the years 1926, 1927, 1928, and 1929. Subsequent to that date, and prior to March 1933, during which time Sears, Roebuck & Co. had adopted the trade-in as a means of maintaining its differential and also the pair price and the giving of free tubes in the sale of its product, the differential remained approximately the same. Between the month of March 1933 and late in September of that year, Sears, Roebuck & Co. sold to the public at a price differential below retail dealers amounting to about 10% and observed the trade-in allowances followed by the independent retail dealers. This coincided with Sears, Roebuck & Co.'s heavy loss of volume in its tire sales during that year due, in part, to competition of the independent retail dealer on prices more nearly approximating Sears, Roebuck & Co.'s prices than in previous years. Subsequent to September, in 1933, in sporadic instances, Sears, Roebuck & Co., as hereinbefore stated, to recoup their losses in volume, granted a trade-in allowance of 25%, and beginning on or about January 1, 1934, this trade-in allowance became universal and at times exceeded 35%, which had the effect of restoring the original spread of from 20% to 25% below the prices that were made by the independent retail dealers.

During the period of time Sears, Roebuck & Co. was granting trade-in allowances of 25%, it still had a gross of 35% remaining on its Sears, Roebuck & Co.'s "All State" brand of tires, and as stated by its divisional sales manager in a letter to district and group managers of the tire department, Sears, Roebuck & Co. was

in a position, in all markets, to always beat competition.

In this same letter, the district managers were urged to "cash in on this position." As a result of the increased activities of Sears, Roebuck & Co. in the early months of the year, 1934, pressure was brought to bear upon Sears, Roebuck & Co. by dealers, manufacturers, bankers, and others, not to sell tires at prices which would ruin the tire industry, and the National Recovery Administration found it necessary to declare an emergency and order a truce in the retail tire industry in March 1934, and on May 1, 1934, established a Code of Fair Competition for the Retail Rubber Tire and Battery



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Trade, and on August 22, 1934, established, under said Code, certain restrictive prices to stabilize the retail tire market.

The prices actually received by Sears, Roebuck & Co. on the one hand and by the independent retail tire dealer on the other for respondent's tires throw some light upon the effect upon the dealer of Sears, Roebuck & Co.'s competition, but they do not tell the whole story. There remains the problem of whether the dealer was able to maintain himself as an independent tire dealer upon the narrowed margins which he actually received in the way of trade discounts after meeting Sears, Roebuck & Co.'s systematically low prices on tires. Testimony on this point is conflicting, but not irreconcilably so. Goodyear dealer witnesses called by the Commission testified generally that the Sears, Roebuck & Co. competition had a very severe effect upon their business. Nine had gone out of business as a result of such competition. On the other hand, a substantial number of dealer witnesses called by respondent testified that Sears, Roebuck & Co.'s competition had not been more severe than that of retail dealers who were well financed and aggressive. In this connection, however, it was generally admitted by such witnesses that no other single competitor had been able to get as large a percentage of the retail tire business in the communities where Sears, Roebuck & Co. was located, in the same length of time.

Goodyear dealers called by counsel for the Commission testified to attempting to meet the Sears, Roebuck & Co. competition with the Goodyear brand, "Pathfinder", the second line tire, but they said that the Pathfinder tire, while priced competitively with the Sears, Roebuck & Co.'s "All State" brand was not of the same quality and did not have the same public acceptance or public preference as the Sears, Roebuck & Co.'s "All State" brand which was a first line tire. They testified that consumer purchasers could not be convinced of such equality and saw no reason why they should pay more for the Goodyear "All Weather" brand first line than they paid for the Sears, Roebuck & Co.'s "All State" brand first line tire. Furthermore, the Goodyear "Pathfinder" second line tire had a smaller profit for the dealers than first line tires, which might mean no profit at all on the sale. As a consequence, Goodyear dealers, as well as others who were confronted with entirely similar problems, testified that they lost customers to Sears, Roebuck & Co.

According to the testimony of such dealer witnesses, when appeals were made to the respondent's officials for some sort of protection or device by which they might meet Sears, Roebuck & Co.'s competition, respondent's representatives denied for a time that respondent was making the tire sold by Sears, Roebuck & Co. Later respondent's

representatives assured Goodyear dealers that the Sears, Roebuck & Co. competition would not interfere with them in any way; that their profits would not be interfered with; that the Pathfinder, the Goodyear brand second line tire, was the same or better tire than the Sears, Roebuck & Co.'s All State brand.

Goodyear dealers called by counsel for the Commission also stated that the respondent, in addition to recommending the Goodyear Pathfinder brand as a competitive tire, also recommended increased effort and additional investment, larger filling stations, and diversified merchandising and better service to customers, and in many instances the respondent shared advertising expenses with the dealers. Respondent, however, refused to give the dealers the same price on tires as it was giving to Sears, Roebuck & Co. and these dealers further testified that while they knew that Sears, Roebuck & Co. was selling a Goodyear-made tire of high quality, the exact price differential given Sears, Roebuck & Co. by respondent was kept secret.

As hereinbefore set forth, Goodyear dealers suffered with other dealers in loss of volume and profit and many were forced out of business, and where it was necessary to do so respondent replaced the fallen dealers with company-owned retail stores. Respondent also established many other such stores to maintain its volume and in doing so sustained losses of about \$9,500,000 during the period 1926 to 1933 in operation of its retail stores.

Dealer and other witnesses called by respondent give a somewhat different version of the situation. There is considerable testimony that Sears, Roebuck & Co. was not mainly or materially responsible for the price situation which followed the entrance of Sears, Roebuck & Co. into the retail tire field with the Goodyear-made tire. Respondent contended that Goodyear brand tires had shown larger percentage of total renewal sales in the retail market in 1933 than in 1926. Respondent had also increased its number of company-owned retail outlets from a negligible number in 1925 to 262 at the end of 1933. Since 1926 respondent has sold directly to consumers a substantial volume of its own brands of tires, the volume increasing each year until 1933. Subtracting the total volume of sales by respondent's company stores from the total Goodyear renewal sales, the volume of sales of Goodyear independent dealers in 1933 would be a little less than the volume of sales through the same channels in 1926.

Respondent takes the position that trade-in allowances by dealers competing with Sears, Roebuck & Co. had reduced the differential between Sears, Roebuck & Co. and dealer prices from 25% to about 15% between 1926 and April 1933, and after that date to about 10%; also, that Sears, Roebuck & Co. adhered to its retail store and mail

order list or published prices; and that prior to 1931 it had not used trade-in allowances. After that date respondent contends that dealer trade-in allowances became more frequent and of larger amount. Evidence also was submitted in support of the contention that Sears, Roebuck & Co.'s trade-in allowances had been made to meet this competitive situation. However, Mr. Nelson, Sears, Roebuck & Co.'s merchandise manager, testified that these trade-ins were for the purpose of keeping respondent's prices *below* the market prices of standard first line tires, rather than to *meet* these prices.

Many dealer witnesses called by respondent testified as to several factors which they contended gave them the ability to sell Goodyear brand tires at higher prices than those received for Sears, Roebuck & Co.'s tires offering competition. These reasons may be summarized as follows:

(1) Greater public acceptance or public preference of the Goodyear "All Weather" brand tire.

(2) Sears, Roebuck & Co.'s "All State" brand tire is as distinct from Goodyear brand tires as are the tires of other manufacturers.

(3) Respondent's "All Weather Non-skid Tread" brand was a feature valued above the tread features of Sears, Roebuck & Co.'s "All State" brand.

(4) Respondent sold original equipment to many popular automobile manufacturers and the fact that the cars already were equipped with respondent's "All Weather" brand tires predisposed its owner to use them in replacement for such car. It was stipulated by counsel that respondent's original equipment applied to the Chrysler, Plymouth, Nash, Ford, Cadillac, and LaSalle cars at certain times. Sears, Roebuck & Co.'s "All State" brand is not used as original equipment on any new automobiles.

(5) National advertising by respondent, which had cost it about \$4,500,000 a year and something like \$72,000,000 during its life as a tire manufacturer, was pointed to as giving and maintaining respondent's public acceptance or public preference and its extensive good will.

(6) Practice among automobile manufacturers had changed about 1929 as to their supplying the customer with spare tires at the time that the new car was sold. Prior to that time the tires had been sold to customers separately by automobile local dealers and these dealers had bought their supplies of tires for this purpose from local tire dealers handling the brand of tires used as original equipment. It is not clear whether that custom became universal, although it became very general. Respondent's witnesses estimate the spare tire as about 5% of the renewal market. There is no other estimate upon

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this issue. Respondent's dealer witnesses in considerable numbers testified to this curtailing of their demand for replacement tires as a substantial factor in a reduction of their tire sales.

Without doubt the dealer difficulties in competition were emphasized and added to by several factors other than the injection of Sears, Roebuck & Co.'s consumer prices, which were always below the market prices for comparable standard goods, although the precise extent of the differential at any one time was never certain in advance. Among these factors was the falling demand for pneumatic rubber tires due to some extent to a halt in the increase of automotive vehicles in use in the United States. Another factor in this falling demand was the improvement of the wearing qualities of pneumatic tires up to and including 1930.

The weight of the testimony shows that price and quality are the two factors which control in the capture of a competitive market by a competing brand of goods, and Sears, Roebuck & Co. had both, and supplied both to the fullest extent.

The great mass of tire purchasers, as well as other shoppers, are price-minded, and it was to this mass of purchasers that the Sears, Roebuck & Co.'s price and quality appeal was effectively made. The great majority of respondent's dealers, as well as dealers of other standard manufacturers, found their principal market to be this class of customers.

The conflict at first apparent between the testimony of the Commission's dealer witnesses and the respondent's dealer witnesses in this proceeding is not irreconcilable, because of the considerations hereinabove pointed out as to the part played by public preference and good will carried with the brand of tires such as respondent's and the conservative psychology of a minority of purchasers. It is entirely possible that the dealers called by respondent might have been able to hold a considerable portion of their trade against the price and quality competition of Sears, Roebuck & Co. A majority of the dealers so testifying were comparatively strong dealers, who in fact, received bonus concessions and other extreme quantity discounts, in addition to their trade discount. With large numbers of retail dealers and small manufacturers going out of business on account of the severity of the Sears, Roebuck & Co. competition, the strong dealers among respondent's witnesses had an opportunity to capture some portion of the trade which had theretofore been served by such dealers and had theretofore been supplied by competing manufacturers. Such testimony in no way conflicts with the testimony of smaller and less resourceful independent retail dealers, who were not securing any

sales bonus at all and were obliged, with their mounting costs of doing business, to secure prices from manufacturers which would permit them to apply practically their entire trade discount to try to meet those costs and the competitive buying advantage of Sears, Roebuck & Co. Moreover, such a competitive situation could not be met by thousands of dealers receiving bonus allowances of 3% or less.

The retail tire stores operated by respondent enjoyed the same bonus and quantity discount advantages as the most favored service station dealer. Except in commercial business, which was rather important from the standpoint of volume and profits, the said company-owned retail stores did not follow the Sears, Roebuck & Co. policy of underselling. In that respect, it was not such severe competition to the average retail dealer as was that of Sears, Roebuck & Co.

Therefore, as a result of the unjust discriminatory advantage given Sears, Roebuck & Co. by Goodyear, Sears, Roebuck & Co. has a much larger gross margin for profit upon which to operate in the sale of tires than the ordinary Goodyear service station dealers and sub-dealers enjoy, and this price discrimination has been and is a direct and substantial causative factor in the competitive situation in the retail tire industry hereinbefore described. Only the Goodyear service station dealers in a strong financial position and those who receive the larger "key dealer" discounts and bonuses have been and are able to successfully withstand the kind of competition Sears, Roebuck & Co. was able to give them by reason of the aforesaid discriminatory buying advantage resulting from this price discrimination. The number of independent Goodyear service station tire dealers is decreasing each year and said dealers are being replaced by subdealers and Goodyear-owned retail tire stores, chain stores of mass distributors and gasoline stations. It is clear that such price discrimination places in Sears, Roebuck & Co.'s hands the power to continue, abate, or resume such destructive control of the tire market at will, subject only to its own discretion.

SEC. 22.—*Effect of the discrimination on competing manufacturers and wholesale distributors of tires.*

As hereinbefore set out, the severe and destructive competition furnished by Sears, Roebuck & Co. resulting from the discriminatory low price at which it bought tires from respondent, was the principal factor in bringing about price declines in the retail tire market and in increasing the severity of the competition between respondent and its smaller competing manufacturers to the point where competition was destroyed, forcing thousands of independent retail dealers

out of the tire business, and in turn forcing out of business a substantial number of small competing manufacturers.

In 1926 there were doing business in the United States 104 pneumatic tire and tube manufacturers who sold their output principally through independent retail tire dealers, although some of them were selling their tires and tubes to mass distributors. The destructive competition furnished by Sears, Roebuck & Co. was an important causative factor in bringing about the reduction of the number of tire and tube manufacturers in the United States from 104 in 1926 to 32 in 1933.

Thirteen representatives and officials of eleven independent manufacturers testified with respect to the effect of the competition furnished by Sears, Roebuck & Co. resulting from the discriminatory prices at which Sears, Roebuck & Co. bought tires from respondent. These representatives of manufacturers were unanimous in their testimony that practically all of the retail price declines in the tire industry were brought about by Sears, Roebuck & Co. While they admitted that the steady decline in rubber prices, the large capacity of the manufacturers and the diminishing quantity of available business had something to do with the decline of the price of tires, they insisted that, without Sears, Roebuck & Co. making nation-wide cuts and initiating price declines followed by the other mail order and mass distributors, conditions would not have been as bad as they were. They were also unanimous in their testimony that beginning in March 1926, when Sears, Roebuck & Co. began to make substantial reductions in the retail prices of its tires to the public, the industry had to follow, and that the price cuts, made particularly in the year 1926, were not justified by changed or lowered costs of raw materials; that Sears, Roebuck & Co. dictates the prices of tires for all markets and that the Sears, Roebuck & Co. price has been the pattern for the industry for many years.

The smaller independent manufacturers were forced to meet the Sears, Roebuck & Co. competition by cutting the price on their best line of tires. Those manufacturers had a natural advantage over large competitors when the price of the raw materials was on a downward trend. But since August 1933, the prices of rubber and cotton have been increasing and the small manufacturers are now at a disadvantage because the large competitors, such as respondent, are able to have and maintain a much larger stock of raw materials that had been purchased at low prices. The average small manufacturer usually has on hand only one or two months' supply of raw materials, due to his financial limitations. On the other hand, respondent, due to its financial position, has been able to maintain a rubber position so

that it keeps an inventory of rubber which, at the time testimony was taken, would last about eighteen months. In December 1932, respondent had on hand or under contract 219,782,340 pounds of rubber, which was inventoried at approximately 3¢ per pound. The current market price of rubber, at the time testimony was taken, was approximately 11¢ per pound.

It is determined that the weight of the testimony in the record is to the effect that competitive price wars in 1929, 1930, 1931 and 1932 were initiated either by Sears, Roebuck & Co. or by competing manufacturers, such as Firestone, through the announcement of low prices on second line tires to enable dealer customers to cope with Sears, Roebuck & Co.'s competition, and that it then became and was often necessary for independent manufacturers to rebate substantial amounts to dealers so that the dealers would not lose money because of Sears, Roebuck & Co.'s price competition. In the latest price war, begun in the fall of 1933 and continued through the early months of 1934, respondent allowed its dealer customers extra allowances as much as 12½% because of Sears, Roebuck & Co.'s competition.

It is also determined from the testimony that many independent manufacturers were forced to bring out unprofitable second and third line tires upon the demands of their dealers for tires which they could sell at a price to meet the low prices of Sears, Roebuck & Co. on their Goodyear-manufactured tires of high quality; that at first the independent manufacturers ignored protests received from their dealer customers against Sears, Roebuck & Co.'s competition, but as time went on, they were forced to recognize the competition and to do something to assist the dealers in meeting that competition and the offering of the second and third line tires was one of the methods used.

Substantial testimony further shows that sales volumes of competing manufacturers declined because substantial numbers of their dealers were forced out of business due to competitive conditions created by Sears, Roebuck & Co.'s destructive prices on high quality tires which they had purchased from respondent at discriminatory prices, particularly during the years 1928 and 1931; that while in the more recent years these independent manufacturers were able in some instances to increase the volume of their business, they suffered financial losses in doing so. Since the year 1926 a substantial number of independent manufacturers in the United States have been forced out of business and the competition furnished by Sears, Roebuck & Co. subsequent to March 1926 was an important causative factor producing that result. The larger competing manufacturers,

such as Firestone, were forced to assist retail dealers financially, and in many instances took over their businesses and established company-owned stores in their stead and conducted the same at a large financial loss in order to meet the competitive situation created by the low prices of Sears, Roebuck & Co. on the high quality Goodyear-manufactured tire. In this respondent was no exception. It was forced to do the same thing and to suffer substantial financial losses for the same reason.

Two of the larger competing manufacturers, U. S. Rubber Co. and the B. F. Goodrich Co., as a defensive measure, began to sell tires to other mass distributors, competitors of Sears, Roebuck & Co., including Montgomery Ward & Co., in January 1931 by U. S. Rubber Co., and the Atlas Tire Co., in October 1930 by both U. S. Rubber Co. and B. F. Goodrich Co.

*SEC. 23.—Effect of discrimination on respondent's business.*

In April 1926, shortly after respondent entered into its first tire contract with Sears, Roebuck & Co. its sales manager notified branch managers of the fact that respondent was selling tires to Sears, Roebuck & Co. and in defending such course of action pointed out that the transaction was

one more move to definitely clinch for Goodyear the unquestioned leadership in the tire business. \* \* \* While we produce and sell more tires than any other rubber company in the world, we must continue to grow and to develop new business if we are to hold this leadership.

Further evidence of the purpose of the Sears, Roebuck & Co. arrangement is found in the following letter from Mr. Litchfield to Gen. Wood, president of Sears, Roebuck & Co. at the time the second contract was signed in 1928:

I was very pleased to receive the signed contract delivered by Mr. Westrich, also your letter of appreciation on the relations between our two Companies during the past two years.

This is a contract of far-reaching importance to both of us, and I believe has the elements of cooperation and partnership so that our interests are mutual, in trying to build up a large and profitable tire business.

I wish to assure you that I am personally very anxious that the friendly relations and cooperation continue and increase, and I am sure that all of my immediate associates here will do their utmost to make it successful.

In August, 1930, Mr. P. W. Litchfield, president of the respondent, in writing to a Goodyear dealer in Minneapolis, Minn., who had complained of the price cutting activities of Sears, Roebuck & Co.



and the dwindling profits of Goodyear dealers in the face of such competition, pointed out that the Goodyear dealers had not been injured by mail-order competition generally and that Goodyear dealers on Goodyear brands were getting a greater share of the total available business than ever before.

If the mail-order houses have put the old-fashioned gyp dealer out of business, the dealer who in the old days was the worst competition, that is too bad for such dealers.

Mr. Litchfield also pointed out in his letter that Goodyear dealers in Goodyear brands had, during the past three years, gone ahead more rapidly than any other class of dealers and had made more profit than any other class of dealers.

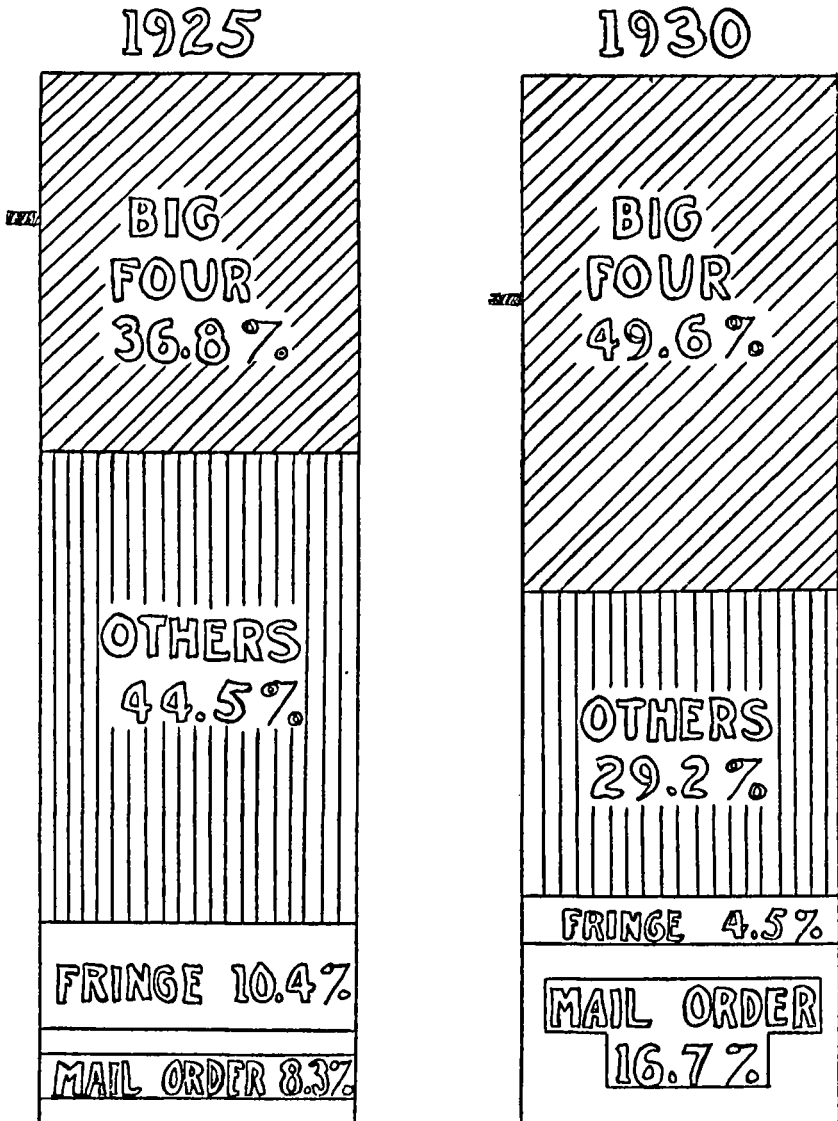
In March, 1931, Mr. R. S. Wilson, vice president and sales manager of the respondent, in a circular letter addressed to all salesmen, in care of branch managers, division managers and sales department managers, summarized at some length trade reasons for respondent's entering into the contract with Sears, Roebuck & Co. and the extent to which those reasons had been justified by the history of the arrangement (Com. Ex. 655). In this letter it was alleged that when respondent went into the Sears, Roebuck & Co. deal it felt that there would be beneficial results to Goodyear dealers because (a) of better quality of Goodyear brand tires than any competitor, and (b) Goodyear tires would thus be easier to sell and hence more profitable to Goodyear dealers.

Mr. Wilson, in this letter, admitted that Sears, Roebuck & Co.'s tire sales had increased rapidly in the past five years, but insisted that the sales of Goodyear brand tires by Goodyear dealers had also increased rapidly in the past five years, and then stated:

From whom did Goodyear dealers and Sears, Roebuck & Co. take this business, I am showing you on next page, in chart form, a division of the renewal tire market in 1925 and again in 1930.

The chart referred to is set forth on the following page.

## SHIFT IN RENEWAL TIRE MARKET



It was then explained by Mr. Wilson, in this letter to the salesmen and branch managers, that among other things it could be noted from the foregoing chart that the four largest manufacturers in the industry, including the respondent herein, had increased their percentage of total renewal sales of tires from 36.8% in 1925 to 49.6% in 1930, and that the percentage of renewal sales of tires of the smaller manufacturers had declined from 44.5% in 1925 to

29.2% in 1930, and that the percentage which had been sold by what Mr. Wilson termed the "fringe" or the very small manufacturers who usually sold to the so-called "gyp" dealers, had declined from 10.4% in 1925 to 4.5% in 1930, and that the mail-order sales had increased from 8.3% in 1925 to 15.7% in 1930.

The conclusion drawn by Mr. Wilson from the foregoing chart and figures discloses the real purpose for the transactions involved in this proceeding. Mr. Wilson said:

Note that the group containing the "fringe" manufacturers and their outlet, the gyps, have decreased in size almost exactly in proportion as the mail-order chain store group have increased in size.

Note likewise how the dealers of the "Big-4" group have grown. We state without the slightest fear of contradiction that Goodyear renewal sales on Goodyear brands alone to Goodyear dealers have grown more rapidly in the last five years in dealer sales than in any other of the "Big-4."

It will be noted that on the left edge of that part of each of the foregoing comparative diagrams is a tab or mark. These marks are located to show the relative proportion of the "Big 4" business captured by Goodyear between 1925 and 1930, as shown by the testimony and exhibits in the record, and show that not only has the dominant position of the "Big 4" substantially increased in this period, but that the dominant position of respondent has increased not only with respect to the entire renewal tire market but with respect to its relative position in the "Big 4" itself.

From the foregoing it is determined that one of the effects of the said discrimination hereinbefore described, is a tendency to increase the concentration of a large volume of pneumatic rubber tire business in respondent and to drive from business small competing manufacturers as well as the retail independent dealers and to substitute therefor mass distributors such as mail order houses. At the time of making the tire contracts with Sears, Roebuck & Co., hereinbefore described, the officials of respondent had this effect in mind.

During the period of time from 1926 to 1930, no other tire manufacturer showed as great an increase in volume of sales, in proportion to the total industry renewal sales, as respondent. Respondent's tire sales to dealers alone, in 1926, were 5,166,987 units, or 13.18% of the total industry renewal sales, which amounted to 39,199,527 units. Its sales to special brand customers (except Sears, Roebuck & Co.) during that year, were 422,168 units, and its sales to company-owned stores were 54,498 units, or total renewal sales (except Sears, Roebuck & Co.) of 5,643,653 units, which amount was

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14.40% of the total industry renewal sales of that year. Respondent's sales to Sears, Roebuck & Co. that year were 747,116 units, or 1.91% of the total industry renewal sales. The total Goodyear renewal sales in 1926, including Sears, Roebuck & Co. amounted to 6,390,769 units, which was 16.31% of the total industry renewal sales.

During 1927 respondent's sales to its dealers increased to 6,172,830 units, which was 13.16% of the total industry renewal sales, which amounted to 46,888,211 units. Its sales to private branch customers (except Sears, Roebuck & Co.) amounted to 530,122 units, while its sales to company-owned stores were 92,357 units. Its total renewal sales to all customers, except Sears, Roebuck & Co., amounted to 6,795,309 units, or 14.49% of the total industry renewal sales for that year. Respondent's sales to Sears, Roebuck & Co. during that year increased to 1,635,068 units, or 3.49% of the total industry renewal sales. Respondent's total renewal sales during that year, including sales to Sears, Roebuck & Co., amounted to 8,430,377 units, or 17.98% of the total industry renewal sales.

During 1928 respondent's sales to its dealers increased to 7,519,541 units; or 14.38% of the total industry renewal sales during that year, which amounted to 52,302,912 units (the highest in the history of the industry). Its sales to special brand customers (except Sears, Roebuck & Co.) amounted to 511,814 units, and sales to its company-owned stores, during that year, were 150,844 units. Its total renewal sales (except Sears, Roebuck & Co.) amounted to 8,182,199 units, or 15.64% of the total industry renewal sales. Respondent's sales to Sears, Roebuck & Co. during that year increased to 3,345,492 units, or 6.40% of the total industry renewal sales. Respondent's total renewal sales, including Sears, Roebuck & Co., during that year, amounted to 11,527,691 units, or 22.04% of the total industry renewal sales during that year.

In 1929 respondent's sales to its dealers increased to 7,798,939 units, or 17.15% of the total industry renewal sales, which had declined to 45,471,495 units. Its sales to private brand customers (except Sears, Roebuck & Co.) amounted to 532,779 units and its sales to company-owned stores amounted to 367,800 units. The total renewal sales of respondent during that year to all its customers (except Sears, Roebuck & Co.) amounted to 8,699,518 units, or 19.13% of the total industry renewal sales. Respondent's sales to Sears, Roebuck & Co. during that year increased to 4,225,666 units, or 9.29% of the total industry renewal sales during that year. Respondent's renewal sales to all its renewal customers, including Sears, Roebuck & Co., amounted

to 12,925,184 units, or 28.42% of the total industry renewal sales during that year.

In 1930 respondent's sales to its dealers declined to 7,140,824 units, or 19.18% of the total industry renewal sales, which had that year declined further to 31,482,544 units. Its sales during that year to private brand customers (except Sears, Roebuck & Co.) declined to 308,390 units, and sales to company-owned stores increased to 643,170 units. Respondent's total sales of tires to all of its renewal customers (except Sears, Roebuck & Co.) during that year amounted to 8,092,384 units, or 21.74% of the total industry renewal sales. Respondent's sales to Sears, Roebuck & Co. during that year declined to 3,109,403 units, or 8.35% of the total industry renewal sales. Respondent's total sales of tires to all its renewal customers, including Sears, Roebuck & Co., during that year amounted to 11,201,787 units, or 30.09% of the total industry renewal sales.

The Firestone Tire & Rubber Co. is generally considered the second largest manufacturer in the tire industry and is, therefore, respondent's principal competitor. During the year 1926, Firestone's sales to independent dealers amounted to 4,863,107 units, or 12.14% of the total industry renewal sales. Its only other renewal sales were to company-owned stores, which amounted to 4,467 units, or 0.01% of the total industry renewal sales. Firestone's total renewal sales during that year amounted to 4,867,574 units, or 12.42% of the total industry renewal sales.

During 1927 the Firestone Co. sold to independent dealers, 6,309,194 units, or 13.46% of the total industry renewal sales. Its sales to company-owned stores during that year amounted to 67,698 units, or 0.14% of the total industry renewal sales. Firestone's total renewal sales during that year amounted to 6,376,892 units, or 13.60% of the total industry renewal sales.

During 1928 Firestone's sales to independent dealers showed a slight increase to 6,424,163 units, or 12.28% of the total industry renewal sales. Its sales to company-owned stores during that year increased to 198,502 units, or 0.38% of the total industry renewal sales. Firestone's total renewal tire sales during that year amounted to 6,622,665 units, or 12.66% of the total industry renewal sales.

During 1929 Firestone's sales to independent dealers declined substantially to 4,730,165 units, or 10.40% of the total industry renewal sales. Its sales to company-owned stores increased very substantially to 1,119,104 units, or 2.46% of the total industry renewal sales. Firestone's total renewal tire sales during that year declined to 5,948,269 units, or 12.86% of the total industry renewal sales.

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During 1930 Firestone's sales to independent dealers declined further to 3,828,835 units, or 10.28% of the total industry renewal sales. Its sales to company-owned stores showed a slight increase to 1,347,449 units, or 3.62% of the total industry renewal sales. Firestone's total renewal tire sales during that year amounted to 5,176,284 units, or 13.90% of the total industry renewal sales.

Other leading competitors of the respondent which made up the "Big-4", hereinbefore referred to, were the Goodrich Tire & Rubber Co. and the U. S. Rubber Co. In 1926 the Goodrich total renewal sales to independent dealers amounted to 3,885,631 units, or 9.91% of the total industry renewal sales. The total renewal sales to independent dealers by the U. S. Rubber Co. amounted to 2,735,484 units, or 6.98% of the total industry renewal sales. Its sales to company-owned stores during that year amounted to 42,828 units, or 0.11% of the total industry renewal sales. The total renewal tire sales of the U. S. Rubber Co. during that year amounted to 2,778,312 units, or 7.09% of the total industry renewal sales.

In 1929 the Goodrich renewal tire sales to dealers amounted to 4,585,406 units, or 10.08% of the total industry renewal sales. Its sales to company-owned stores amounted to 299,483 units, or 0.66% of the total industry renewal sales. Its total renewal tire sales during that year amounted to 4,884,889, or 10.74% of the total industry renewal sales. The total renewal tire sales of the U. S. Rubber Co. to its dealers in 1929 amounted to 2,887,749 units, or 6.35% of the total industry renewal sales. Its sales to company-owned stores amounted to 115,000 units, or 0.25% of the total industry renewal sales. Its total renewal tire sales amounted to 3,002,749 units, or 6.60% of the total industry renewal sales.

During 1930, the Goodrich renewal tire sales to independent dealers declined to 4,104,742 units, or 11.02% of the total industry renewal sales. Its sales to company-owned stores amounted to 479,568 units, or 1.29% of the total industry renewal sales. The total renewal tire sales of the Goodrich Co. during that year amounted to 4,584,310 units, or 12.31% of the total industry renewal sales. The U. S. Rubber Co.'s renewal tire sales to its dealers during 1930 declined to 2,498,119 units, or 6.71% of the total industry renewal sales. Its sales to company-owned stores during that year amounted to 140,000 units, or 0.38% of the total industry renewal sales. The total renewal tire sales for the U. S. Rubber Co., during 1930, amounted to 2,638,119 units, or 7.09% of the total industry renewal sales (same as 1926).

During the depression years subsequent to 1930, which was the first full year of the depression, competitors of the respondent, both

the small and large manufacturers, took steps to protect themselves from the competition of Sears, Roebuck & Co., as hereinbefore indicated. In the competitive warfare which followed, and which existed during the period of the depression, the relative proportion of the total industry renewal sales controlled by respondent, declined from a peak of 30.09% in 1930 to 25.56% in 1932, of the total industry renewal sales. The Firestone Company, through the increase in its volume of sales to its company-owned stores, increased its relative position in the industry from 13.90% in 1930 to 15.07% in 1932. The Goodrich Co., on its dealer and company-owned store business showed a decline from 12.31% in 1930 to 9.56% in 1932. During the year 1932, however, it sold 639,323 units to the Standard Oil Co. subsidiary, hereinbefore mentioned, which increased its sales by 1.92% of the total industry renewal sales, or a grand total of 11.48% of the total industry renewal sales.

The renewal sales of the U. S. Rubber Co. to its dealers and company-owned stores, in proportion to the total industry renewal sales, increased from 7.09% in 1930 to 7.33% in 1932. In addition the U. S. Rubber Co. sold tires to Montgomery Ward & Co. and also to the subsidiary of the Standard Oil Co., which increased its relative percentage in the industry during 1932 approximately 7%, so that its total percentage of industry renewal sales during 1932 amounted to about 14%.

During the year 1933, as hereinbefore indicated, Sears, Roebuck & Co., due to pressure brought to bear upon it by the industry, narrowed the margin between the price at which it sold its tires and the industry price on tires of comparable quality, to approximately 10%, instead of 20% to 25% as had been observed in former years. This, together with increased competitive efforts on the part of independent dealers to secure the volume of business previously lost to Sears, Roebuck & Co., resulted in a substantial decline in the total tire sales of Sears, Roebuck & Co. Its total sales during that year amounted to approximately 1,800,000 units, or 5.5% of the total industry renewal sales. Of this amount approximately 1,170,000 units were purchased from respondent, the balance having been bought from a small manufacturer with the permission of the respondent. Respondent's sales to its dealers declined sharply to 4,336,577 units or 13.05% of the total industry renewal sales. Its sales to company-owned stores also declined slightly to 1,063,873 units and its sales to special brand customers, other than Sears, Roebuck & Co., amounted to 357,578 units. Respondent's total renewal sales, including Sears, Roebuck & Co., during that year amounted to 6,928,903 units, or

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20.84% of the total industry renewal sales, or an increase in percentage over 1926 of 6.44%.

During 1933 the renewal tire sales of the Firestone Co. to its dealers declined further to 3,214,995 units, or 9.67% of the total industry renewal sales. Its sales to company-owned stores during that year declined further to 1,140,082 units, or 3.43% of the total industry renewal sales. The total renewal tire sales of the Firestone Co. to all classes of customers in 1933 amounted to 4,355,077 units, or 13.10% of the total industry renewal sales, or a gain of 0.68% over its total renewal sales for 1926.

The Goodrich Tire & Rubber Co.'s sales to dealers in 1933 amounted to 2,826,211 units, or 8.50% of the total industry renewal sales. Its tire sales to company-owned stores declined to 492,494 units, or 1.48% of the total industry renewal sales. Its total sales to dealers and company-owned stores amounted to 3,318,705 units, or 9.98% of the total industry renewal sales, or an increase of 0.07% over 1926. During that year it sold to the subsidiary of the Standard Oil Co. 870,708 units, or 2.62% of the total industry renewal sales. The total renewal tire sales of the Goodrich Company to all classes of customers in 1933 amounted to 4,189,413 units, or 12.60% of the total industry renewal sales, or a gain for the Goodrich Co. of 2.69% of the total industry renewal sales during the entire period from 1926 to 1933.

The renewal tire sales of the U. S. Rubber Co. to its dealers in 1933, amounted to 2,395,650 units, or 7.20% of the total industry renewal sales. Sales to its company-owned stores amounted to 125,000 units or 0.38% of the total industry renewal sales. The total renewal tire sales of the U. S. Rubber Co. to dealers and company-owned stores amounted to 2,520,650 units, or 7.58% of the total industry renewal sales. This company, however, sold approximately 2,200,000 tires to Montgomery Ward & Co. and the said subsidiary of the Standard Oil Co., which increased its percentage of the total industry renewal sales to approximately 14.5%, or an increase of approximately 7% over the year 1926.

The finding is therefore made that in the year 1933, the total renewal sales of the "Big 4" manufacturers was approximately 60% of the total industry renewal sales as compared with approximately 40% percent in 1926 and 50% in 1930; and that respondent, by virtue of the volume of sales of tires to Sears, Roebuck & Co. has increased its percentage of the total industry renewal sales from 13% in 1926 to 20% in 1933 and thus has increased its dominant position in the tire industry, in large part at least due to the sale of tires to Sears, Roebuck & Co. at discriminatory prices.



**SEC. 24.—Summary.**

The following is a brief summary of the foregoing findings:

1. Respondent, an Ohio corporation with principal office and place of business and principal manufacturing plants at Akron, Ohio, is the largest manufacturer and distributor of pneumatic rubber tires in the United States.

2. Respondent, since about 1914, has distributed the great bulk of its pneumatic rubber tires sold for resale in the several States of the United States through approximately 25,000 local retail dealers.

3. Sears, Roebuck & Co. is a New York corporation with its principal office located in the city of Chicago, State of Illinois, engaged in the distribution of general merchandise products, including pneumatic rubber tires and tubes, by mail order and through chain stores to the consuming public, and is reputed to be the largest mail order house and chain store operator in the United States.

4. On March 8, 1926, respondent and Sears, Roebuck & Co. entered into a contract by which respondent agreed to manufacture and to sell, and Sears, Roebuck & Co. agreed to purchase upon a basis of cost plus 6% (afterward 6½%) the requirements of Sears, Roebuck & Co. for a supply of the pneumatic rubber tires which it sold at retail. This contract with minor modifications was renewed May 17, 1928, and again October 5, 1931, and under the terms of the last renewal will remain in force at least until December 31, 1942.

5. On October 5, 1931, the date that the last tire contract was entered into, a secret agreement was made between respondent and Sears, Roebuck & Co. by which respondent assigned to Sears, Roebuck & Co. 18,000 shares of Goodyear common capital stock and gave to Sears, Roebuck & Co. \$800,000 in cash to be used in the purchase of 32,000 more shares of Goodyear common capital stock as a consideration for the signing of the third tire contract without opening it to competition.

6. Under these several tire contracts, respondent has in fact, with minor exceptions, manufactured and sold to Sears, Roebuck & Co. its requirements of pneumatic rubber tires which it sells at retail.

7. Pursuant to the terms of these several tire contracts between respondent and Sears, Roebuck & Co., respondent has sold tires to Sears, Roebuck & Co. at prices substantially lower than it sold tires of comparable grade and quality to independent retail tire dealers. This difference in sales price has averaged, on four popular sizes of tire casings, from 32 to 40% in 1927; from 33 to 55% in 1928; from 35 to 45% in 1929; from 36 to 46% in 1930; from 35 to 50% in 1931; from 38 to 48% in 1932; from 35 to 53% in 1933. The average gross discrimination on these four sizes for the entire period of time from

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May 1926, to December 1931, was approximately 40%. On other sizes the gross discrimination over the entire period varied from 32% to 42%.

8. The net average sales price discrimination remaining after deductions had been made from the dealer prices for discounts and allowances and transportation, over the entire period, varied from 29% to 40% on eight sizes of tires. The total aggregate net discrimination, after making such allowances, amounted to approximately \$41,000,000, or approximately 26% of the aggregate net sales price to independent dealers on a volume of business comparable to the volume sold to Sears, Roebuck & Co.

9. Such discriminatory prices were not given to Sears, Roebuck & Co. On account of differences in quantity of the commodity sold, nor were they given to make only due allowance for differences in the cost of selling or transportation. Net price discrimination, after making due allowance for selling and transportation costs, ranged from 11% to 22% on eight popular sizes of tires.

10. Such discriminatory prices were not made to Sears, Roebuck & Co. in good faith to meet competition. No competitor of financial responsibility, able to meet Sears, Roebuck & Co.'s requirements as to quantity and quality of the tires, has ever solicited Sears, Roebuck & Co.'s tire business by offering tires of Goodyear quality to Sears, Roebuck & Co. at prices as low as Sears, Roebuck & Co. was paying respondent.

11. Respondent concealed the prices and terms at which it was selling tires to Sears, Roebuck & Co. from its own sales organization and from the trade generally, and at no time did respondent offer to its own dealers prices on Goodyear brands of tires which were comparable to prices at which respondent was selling tires of equal or comparable quality to Sears, Roebuck & Co.

12. None of Sears, Roebuck & Co.'s competitors has the advantages of similar low prices. Sears, Roebuck & Co. was and still is enabled by such discriminatory prices to undersell, at a profit to itself, all retail tire distributors, including retail dealers selling respondent's brands of tires and competing dealers selling tires of other manufacturers.

13. Sears, Roebuck & Co. has in fact, persistently, systematically and substantially, undersold such dealers by pricing for the consumer market the tires which it had so purchased from the respondent at prices ranging from 20 to 25% lower than the prices placed upon tires of comparable grade and quality sold by other retail dealers in the market, except in the year 1933, when due to outside pressure Sears, Roebuck & Co. prices were only approximately 10% lower.

Sears, Roebuck & Co.'s volume of sales of tires increased more rapidly than that of any other retail distributor from 1926 to 1930, and it is still the largest retail distributor of tires in the United States.

14. Sears, Roebuck & Co. usually led in price declines during the period covered by the contracts, that is, from 1926 through 1933, and with the low prices, aggressively pushed the sale of its tires by the use of numerous sales devices, such as excessive guarantees, free tube offers, and trade-in allowances.

15. The competition which Sears, Roebuck & Co. thus brought into the retail tire market in the several States was a major factor in driving out of business a large number of retail tire dealers by reducing their volume of sales of tires or by curtailing of profits derived by such sales, or both.

16. The Sears, Roebuck & Co. competition became destructive and was not such normal competition as would be of benefit to consumers, since Sears, Roebuck & Co. was able, through its discriminatory price advantages to practice such competition and to succeed in engrossing for itself abnormal profits, while curtailing the profits of its competitors.

17. Sears, Roebuck & Co. competition tended to and was in fact a major factor in curtailing the number of competitors who were independent tire dealers, and tended to and was a major factor in substituting for such independent retail tire dealers as were driven out of business, mass distributors and other large volume dealers.

18. Such curtailing of a number of independent retail tire competitors has in turn driven out of business numerous small tire manufacturers and has thus reduced the manufacture and sale of pneumatic rubber tires to a smaller and smaller number of independent manufacturers and dealers.

19. Respondent, as a result of the increased volume of business it has obtained through the sale of tires to Sears, Roebuck & Co. and the reduction in the number of independent manufacturers and dealers, resulting from Sears, Roebuck & Co.'s competition, has substantially increased its percentage of the total industry renewal sales since the year 1926, and has increased its dominant position in the tire industry.

#### CONCLUSIONS

Said respondent, the largest rubber tire manufacturer in the world, has been and now is engaged in interstate commerce in the sale of tires (casings and tubes) to independent service station dealers and also wholesalers, chain retail stores and mail order houses in compe-

tition with other manufacturers and wholesalers of tires in the United States. Tires are commodities within the meaning of the language of Section 2 of the Clayton Act. In the course and conduct of its said business respondent has unlawfully discriminated in price in the sale of tires between its purchasers thereof, that is to say between Sears, Roebuck & Co., the largest mail order and chain store operator in the United States, and other purchasers of tires, competitors of Sears, Roebuck & Co., by allowing Sears, Roebuck & Co. a lower price than allowed other purchasers competitively engaged in said line of commerce and also by allowing said Sears, Roebuck & Co. secret rebates and discounts in the form of cash and valuable stock bonuses. These said price discriminations were concealed by said respondent from said other purchasers, and the said price discriminations hereinbefore described have the capacity and tendency to, and in fact do, substantially lessen competition in the sale and distribution of rubber tires (casings and tubes) for use on motor trucks and passenger automobiles between respondent and other manufacturers and wholesale distributors of said products and between the said Sears, Roebuck & Co. and other retail tire dealers engaged in the sale and distribution of rubber tires (casings and tubes) in competition with said Sears, Roebuck & Co., including retail tire dealers engaged in the sale and distribution of Goodyear branded tires. Said discriminations also have the tendency and capacity to create a monopoly in said respondent in the sale and distribution of rubber tires (casings and tubes) for use on motor trucks and passenger automobiles to wholesale and retail tire dealers now owned or controlled by said respondent, located throughout the several States of the United States. Said discriminations also tend to create a monopoly in the respondent and said Sears, Roebuck & Co. in the retail distribution and sale to the public of rubber tires (casings and tubes) for use on motor trucks and passenger automobiles throughout the several States of the United States. Said discriminations in price were not made on account of the differences in grade, quality or quantity of the commodity sold, nor did said discriminations make only due allowance for differences in the cost of selling or transportation of said tires, nor were said discriminations made in good faith to meet competition.

The cost of selling large annual quantities to Sears, Roebuck & Co. is less than the cost of selling small individual shipment quantities to independent tire dealers, and a lower price to Sears, Roebuck & Co. is justified, but only to the extent that its large annual purchases are economically justified, that is, to the extent that Goodyear's large

sales to Sears, Roebuck & Co. are less expensive to make than its smaller sales to independent tire dealers.

The Commission does not consider a difference in price to be on account of quantity unless it is based on a difference in cost, and where based on a difference in cost, such difference in price is reasonably related to, and approximately no more than, the difference in cost, otherwise the discrimination will create unjust preference and unfair competitive conditions. The evidence in this case does not show that the amount of the discrimination is made in favor of large sales to Sears, Roebuck & Co. and against small ones to the independent dealer on account of savings or economies to the seller, taking into account all relevant factors going to make up price on account of quantity. The difference in price shown in this case far exceeds any demonstrated difference in savings and bears no reasonable relation to the differences in cost.

The practice of giving large and powerful purchasers a disproportionately large discount is not justified. Such a discrimination, when made merely on account of size, tends toward monopoly and the suppression of competition. If the quantity proviso be interpreted to mean that a manufacturer can discriminate with respect to quantity sales to any extent he desires, the section would be rendered meaningless and ineffective. It is clear that the quantity proviso can only have been intended to preserve to the large buyer the inherent economies of large purchases and does not give a manufacturer a license to grant him a favored price without restraint. Quantity discounts are exempt because such a discount involves some economic utility that should be preserved. The meaning of the quantity exception, therefore, is not that a difference in quantity permits price discrimination without limit or restraint, but merely that a difference in the quantity of the commodity sold must be given reasonable weight in determining whether the discriminatory price is warranted.

In arriving at a price on account of quantity sold, some standard of comparison is necessary. It is the relation between price and quantity. Factors that go to make up price because of quantity are to be taken into account and given reasonable weight in determining whether a price discrimination is legal or illegal. Quantity sales are cheaper than small ones and to this extent they are economically justifiable. A quantity discount based on the amount of annual sales is a price discrimination contrary to Section 2 of the Clayton Act unless it can be shown that it represents and fairly approximates lower costs. On the one hand, remote and unsubstantial differences in cost may be disregarded, and on the other hand, a dis-

count is not to be condemned merely because it does not mathematically accord with cost differences. The problem is a practical one and must depend on the effect and intent of the scheme as a whole. The principle back of Section 2 of the Clayton Act is one of equality to purchasers and in order to maintain this principle of equality it is necessary that the difference in price be reasonably related to the difference in cost and not a covert means of favoritism. If it were left to a manufacturer to make the price solely on account of quantity, he could easily make a discount by reason of quantity so high as to be practically open to the largest dealers only. A manufacturer, if allowed to do so, might in this manner hand over the whole trade in his line of commerce to a few or a single dealer, or he might at will make the discount equal to or greater than the ordinary profit in the trade, and competition by those who could not get the discount would obviously be out of the question.

A manufacturer, under the Clayton Act, is under a duty to comply with the law, and he may not make his bargains according to his own interest by discriminating as he pleases, however honest and however justifiable such course might be from the standpoint of commercial principles. Large industrial companies, through price discrimination, can control competitive business conditions among their customers to the extent of enriching some and ruining others. Under the Clayton Act, a manufacturer has no right to put dealers to any such destructive disadvantage by any unjustified discrimination. While a manufacturer has an interest in making attractive offers, in order to secure as much business as possible, it is, however, an interest which can only be consulted and acted upon in subordination to law. When one discriminates in price between competitors he reduces the price to one or some of them. Competition limits the selling price. When a competitor is given a lower price it follows that his profit has been increased by just the amount of the reduction. It equally follows that every competitor has been put to a disadvantage in just that sum.

It is not contemplated by the statute that a discriminatory price made on account of quantity may be a secret price, but the statute contemplates a price open to all of the seller's customers who may desire to purchase a similar quantity at like prices on like terms.

A lower price to Sears, Roebuck & Co. for large quantities purchased, not justified by differences in cost, cannot be justified on the ground that such lower price was made in good faith to meet competition or because respondent deems such a price necessary to keep the business from going to a manufacturer competitor. The proviso in the act permitting discrimination made in good faith to meet compe-

tition is available to the respondent only if its manufacturer competitors have already made an equally low and discriminating price to Sears, Roebuck & Co.

If a powerful concern starts a campaign of price cutting in a particular community and to particular customers in violation of the Clayton Act, a competitor does not violate the act by meeting this competition by a corresponding discrimination. It is a discrimination in good faith for defensive purposes that is sanctioned, not offensive discrimination.

The Commission considers the correct theory of the law to be that, in addition to the statutory cause of action for treble damages against an offensive price discriminator and in addition to the right to apply to the Federal Trade Commission for a cease and desist order, there is an immediate right of self defense; but that it is available only if the discrimination started with the competitor and it must be exercised in good faith. A manufacturer may justify a discriminatory low price to a large purchaser on the ground of meeting competition only if his competitor has previously made an equally low and discriminating price to that purchaser. Any other interpretation would nullify the effectiveness of the whole section.

In the phrase in the statute, "Where the effect of such discrimination may be to substantially lessen competition", the words "where the effect may be" are obviously used merely to indicate that it is *tendency* and *probable effect* rather than the *actual results* that are important. It follows that the words "substantially lessen competition" are not to be taken in a purely quantitative or arithmetical sense. It is not necessary, nor is it sufficient, to find that difference in price (or any other unfair acts for that matter) will result in, say 5% or 10% less competition than there was before. Such an interpretation would make the law entirely unworkable, for competition is not a thing that can be measured with a yardstick. It would, moreover, be inconsistent with the intent of Congress as expressed in the law, the purpose of which is to insure fair and honest competition based on efficiency. The words "may be" indicate neither bare possibility, nor certainty, but probability, to be deduced from the intent or inherent character of the acts themselves. The words must be construed together with the whole section, and they must be taken, all together, to indicate generically the distinction between fair and unfair competition. The law is designed to prevent lessening of competition by unfair acts. As long as fair methods are followed, competitive conditions will prevail; unfair methods always tend to monopoly.

In this case there is a price discrimination in favor of Sears, Roebuck & Co., which gives it an unfair competitive advantage, thereby

producing an unjust competitive situation as between it and independent tire dealers. The discrimination is not grounded on efficiency and cost. It is the opinion of the Commission that no justification exists for this discrimination or method of competition.

With respect to the qualification that price discrimination is forbidden only insofar as its effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce, the Commission considers this to mean merely that the discrimination must have the effect of imposing an unlawful restraint on competition, as distinguished from normal competitive methods.

In considering the question of price discrimination, it is important to bear in mind the underlying theory of Section 2 of the Clayton Act. That theory is that monopoly on the whole is an unnatural product, the result of unwholesome competitive methods; and that it will not ordinarily result where the methods of competition are fair. Hence, to prohibit price discrimination—unfair methods of competition—is to prohibit the methods which foster monopoly.

Price discriminations are specifically condemned by the act because the Congress deems them to be unfair and injurious. They are condemned, it is true, only "where the effect may be to substantially lessen competition or tend to create a monopoly", but this simply means that the discrimination must be of a type which experience has demonstrated to be unfair. The hypothesis which underlies Section 2 of the Clayton Act is that price discriminations not justified on the basis of cost and efficiency create unfair competitive conditions, and that unfair competitive methods of themselves tend toward monopoly.

The price discrimination to Sears, Roebuck & Co. was not justified on account of differences in the grade, quality or quantity of the commodity sold, or by difference in the cost of selling or transportation, or by good faith to meet competition, and it had the effect of substantially lessening competition and tending to create a monopoly.

The Commission, therefore, finds that the said discriminations were and are in violation of Section 2 of said Clayton Act.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint and amended complaint of the Commission, the answers of the respondent thereto, testimony and evidence taken before John W. Bennett, examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaints and in opposition thereto, briefs filed herein and oral argument by Everett F. Haycraft and PGad B. Morehouse, counsel for the Com-



mission, and by Edward B. Burling and Grover Higgins, counsel 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 October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (38 Stat. 730).

*It is ordered*, That the respondent, The Goodyear Tire & Rubber Co., and its subsidiaries and their officers, agents, representatives, servants and employees, in connection with the sale of automobile and truck tires (casings and tubes) sold in interstate commerce, for resale within the United States or any territory thereof, or the District of Columbia, cease and desist from:

(1) Discriminating in price, either directly or indirectly, between Sears, Roebuck & Co. and respondent's retail dealer customers, or any of them, by selling said tires to said Sears, Roebuck & Co. at net realized prices which are lower than net realized prices at which said respondent or any of its subsidiaries, sells the same sizes of tires of comparable grade and quality to independent tire dealers, or other purchasers. In arriving at said net realized prices, respondent shall take into account and make due allowance and only due allowance for differences in the cost of transportation and selling tires to independent tire dealers on the one hand and Sears, Roebuck & Co. on the other.

(2) Discriminating in price, either directly or indirectly, between Sears, Roebuck & Co. and independent retail dealers, by selling said tires to said Sears, Roebuck & Co. at an aggregate price computed and based upon the cost of said tires plus a fixed ratio of profit, which said price is less, in the aggregate, than a price currently computed or based upon a cost, computed in accordance with the accounting principles and procedures then maintained by respondent, and including all items of costs and expenses then being incurred in the manufacture, sale and distribution of tires to all other purchasers of tires from said respondent engaged in the resale thereof, except advertising and selling expenses incurred in the sale of Goodyear brands, and with a profit factor which would be sufficient to return to said respondent thereon a ratio of net profit to cost of goods sold approximately equivalent to the ratio of net profit to cost of goods sold, realized from the sale of tires to said other purchasers: *Provided, however*, That in complying with this section of this order respondent shall not be prevented from following the method now employed in billing Sears, Roebuck & Co. periodically at estimated prices for all tires shipped to Sears, Roebuck & Co. during such period and collecting the amount of said billing from Sears, Roebuck & Co. at times

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agreed upon between respondent and Sears, Roebuck & Co. and furnishing Sears, Roebuck & Co. at convenient times, agreed upon between respondent and Sears, Roebuck & Co., an estimate of the prices at which said tires will be billed to Sears, Roebuck & Co., and making recalculations or redeterminations of said prices at which said tires have been billed to Sears, Roebuck & Co., giving effect to the factors and bases entering into said prices, and in the event payments made by or due from Sears, Roebuck & Co. to respondent on account of the purchase price of the product delivered during the respective periods, exceeds the aggregate amount to which respondent would be entitled upon the basis of said recalculated or redetermined prices, respondent shall not be prevented from following the present method of paying to Sears, Roebuck & Co. such excess amount; and provided that in the event the payments made by or due from Sears, Roebuck & Co. to respondent on account of the purchase price of the product delivered during the said respective periods were less than the aggregate amount to which respondent would be entitled on the basis of said recalculated or redetermined prices, then respondent shall not be prevented from requiring Sears, Roebuck & Co. to repay to the respondent the amount shown to be due respondent, in order to comply with the provisions of this order.

*Provided, further,* That nothing herein shall restrict the respondent's liberty to remove the discrimination either by increasing its price to Sears, Roebuck & Co., or by lowering its price to its other customers.

*It is further ordered,* That said respondent shall, within 30 days from notice hereof, file with this Commission a report in writing stating in detail the manner in which this order will be complied with and conformed to.

## Complaint

## IN THE MATTER OF

## MILTON TOCH TRADING AS UNIVERSAL INK COMPANY

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

*Docket 2715. Complaint, Feb. 7, 1936—Decision, Mar. 7, 1936*

Where an individual engaged for some two years in the sale of liquid and powdered ink—

Represented through letters, labels, circulars and otherwise that he was established in business in 1895 and was the manufacturer of the ink sold and distributed by him under his trade name, notwithstanding fact his business was not established until 1934 and he did not make said products, or own, operate or control any plant or factory which made the same;

With capacity and tendency to mislead and deceive purchasers of his said product into the belief that in buying from him they were dealing with a manufacturer of established business standing and thereby saving middleman's profit, and to confuse, mislead and deceive a substantial number of the public in respect of his business history and status as aforesaid, and into purchasing his products in such erroneous belief, and with effect of diverting trade to him from competitors who do not thus misrepresent their status or history and with tendency so to do, to their substantial injury and prejudice:

*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. DeWitt T. Puckett* for the Commission.

*Mr. Charles Howard Levitt*, of New York City, for respondent.

## COMPLAINT

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 having reason to believe that Milton Toch, an individual, trading as Universal Ink Company, hereafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Milton Toch, trading as Universal Ink Company, is an individual whose office and place of business is at 1847 Sixty-eighth Street, Brooklyn, N. Y. He is now, and has been since 1934, engaged in advertising and selling powdered and liquid ink between and among the various States of the United States and

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in the District of Columbia, and now causes, and for more than one year last past has caused, such products when sold by him to be shipped from his place of business in Brooklyn aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by the respondent in powdered and liquid ink between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than one year last past has been, in substantial competition with other individuals, and with firms, partnerships, and corporations engaged in the sale of ink between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in the sale and offering for sale of powdered and liquid ink represents, and for more than one year last past has represented, through letters, labels, circulars, and in various other ways, that he was established in business in 1895, and that he is the manufacturer of writing inks of the highest quality, and that the powdered ink offered for sale and sold by him is manufactured and distributed by the Universal Ink Company, which is a trade name used by respondent in the conduct of his business; when in truth and in fact the respondent's business was not established in 1895, but in 1934, and when respondent does not manufacture the dry or powdered ink products offered for sale and sold by him, and does not own or operate, or directly and absolutely control any plant or factory in which the dry or powdered ink offered for sale and sold by him is made or manufactured.

PAR. 3. It is the common belief among wholesalers and retailers and the purchasing public that a superior grade of ink can be purchased direct from the manufacturer at a considerable saving in price. There are those among the purchasing public who prefer to purchase ink direct from the manufacturer and from manufacturers and dealers of established business standing. The representations made by respondent, as alleged in paragraph 2 hereof, have the tendency and capacity to mislead and deceive the purchasers of respondent's powdered ink into the belief that when purchasing said ink from respondent they are dealing with the manufacturer of the ink purchased and thereby are gaining an advantage by saving the middleman's profit.

PAR. 4. The use by the respondent of the representations set out in paragraph 2 hereof, has and has had the capacity and tendency

to mislead and deceive and does and has mislead and deceived the purchasing public into the belief that such representations are true, and to purchase such ink from respondent in such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of ink who do not misrepresent their status as manufacturers or as to the length of time which they have been in business, who likewise advertise, sell and distribute ink among the various States of the United States and the District of Columbia. By the representations aforesaid, trade is diverted to respondent from such competitors; thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in 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 powers 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, 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 7, 1936, issued and served its complaint in this proceeding upon respondent, Milton Toch, an individual, trading as Universal Ink Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint the respondent filed answer in which he admitted all the material allegations of the complaint. Thereafter, the proceeding came on regularly for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Milton Toch, is an individual, trading as Universal Ink Company, and is now, and has been since 1934, in business at 1847 Sixty-eighth Street, Brooklyn, N. Y.

PAR. 2. The respondent is, and has been since 1934, engaged in the sale of liquid and powdered ink to purchasers thereof located in the District of Columbia and in various States of the United States other than the State of New York, and has caused and still

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causes his said ink when so sold by him to be transported, in commerce, from his principal place of business in Brooklyn, N. Y., to, into and through said other States and in the District of Columbia to the said purchasers, to whom the said ink was sold by respondent.

PAR. 3. During the time above mentioned and referred to, other individuals, firms and corporations, located in the various States of the United States, have been engaged in the manufacture and in the sale of ink, which they have sold and still sell to the purchasers thereof located in the various States of the United States and in the District of Columbia. The respondent, during the aforesaid time was, and still is, in competition in commerce in the sale of his ink with said individuals, firms and corporations likewise engaged in the sale and distribution of ink among the various States of the United States.

PAR. 4. The respondent, during the aforementioned time, in connection with the offering for sale and in the sale of his liquid and powdered ink represented and still represents, through letters, labels, circulars, and otherwise, that he was established in business in 1895, and that he is the manufacturer of the liquid and powdered ink sold and distributed by the Universal Ink Co., which is a trade name used by respondent in the conduct of his business; when in truth and in fact the respondent's business was not established in 1895 but in 1934, and respondent does not manufacture the dry or powdered ink offered for sale and sold by him and does not own or operate, or directly or absolutely own, operate, or control any plant or factory in which the dry or powdered ink offered for sale and sold by him is made or manufactured.

PAR. 5. It is the common belief among wholesalers and retailers and the purchasing public that ink can be purchased direct from the manufacturer at a considerable saving in price. There are those among the purchasing public who prefer to purchase ink direct from the manufacturer and from manufacturers and dealers of established business standing. The representations made by respondent, above referred to, have the capacity and tendency to mislead and deceive the purchasers of respondent's powdered ink into the belief that when purchasing said ink from respondent they are dealing with a manufacturer of established business standing and thereby are gaining an advantage by saving the middleman's profit.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive a substantial number of the purchasing public into the belief that respondent has been in business since 1895, and that he is a manufacturer of powdered ink, and to purchase respondent's ink in such erroneous belief.

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PAR. 7. There are among the competitors of respondent, manufacturers and distributors of ink who do not misrepresent their status as manufacturers or the length of time in which they have been engaged in said business, who likewise sell and distribute ink among the various States of the United States and in the District of Columbia. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

## 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 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 matter coming on to be heard by the Commission upon the complaint filed herein on February 7, 1936, and the answer to said complaint filed March 1, 1936, by Milton Toch, an individual trading as Universal Ink Company, respondent herein, in which answer the said respondent states that he desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, and further that he admits all of the material allegations of the complaint to be true, and that without further evidence or other intervening procedure, the Commission may make, issue and serve upon respondent findings of fact and an order to cease and desist from the violations of law charged in the complaint; and the Commission now being fully advised in the premises;

*It is hereby ordered*, That the respondent, Milton Toch, individually, and trading as Universal Ink Company, and his agents, representatives, servants, and employees, in connection with the offering for sale or sale of ink in interstate commerce, cease and desist from representing, directly or indirectly, that the business of respondent was established prior to 1934, or that the respondent is a manufacturer of powdered ink.

*It is further ordered*, That the respondent above named within 60 days after the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with.

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## IN THE MATTER OF

HUBERT J. McQUESTION, WILLIAM M. McQUESTION AND  
MRS. MARY M. McQUESTION, TRADING AS NORTH  
SHORE CEMENT BURIAL VAULT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2218. Complaint, Aug. 14, 1934—Decision, Mar. 10, 1936*

Where a firm engaged in the sale of concrete burial vaults; in advertising same in newspapers and periodicals and otherwise, and through purported demonstrations with miniature models and through warranties—

Represented that their "Vault Eternal" was water and air-tight, impervious to moisture, invulnerable to mineral action of water and to ground corrosion of every form, and constituted the one successful method of permanent positive protection regardless of conditions, and would become stronger with age and was so constructed as to insure against earth weight and unsightly sunken graves and was guaranteed for all time;

The facts being that said vaults were not always water-proof or air-tight at time of sale, were subject to effects of corrosion, and would not endure as water-proof or air-tight for all time, and, in view of unknown variables in the concrete itself and in certain soil conditions making for rapid destruction of the concrete, presence of corrosives in soil in different localities, limited life of the paint used, and other facts pertaining to said products in actual use, they could not truthfully and fairly be represented as enduring as water-proof for any fixed or stated period of time or as insuring against earth weight and sunken graves, said over-ground demonstrations were therefore deceptive and, due to rarity of disinterment, said warranties, employed as sales inducements, were worthless;

With capacity and tendency to mislead and deceive the public into the belief that products in question were air-tight and water-proof under actual burial conditions and would endure as such for all time:

*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.

Before *Mr. William C. Reeves*, trial examiner.

*Mr. E. J. Hornibrook* for the Commission.

*Mr. L. E. Vaudreuil*, of Kenosha, Wis., for respondents.

## COMPLAINT

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 having reason to believe that Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion,



copartners, trading under the firm name and style of the North Shore Cement Burial Vault Co., have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion are copartners, trading under the firm name and style of the North Shore Cement Burial Vault Co., with their factory and principal place of business in the city of Kenosha, State of Wisconsin, and at and from said city of Kenosha, respondents, under said trade name and style, among other things, manufacture and sell cement vaults used to encase or enclose a coffin in the burial of the dead. These cement vaults are called by the respondents "The Vault Eternal." The respondents sell these vaults to undertakers, who in turn sell the same to ultimate purchasers thereof. These said vaults are so sold in different States of the United States and when orders are received therefore, they are shipped by respondents from their said place of business into and through other States of the United States to the respective places of business of such undertakers, many of which are located in States other than the State of Wisconsin. In the course and conduct of said business respondents are in substantial competition with individuals, copartnerships and corporations likewise engaged in the manufacture and sale, and transportation between and among various States of the United States of steel, stone, cement, and other vaults used in the burial of the dead.

PAR. 2. In aid of the sale of said vaults, respondents advertise the same by and through the use of circulars, letters, booklets, pamphlets, purported certificates of warranty, and other printed and illustrated materials caused by respondents to be furnished to the consuming public, and by means of demonstrations hereinafter described, and in and through such media respondents make the following among other false and misleading statements and representations:

A. It remained for the present day and generation to accomplish the seemingly impossible; to mould in steel and cement, a crypt of enduring strength. Sealed hermetically, impervious to moisture, and an impregnable barrier to every destructive element of the ground, it is in truth, "The Vault Eternal";

B. The Vault Eternal is made of the only known material that is invulnerable to the attack of ground corrosion;

C. The security afforded by concrete—the only known material durable enough and dependable enough to use in harnessing one of nature's most powerful forces—WATER—gives assurance to the family that the lovely casket enclosed in a water-proof and air-tight vault, such as "The Vault Eternal", is the most permanent type of interment;

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D. The material and construction insures it (The Vault Eternal) against earth weight, preventing the unsightliness and expense of sunken graves and the destructive elements of nature, particularly mineral action. The Vault Eternal is absolutely guaranteed, not for a lifetime but for ALL time.

E. Truly, the Vault Eternal assures undisturbed, peaceful rest.

With the sale of each of respondents' vaults they cause to be given to the ultimate purchaser thereof, a so-called "Guarantee" in the following language:

## GUARANTEE

We, the undersigned, do hereby certify that each "Vault Eternal" produced by us is guaranteed against any and all defects due to poor workmanship or materials. If at any time a "Vault Eternal" should be disinterred and found to be materially defective in any way or to contain any water or liquid other than that derived directly from the body which it contains we will furnish a new "Vault Eternal" without charge for the vault itself or the delivery thereof.

NORTH SHORE CEMENT BURIAL VAULT COMPANY

Milwaukee, Kenosha

Respondents also supply their undertaker customers with miniature vaults. These vaults are so made that they can be submerged into a bowl of water. A pipe is run up through the center with a cover on it so that the cover can be taken off and matches dropped down on the inside of the vault, the purpose being to show the prospective purchaser that respondent's product is impervious to moisture and is in fact water-proof. Respondents instruct their undertaker customers to make this test and demonstration and it is often made by undertaker customers.

PAR. 3. A. The statements and representations set forth in the preceding paragraph are false and misleading in that respondents' said vaults are not invulnerable to the attacks of ground corrosion, are not impervious to moisture and are not an impregnable barrier to every destructive element of the ground;

B. That respondents' said burial vaults are not air-tight, and interment therein is not the most permanent type of interment;

C. Respondents' "Vault Eternal" will not endure for ALL time, as said name implies;

D. The term water-proof as used by respondents in their advertising as aforesaid means to the consuming public a water-tight vault, a vault which will not permit water to enter it, and

Respondents' said vault is not water-proof as the term is so understood by the consuming public, and water will seep into it through the joints and the walls thereof, when used in the burial of the dead;

E. Disinterment after burial is so rare as to make the said certificate of guarantee worthless to the vast majority of purchasers of

respondents' said vaults for the reason that no opportunity is afforded them in which to ascertain whether the vault is water-proof or not;

F. The tests and demonstrations referred to above are unfair and misleading for the reason that the same physical conditions do not prevail when the tests are being made as would and do prevail when the vaults of the respondents are buried in the ground and such tests do not prove that said vaults are air-tight or water-proof or water-tight.

PAR. 4. Each and all of the said representations and statements of respondents and the said use of said tests and demonstrations described in paragraph 2 hereof have and have had the tendency and capacity to deceive the purchasing public into the belief that they are true and fair and to induce purchasers to buy said vaults in such belief and to unfairly divert trade from the said competitors to the said respondents and otherwise injure them.

PAR. 5. The acts and practices of the said respondents above set forth are all to the prejudice of the public and the respondents' said 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 powers 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, 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 14th day of August A. D. 1934, issued and served its complaint in this proceeding upon respondents, Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion, copartners, trading under the name and style of North Shore Cement Burial Vault Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by E. J. Hornbrook, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and respondents by and through their attorney, L. E. Vaudreuil, of Kenosha, Wis., declined to introduce testimony in defense; and said testimony and evidence in behalf of the Commission was duly recorded and filed in the office of the Commission. The Commission's said attorney filed brief herein and respondents by and through their

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said attorney declined to file brief or appear and orally argue this matter. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, the said testimony and evidence, the brief in support of the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion, are copartners trading under the name and style of North Shore Cement Burial Vault Company, with their principal office and factory in the city of Kenosha, in the State of Wisconsin. At and from said city of Kenosha, respondents, among other things, manufacture and sell concrete vaults for use in encasing coffins and caskets in the burial of the dead. These concrete vaults are called by respondents the Vault Eternal.

Respondents sell these vaults exclusively to morticians and undertakers. At said city of Kenosha these said concrete vaults are manufactured by respondents. They make approximately 350 per year. They employ from three to four men in the manufacture of such vaults. All of said vaults are sold in the State of Wisconsin, except about 15 per year, which latter number, upon orders of their Illinois customers, are sold by respondents in the State of Illinois and shipped or hauled by them to their said last named customers from the said city of Kenosha into the various towns and cities in the State of Illinois, where said customers reside or have their places of business. These vaults are usually placed in graves by respondents and sealed by them.

In the course and conduct of said business respondents have been, and are now, in competition with various persons, corporations, and copartnerships engaged in the manufacture or sale of metal, cement, and concrete vaults, in commerce among the States of the United States.

The practices of the respondents, as hereinabove and hereinafter set forth, have and have had, and each of them has and has had, the capacity and tendency to divert trade to respondents from their said competitors and to otherwise injure them.

PAR. 2. Respondents make one type of vault, although they manufacture several sizes of the same type. The "Vault Eternal" varies in size from 8 feet in length, 36 inches in width by 35 inches in depth to a vault which is 2 feet 7 inches in length, 1½ feet in width and

14 inches in depth. They vary in price (f. o. b. Kenosha) from \$50 for the first described vault to \$18 for the last described vault. The vault first described weighs around 1,980 pounds. The vault last described weighs 200 pounds. They vary in thickness from 1 $\frac{5}{8}$  inches to 1 $\frac{1}{2}$  inches. They are made of reinforced concrete. The concrete which enters into the construction of vaults is made of one part sand, one part stone, and one-half part cement, with 5 gallons of water added for each sack of cement; the reinforcing material thereof consists of cold-rolled steel of 3.4 gage with meshes three-fourths of an inch apart. In the manufacturing process the concrete is poured into a mold which is vibrated to produce a very dense material and is calculated to add to its lasting quality. The outside covers of these vaults and the inner walls thereof are painted with a good quality enamel paint, and the inner sides of the covers and the base and outside walls are covered with an asphalt paint. These vaults are closed by having the covers thereof fitted into a groove at the top of the main body of each of the vaults, which groove contains a quantity of ship tar asphalt.

PAR. 3. Respondents in the course of their said business as set forth in paragraphs 1 and 2 hereof have in the aid of the sale of said vaults made and now make use of advertisements which they have caused to be published in newspapers of general circulation, and in periodicals and they also have made and now make use of various forms of advertising matter which they have caused to be distributed to customers and prospective customers in the States of Wisconsin and Illinois, in which advertisements and advertising matter certain claims and representations are, and were, made concerning the said vaults, among which are claims and representations to the effect that such vaults are, and were, invulnerable to mineral action of water and to ground corrosion of every form, and constitute the one successful method of permanent, positive protection regardless of any conditions and will not corrode or decay but will become stronger with age. These vaults are, and were, described in such advertisements and advertising matter as the Vault Eternal and as being of enduring strength, impervious to moisture, an impregnable barrier to every destructive element of the ground, invulnerable to the attack of ground corrosion, waterproof and airtight, constructed so as to insure against earth weight, guaranteed not for a lifetime but for *all time*, assuring undisturbed, peaceful rest. Respondents have also caused to be given to ultimate purchasers of such vaults what purports to be a guarantee in the following language:

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## "GUARANTEE"

THIS IS TO CERTIFY that the 'Vault Eternal' used today in the cemetery for the interment of the body of \_\_\_\_\_ is hereby guaranteed by us against defect due to poor workmanship or materials. If it should be disinterred at any time whatsoever and found materially defective in any way or to contain any water other than that derived directly from the body, this company will furnish a new vault to take its place without charge for the vault or delivery thereof.

NORTH SHORE CEMENT BURIAL VAULT COMPANY

Kenosha

Date\_\_\_\_\_

\_\_\_\_\_  
President."

The above described purported guarantee was adopted and its use begun in the year 1934. At the time of taking testimony in this matter the respondents had not distributed them to their said Illinois customers but had distributed to at least one of their Illinois customers the material which appears on the back of Commission's Exhibit No. 5, which contains a copy of said guarantee and also in the upper right-hand corner thereof under the title "Economy" appear the words, "The material and construction insure it against earth weight, preventing the unsightliness and the expense of sunken graves from the destructive elements of nature. The 'Vault Eternal' is absolutely guaranteed not for a lifetime but for all time"; and under the title "The Answer", appear the words, "Truly the Vault Eternal assures undisturbed peaceful rest"; and under the title "Material" appear the words, "Moreover it is the only material that is invulnerable to the attack of ground corrosion."

The representations in said advertisements and of said warranties import and imply that said vaults are not only waterproof and airtight at the time of interment thereof, but that they will endure as such under any and all burial conditions forever.

Respondents also, in aid of the sale of said vaults, furnish their said customers with miniature vaults for the purpose of making demonstrations and convincing the ultimate purchaser thereof that they are waterproof.

PAR. 4. The said representations and advertising of respondents and the use of said guarantee as described in paragraph 3 hereof, are false and misleading in that said vaults are not always waterproof or airtight at the time of sale thereof and will not endure as

waterproof or airtight for all time; these vaults are subject to the effects of corrosion; in many cases of alkali in the soil all concrete is subject to corrosive effects; there is a condition which cannot be accounted for which makes concrete when buried underground subject to corrosion; there are certain variables in the concrete itself and in certain soil conditions, which are unknown, which cause rapid destruction of the concrete of which these vaults are made; there is no way to determine the resistance of the concrete of which these vaults are made to these disintegrating actions; the length of time concrete will last in alkali soil is unknown; there are many locations where alkali and other soluble chemicals occur in soil, and these, or any of them, will cause disintegration of any concrete; corrosive soil occurs in a number of localities in the United States; concrete such as that used by respondents will often disintegrate on the surface of the ground; the paint covering the Vault Eternal only has a life of 4 to 5 years and at the end of such period the resistance to water then entering depends entirely upon the resistance of the vault itself; nothing is absolutely waterproof; this paint only remains temporarily—not for all time; these vaults do not remain waterproof for all time; the jointing material does not last indefinitely; settling of the vault causes cracking; injurious salts which are in many soils cause corrosion and disintegration of the concrete of which the vaults are made; corrosion once started continues until the vault is a mass of pulp; the chances of getting an airtight seal of respondents' vaults is about 50 percent; the tar and asphalt seal gives trouble and disintegration begins in 10 years or less; concrete will not resist corrosive action of the soil, moisture, and minerals for all time; the probabilities of this vault being waterproof at the time of burial are about 50 percent and it, if waterproof at the time of burial, will not endure as waterproof for all time; these vaults cannot be truthfully and fairly represented as enduring as waterproof for any fixed or stated period of time; the material and construction of these vaults do not insure them against earth weight, or the prevention of unsightliness and the expense of sunken graves and the resistance of destructive elements of nature; the material and construction of these vaults do not assure "undisturbed peaceful rest"; the material and construction of these vaults are not invulnerable to the attack of ground corrosion; the demonstrations made with miniature vaults, in aid of the sale of respondents' said vaults, as aforesaid, are not made under burial conditions and are therefore deceptive.

Disinterments as compared to burial are so rare that respondents' said certificates of guarantee are worthless to the purchasers of said

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vaults. Disinterments as compared to burials are less than 5 percent. These vaults are not proper subjects of warranty or guarantee. Many are not waterproof when placed in the ground, and many which are then waterproof will not endure for any considerable length of time. These warranties are used by respondents as sales inducements.

Water in graves is a common occurrence in the States of Illinois and Wisconsin. In Illinois water has been seen in graves to a depth of 6 feet.

PAR. 5. The practices of respondents in using said purported guarantee, as aforesaid, and in using the advertising described in paragraph 3 hereof, have and have had, and each of them has and has had, the capacity and tendency to mislead and deceive the public into the belief that said vaults are airtight and waterproof under actual burial conditions and that they will endure as such for all time.

## 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 respondents' competitors and constitute unfair methods of competition in interstate commerce and 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 the respondents, the testimony and evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and upon the brief of E. J. Hornibrook, counsel for the Commission, no testimony having been offered or brief filed in opposition to the charges of said complaint by the respondents, and the Commission having made its report, stating its findings as to the facts and its conclusion that 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 ordered*, That Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion, copartners trading under the name and style of North Shore Cement Burial Vault Company, re-



spondents, their agents, employees, and representatives, in connection with the offering for sale or sale in interstate commerce of cement or concrete burial vaults in purported certificates of warranty or guarantee, in advertising or in any other manner do forthwith cease and desist from representing that:

(a) Any such vault is of enduring strength, is hermetically sealed, impervious to moisture and an impregnable barrier to every destructive element of the ground or is a "Vault Eternal";

(b) Any such vault made of material which is invulnerable to the attack of ground corrosion;

(c) The materials used in the construction of said vaults are durable and dependable enough to assure air-tightness and water-proofness at the time of sale thereof or under actual burial conditions or that said vaults insure the most permanent of any type of interment;

(d) The materials and construction of such vaults insure against earth weight, prevent the unsightliness and expense of sunken graves and the destructive elements of nature due to mineral or other action;

(e) Such vaults are guaranteed not for a lifetime but for *All Time*;

(f) Such vaults are water-proof or air-tight at the time of sale thereof or for any fixed or stated period of time;

(g) Such vaults assure undisturbed, peaceful rest;

(h) And also from representing by or through the use of tests or demonstrations that such vaults are water-proof at the time of sale thereof, or that they will endure as water-proof or air-tight under burial conditions.

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

## Complaint

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IN THE MATTER OF  
MILES L. FINCH DOING BUSINESS AS ASSOCIATE  
BRITISH MANUFACTURERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2519. Complaint, Aug. 15, 1935—Decision, Mar. 10, 1936*

Where an individual engaged in the sale of genuine Harris Tweed and of certain power loomed woolen fabrics of domestic manufacture—

Advertised and labeled the latter as "IMPORTED British Wool HARRIS TWEED type (Shepherd and black faced sheep in background)" and as "Loomed from British Island Wool, HARRIS TWEED type", notwithstanding fact that fabric thus described was not genuine Harris Tweed, i. e., hand woven wool cloth made in the Outer Hebrides, Scotland, but was an imitation thereof and inferior thereto;

With effect of misleading and deceiving the purchasing public and retail merchants into buying said fabrics in the belief that they were the genuine Harris Tweed, and of further affording said retailers an opportunity to perpetrate a fraud upon the purchasing public, and with further effect of unfairly diverting trade to said individual from competitors engaged in the sale of genuine Harris Tweed and from those truthfully and honestly advertising tweed similar to aforesaid product, and with capacity and tendency so to deceive and mislead; to the injury and prejudice of the public and competitors:

*Held*, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. R. L. Kennedy* for the Commission.

*Mr. Felix A. Russell*, of Washington, D. C., for respondent.

## COMPLAINT

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, having reason to believe that Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, hereafter referred to as the respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Miles L. Finch is an individual engaged in business under the name and style of Associate British Manufacturers, with his principal place of business at 200 Fifth

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## Complaint

Avenue, New York, N. Y. Respondent is now and for more than 2 years last past has been engaged in the importation and sale of genuine Harris Tweed and imitations of Harris Tweed, and in the sale of certain power loomed woolen fabrics, imitating genuine Harris Tweeds, of domestic manufacture, and, in the distribution thereof, in commerce, between and among various States of the United States, has caused said products, when sold, to be shipped from respondent's place of business in the State of New York, to purchasers thereof located in said State, and States of the United States other than the State of New York.

PAR. 2. In the course and conduct of its said business, the respondent was at all times herein referred to and now is in substantial competition in interstate commerce with divers other individuals, corporations, and partnerships engaged in the sale and distribution of genuine "Harris Tweed" and with individuals, corporations, and partnerships engaged in the sale and distribution of imitations thereof.

PAR. 3. "Harris Tweed" is a tweed made from pure virgin wool produced in Scotland, spun, dyed, and finished in the Outer Hebrides, and handwoven by the islanders at their own homes in the islands of Lewis, Harris, Uist, Barra, and their several appurtenances, and all known as the Outer Hebrides.

PAR. 4. The registered trade-mark of Harris Tweed consists of an emblem, under which appear the words "Harris Tweed." The words "Harris Tweed" are an integral part of the trade-mark. Said trade-mark is registered in Washington, United States Patent Office, No. 89399, and in Great Britain, Reg. No. 319214.

PAR. 5. In the course and conduct of respondent's business, as hereinabove described, the respondent in soliciting the sale of and selling, in interstate commerce, tweed in imitation of and inferior to genuine Harris Tweed and in truth and in fact not made from pure virgin wool produced in Scotland; not spun, dyed, and finished in the Outer Hebrides; not hand-woven by the islanders at their own homes in the Outer Hebrides, has during the time herein mentioned advertised and labeled and is now advertising and labeling such tweed as follows:

IMPORTED  
British Wool  
HARRIS TWEED  
type  
(Shepherd and black faced  
sheep in background)

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The words "IMPORTED" and "HARRIS TWEED" are much larger, in lettering, than the words "British Wool", and the word "type" is in letters much smaller than the words "British Wool", and respondent has during the time herein mentioned advertised and labeled such tweed as "Loomed from imported HARRIS TWEED wool", and "Loomed from British Island Wool, HARRIS TWEED type."

PAR. 6. Said advertisements and labels have the tendency and capacity to deceive and mislead, and do mislead and deceive, the purchasing public, by causing it to believe that in the purchase of said tweed, advertised as aforesaid, it is buying genuine Harris Tweed; retail merchants, who may order and buy, in interstate commerce, said imitation tweed from the description thereof, in respondent's advertisements, and afford such retail merchants an opportunity to perpetrate a fraud on the purchasing public, and have unfairly diverted, and do now unfairly divert, trade to respondent from, and otherwise substantially prejudice, competing individuals, partnerships, and corporations, engaged in the sale, in interstate commerce, of genuine Harris Tweed, and competitors who truthfully and honestly advertise and sell, in interstate commerce, tweed similar to the tweed which the respondent, as hereinabove set forth in paragraph 5, advertises and sells.

PAR. 7. The acts and practices and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and of the 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers 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, entitled "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent herein, Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered his appearance and having filed his substitute answer herein, whereby he admits all the material allegations of the complaint to be true, and states that without further evidence, or other intervening procedure, the Commission may make,

issue, and serve upon respondent findings of facts and an order to cease and desist from the violations of law charged in the complaint.

And thereupon this proceeding came on for final hearing and the respondent having waived the filing of briefs and the hearing of oral argument herein before the Commission, and said Commission having approved and accepted respondent's substituted answer wherein is admitted all of the material allegations of the complaint and having duly considered the record and being now fully advised in the premises, now finds the following:

#### FINDINGS AS TO THE FACTS

That the respondent, Miles L. Finch, is an individual engaged in business under the name and style of Associate British Manufacturers, with his principal place of business at 200 Fifth Avenue, New York City, N. Y.

That respondent is now and for more than 2 years last past has been engaged in the sale of genuine Harris Tweed, and in the sale of certain power loomed woolen fabrics, imitating genuine Harris Tweed, of domestic manufacture and, in the distribution thereof, in commerce, between and among the various States of the United States, has caused said merchandise, when sold, to be shipped from respondent's place of business, in the State of New York, to purchasers thereof located in other States of the United States.

That respondent in the course and conduct of his business is, and for a long time past has been, in substantial competition, in interstate commerce, with divers individuals, corporations, and partnerships engaged in the sale and distribution of genuine Harris Tweed, and with individuals, corporations, and partnerships engaged in the sale and distribution of imitations thereof.

That "Harris Tweed" is a hand-woven woolen cloth manufactured in the Outer Hebrides, Scotland.

That the registered trade-mark of Harris Tweed consists of an emblem, under which appear the words "Harris Tweed." The words "Harris Tweed" are an integral part of the trade-mark. Said trade-mark is registered in Washington, United States Patent Office, No. 89399, and in Great Britain, Reg. No. 319214.

That in the course and conduct of respondent's business, as hereinabove described, the respondent in soliciting the sale of and selling, in interstate commerce, tweed in imitation of and inferior to genuine Harris Tweed and in truth and in fact not hand woven woolen cloth manufactured in the Outer Hebrides, Scotland, has during the time herein mentioned advertised and labeled and is now advertising and labeling such tweed as follows:

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## IMPORTED

British Wool

HARRIS TWEED

type.

(Shepherd and black faced  
sheep in background)

The words "IMPORTED" and "HARRIS TWEED" are much larger, in lettering, than the words "British Wool", and the word "type" is in letters much smaller than the words "British Wool", and respondent has during the time herein mentioned advertised and labeled such tweed as "Loomed from imported HARRIS TWEED wool", and "Loomed from British Island Wool, HARRIS TWEED type."

That said advertisements and labels have the tendency and capacity to deceive and mislead, and do mislead and deceive, the purchasing public, by causing it to believe that in the purchase of said tweed, advertised as aforesaid, it is buying genuine Harris Tweed; retail merchants, who may order and buy, in interstate commerce, said imitation tweed from the description thereof, in respondent's advertisements, and afford such retail merchants an opportunity to perpetrate a fraud on the purchasing public, and have unfairly diverted, and do now unfairly divert trade to respondent from, and otherwise substantially prejudice, competing individuals, partnerships, and corporations, engaged in the sale, in interstate commerce, of genuine Harris Tweed, and competitors who truthfully and honestly advertise and sell, in interstate commerce, tweed similar to the tweed which the respondent, as hereinabove set forth, advertises and sells.

That the acts and practices and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and of the 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## CONCLUSION

The aforesaid acts and practices of respondent, Miles M. Finch, engaged in business under the name and style of Associate British Manufacturers, are each and all to the prejudice of the public and to the competitors of respondent and constitute unfair methods of competition in 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 powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Federal Trade Commission upon a complaint of the Commission, and the answer of the respondent, 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."

*Now, therefore, it is hereby ordered*, That the respondent, Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, in connection with the distribution, offering for sale and sale of Harris Tweed in interstate commerce, forthwith cease and desist from:

(a) Representing or claiming in or by advertisements of any character or otherwise, that tweed or other woolen cloth not hand woven and manufactured in the Outer Hebrides, Scotland, is "Harris Tweed."

(b) Advertising or labeling tweed or other woolen cloth as—

IMPORTED  
British Wool  
HARRIS TWEED  
type.

(c) Advertising or labeling tweed or other woolen cloth as—

Loomed from imported  
HARRIS TWEED  
Wool

(d) Advertising or labeling tweed or other woolen cloth as—

Loomed from  
British Island Wool  
HARRIS TWEED  
type.

and from making, in advertisements of any character, claims for his merchandise like, or similar in substance to, the claims hereinabove specified.

*It is further ordered*, That the respondent, Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, shall, within 60 days after service upon it of this order, file with the Commission, a report, in writing, setting forth, in detail, the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

Complaint

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## IN THE MATTER OF

## R. H. SHAROT, DOING BUSINESS AS MODEX MILLS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2588. Complaint, Oct. 17, 1935—Decision, Mar. 17, 1936*

Where an individual engaged in the sale and exportation of various articles of merchandise, including hosiery, underwear, raincoats, and general wearing apparel—

Represented himself as a manufacturer or mill operator through letterheads, bill heads, invoices, correspondence, and advertising matter, and through use of trade name including word "Mills"; facts being he did not make any of the products dealt in by him, nor own, operate, or control any plant or factory making them;

With capacity and tendency to mislead and deceive purchasers into the belief that he was a manufacturer or operator of established business standing and that in buying from him they were dealing with a manufacturer and thereby saving the middleman's profit, and into buying his products in such erroneous belief, and to divert trade to him from manufacturers and distributors of such products in foreign commerce who do not misrepresent their status, and with effect of so doing, to said competitors' substantial injury and prejudice:

*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.

Before *Mr. John J. Keenan*, trial examiner.

*Mr. T. H. Kennedy* for the Commission.

*Wolf & Jacobi* and *Mr. William Biel*, of New York City, for respondent.

## COMPLAINT

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, having reason to believe that R. H. Sharot, an individual, trading as Modex Mills Company, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, in violation of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is R. H. Sharot, an individual, trading under the name and style of Modex Mills Company, with his principal place of business located in the city of New York, State



of New York. He is, and for more than 1 year last past has been, engaged in the sale and distribution of various items of merchandise, such as hosiery, dresses, shoes, cosmetics, raincoats, sanitary napkins, to customers located in foreign countries, in commerce between the United States and various foreign countries, causing the same when sold to be shipped from his place of business in the State of New York or other State of origin to purchasers thereof located in various foreign countries. In the course and conduct of his business said respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in foreign commerce of similar products.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, said respondent adopted as and for his trade name the words Modex Mills Company, under which to carry on his business, and which trade name, containing the word "Mills", he has used continuously for several years last past and is now using in soliciting the sale of and selling his said products in foreign commerce. He has caused said trade name "Modex Mills Company" to appear on his letterheads, bill heads, invoices, and advertising matter distributed in foreign commerce. Said printed matter featured the said trade name, when in truth and in fact said respondent does not make or manufacture the products sold by him which he has sold and distributed in foreign commerce, nor does he own or operate or directly and absolutely control any mill or mills wherein the products sold by him are made or manufactured, but, on the contrary, respondent has filled orders with products made or manufactured in a mill or mills or factory which he does not own, operate, or control.

PAR. 3. There is a preference on the part of certain of the retail merchants in various foreign countries for goods, wares, and merchandise, to be resold by retail to the public, bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said retail merchants that by dealing directly with the mill owner or manufacturer they can buy goods at a cheaper price or on more favorable terms than they can from jobbers or corporations, associations, individuals, firms, and partnerships not manufacturing goods, wares, and merchandise they sell to such retail dealers, by eliminating the profit of the middleman, and that a more uniform line of goods can be purchased from a mill operator than from one who does not operate a mill. The use by the respondent of the word "Mills" in his trade name, in respondent's letterheads, stationery, or otherwise, has a tendency and capacity to mislead and deceive purchasers who are customers and

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prospective customers of respondent by causing them to believe that respondent actually owns and operates or directly and absolutely controls the mill or mills or factory in which said products are made or manufactured or that respondent himself makes or manufactures his products, and that thereby such customers or prospective customers save or will save the middleman's profit, and that the said respondent, in the use of the word "Mills" has a tendency and capacity unfairly to divert trade to respondent from other corporations, associations, individuals, firms, and partnerships who are actually manufacturing products similar to the products of respondent for sale and distribution in foreign commerce and those competitors of respondent who do not manufacture similar or like products to those of respondent for sale and distribution in foreign commerce but who truthfully advertise and label same and who do not claim and represent themselves to be manufacturers.

PAR. 4. The practices of respondent described in paragraph 2 hereof are all to the prejudice of the public and respondent's competitors and have been and are unfair methods of competition in foreign 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."

## 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 17, 1935, issued and served its complaint in this proceeding upon the respondent, R. H. Sharot, an individual trading as Modex Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a hearing was held before John J. Keenan, an examiner of the Commission theretofore duly designated by it, at which hearing respondent, through his attorney, made a statement for the record in which he admitted all the material allegations of the complaint to be true and waived all further hearings in the matter.

Thereafter, the proceeding came on regularly for final hearing before the Commission on the said complaint, the answer and the testimony of the respondent given at the hearing hereinabove referred to, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in

the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, R. H. Sharot, is an individual trading as Modex Mills, and is now, and has been since 1923, in business at 15 Moore Street, New York, N. Y.

PAR. 2. Respondent is, and has been since 1923, engaged as a jobber in the export business, and, as such, in the sale and exportation of various articles of merchandise, including hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel, to purchasers thereof located in various foreign countries, among them Venezuela, Colombia, Peru, and South Africa, and has caused and still causes said products, when so sold by him, to be transported in commerce from his principal place of business in New York, N. Y., or from other places in the United States, to the said purchasers located in various foreign countries.

PAR. 3. During the time above mentioned and referred to, other individuals, firms, and corporations located in the various States of the United States have been engaged in the manufacture and sale of similar articles of merchandise to those hereinabove referred to, which they have sold and still sell to the purchasers thereof located in various foreign countries. The respondent, during the aforesaid time, was and still is in competition in commerce and in the sale of said products with said individuals, firms, and corporations likewise engaged in the sale and distribution of said or similar products in foreign commerce.

PAR. 4. The respondent, during the aforesaid time, in connection with the offering for sale and the sale of the aforesaid products, represented and still represents, through letterheads, bill heads, invoices, correspondence, and advertising matter, that he is a manufacturer or mill operator, and respondent has and does use the word "Mills" in his trade name in such a way that his customers or prospective customers are led to believe that respondent is a mill operator or manufacturer, and when in truth and in fact respondent does not manufacture any of the products offered for sale and sold by him, and does not own or operate, or directly or absolutely own, operate, or control any plant or factory in which any of said products offered for sale and sold by him are made or manufactured.

PAR. 5. It is the common belief among purchasers of respondent's products located in foreign countries that the products above referred to can be purchased directly from a manufacturer or mill operator at a considerable saving in price. There are those among the pur-

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chasers or prospective purchasers of respondent's products located in foreign countries who prefer to purchase said products direct from the manufacturer or mill operator and from manufacturers, mill operators, and dealers of established business standing. The representations made by respondent, above referred to, have the capacity and tendency to mislead and deceive the purchasers of respondent's products into the belief that when purchasing said products from respondent they are dealing with a manufacturer or mill operator of established business standing and thereby are gaining an advantage by saving the middleman's profit.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive a substantial number of the purchasers of respondent's products into the belief that respondent is a manufacturer or mill operator and to purchase respondent's products in such erroneous belief.

PAR. 7. There are among the competitors of respondent manufacturers and distributors of products similar to those sold by respondent in foreign commerce, who do not misrepresent their status as manufacturers or mill operators, who likewise sell and distribute products similar to those sold and distributed by respondent in various foreign countries, and there are jobbers engaged in business similar to that conducted by respondent who do not represent themselves to be mill owners or operators. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

## 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 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 matter coming on to be heard by the Commission upon the complaint filed herein on October 17, 1935, and upon the answer to said complaint filed November 5, 1935, by R. H. Sharot, an individual, trading as Modex Mills, and upon the testimony given at a hearing held before John J. Keenan, an examiner of the Commission, theretofore duly designated by it, at which hearing the respondent admitted

all the material allegations of the complaint to be true and consented that the Commission might find the facts in this matter as alleged in the complaint, 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 ordered*, That the respondent, R. H. Sharot, individually and trading as Modex Mills, and his agents, representatives, servants, and employees, in connection with the offering for sale and sale of hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel in foreign commerce, cease and desist from representing, directly or indirectly, through and by the use of his trade name, or in any other manner, that respondent is a manufacturer, mill operator, or mill owner.

*It is further ordered*, That the respondent above named within 30 days after the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with.

IN THE MATTER OF  
THE DIAMOND MATCH COMPANY

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

*Docket 2599. Complaint, Dec. 9, 1935<sup>1</sup>—Decision, Mar. 17, 1936*

Where a corporation engaged in the manufacture and sale of (a) "Strike-on-the-Box" or "Safety" type matches, thus known and designated for many years, packed and sold in boxes thus labeled, and of a size adaptable for carrying on the person, and (b) "Strike-Anywhere" type matches;

Packed and sold the latter type in small boxes of approximately the same size as those in which the "Strike-on-the-Box" type is packed, marked and labeled "Safety First", and simulating in many respects said "Safety" type, and conspicuously displayed word "Safety" on the larger containers in which it packed its larger size "Strike-Anywhere" matches;

With capacity and tendency to confuse, mislead and deceive purchasers into the belief that its said matches, thus packed, labeled and sold, were in fact "Safety" matches of the "Strike-on-the-Box" type, and with result of causing dealers and consuming public to purchase substantial quantities thereof as and for the genuine safety matches and of placing in the hands of dealers an instrument enabling them to commit a fraud upon the consuming public by thus offering and selling its said product as and for said safety type, and of diverting a substantial volume of trade from competitors, among whom there are those who make and sell or import and sell "Strike-on-the-Box" matches packed and labeled and rightfully represented as "Safety" matches; to the substantial injury of substantial competition in commerce:

*Held*, That such acts and practices, were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. J. T. Welch* for the Commission.

COMPLAINT<sup>1</sup>

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, having reason to believe that the Diamond Match Co., a corporation, hereinafter designated as respondent, is now, and has been, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its amended complaint stating the charges in that respect as follows:

<sup>1</sup> Amended.

PARAGRAPH 1. The respondent, The Diamond Match Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland and having, at all times since its incorporation in 1930, its principal place of business in Baltimore, Md., and a place of business at 30 Church Street in the city of New York, N. Y., with factories for the manufacture of its products in various States.

The respondent, upon its organization, took over the factories and equipment of another corporation that had long been engaged in the manufacture and sale, among other things, of matches. The respondent, since its incorporation and its acquisition of the factories and equipment of said corporation, has continued the business of said corporation and has been, and is now, engaged in the manufacture and sale of matches made by it, as set out in detail in paragraphs 2 and 3 hereof, and the sale of matches made in the Kingdom of Sweden.

PAR. 2. Approximately 50 years prior to the date hereof the sale of matches made from wood sticks or splints, chemically impregnated to prevent glowing of the stick or splint after the match flame is extinguished, and packed in small boxes, or cartons, usually of approximately the same size and containing approximately 40 matches, the outer surface of one or more sides of which box or container has been, and is, coated with a preparation that causes the said matches to ignite when rapidly drawn across the coated surface, was first begun and has since continued in substantial quantity. Said boxes are of a size easily and readily adaptable for use in carrying said matches on the person or in the clothing of the user thereof. Said matches readily ignite only when rapidly drawn across the coated surface of the box or carton in which they are packed and sold. During substantially all of the time that such matches have been made and sold to the public in the United States, they have been, and they are now, known and designated as "strike-on-the-box matches" and as "Safety Matches", and the boxes or cartons in which they have been, and are now, sold to dealers for resale to the public, and to the public for use, have been marked or labeled, among other words, with the words "Safety Match" or "Safety Matches."

Such matches have been, and are now, identified and known by dealers and a substantial portion of the purchasing public, in their purchase, sale, and use during all of said time of said matches, by the words "Safety Match" or "Safety Matches" with which the boxes or cartons were, and are now, usually marked or labeled. Said "strike-on-the-box matches", known and designated by the dealers and pur-

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chasing public as "Safety Matches", have been and are now in demand by a substantial number of the purchasing public, who in purchasing "Safety Matches" expect to purchase and receive "strike-on-the-box matches" containing the qualities hereinabove detailed.

PAR. 3. At all times since its organization, respondent, as had its predecessor for many years prior thereto, has also made and sold, throughout the United States, matches made from wood sticks or splints, chemically impregnated to prevent glowing of the stick or splint after the flame is extinguished, and packed in small boxes or cartons of approximately the same size as the boxes or cartons described and referred to in paragraph 2 hereof, and in many respects simulating said boxes in general appearance and design, the outer surface of one or two sides of which small boxes or cartons has been, and is now, a sanded surface which causes the matches to ignite when rapidly drawn across it. Such matches also readily ignite when rapidly drawn across the surface of any other substance which creates friction between said substance and the match head, and such matches have been for many years, and are now, known to a substantial portion of the purchasing public, in their purchase, sale, and use during all of said time, as "strike-anywhere matches."

PAR. 4. Since the date of its organization, the respondent has sold, and still sells, matches made by it in the United States, and matches made by others in the Kingdom of Sweden that have been, and are, manufactured, packed, and labeled as described in paragraph 2 hereof, the said matches being "strike-on-the-box matches", commonly known and designated as "Safety Matches", and has also sold, and still sells, matches manufactured, as described in paragraph 3 hereof, by it in the United States, the said matches being matches that are commonly designated by the trade and the public generally as "strike-anywhere matches." Said "strike-anywhere matches" manufactured and sold by the respondent as hereinabove set out are packed in boxes or cartons of approximately the same size and general appearance as the boxes or cartons described and referred to in paragraph 2 hereof, the same being the boxes or cartons in which the manufacturers of matches customarily and generally pack matches commonly designated as "strike-on-the-box matches", and commonly known as "Safety Matches." The said boxes or containers in which respondent packs said "strike-anywhere matches" are marked and labeled by the respondent with the words "Safety First Diamond Matches." In truth and in fact, the matches packed in said boxes by the respondent are "strike-anywhere matches" and are not the type of matches known to the trade and public generally as "Safety Matches" which are "strike-on-the-box matches."



PAR. 5. During all of the times hereinabove referred to the respondent, and its predecessor, has also made and sold, throughout the several States of the United States, other matches of the "strike-anywhere" type. These matches are identical with the matches described in paragraph 3 hereof except that said matches are slightly larger in size than the matches described in paragraph 3.

The matches herein referred to are packed in boxes or cartons several sizes larger than the boxes referred to in paragraph 3 hereof and the outer surface of one or two sides of said boxes or cartons has been, and is now, a sanded surface which causes the matches to ignite when rapidly drawn across it. The matches packed in said boxes or cartons have been for many years, and are now, known to a substantial portion of the purchasing public in their purchase, sale, and use as "strike-anywhere matches." The boxes in which said matches are packed by the respondent are labeled with the word "safety", or said word has been conspicuously printed on the outside of said boxes. In truth and in fact, said matches are of the type generally known as "strike anywhere" matches and are not of the type of matches known to the trade and public generally as "safety matches" which are "strike-on-the-box matches."

PAR. 6. The respondent, being engaged in the business of manufacturing and selling all types of matches, as hereinabove described, causes said matches, when sold to said purchasers located in various cities of the several States of the United States, to be transported from its factories or places of business to the purchasers thereof located in States of the United States other than the State or States in which said shipments originated, and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said several types of matches herein described, manufactured, or sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 7. During all of the times hereinabove referred to, other individuals, firms, and corporations, the same being manufacturers or distributors of matches and being hereinafter referred to as sellers, located in various States of the United States, have sold, and have caused to be transported, to wholesale and retail dealers located in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for display and resale to the public, matches, being "strike-on-the-box matches", commonly designated as "Safety Matches", made, packed in boxes or cartons, and marked or labeled as described in paragraph 2 hereof.

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The respondent, in the course and conduct of its business, has been at all times mentioned herein, and is now, engaged in substantial competition with said sellers, as above referred to, in commerce among and between the several States of the United States and in the District of Columbia in the manufacture, importation, distribution, and sale of matches of the several types hereinabove described.

PAR. 8. The sale, by the respondent, as set forth in paragraphs 3, 4, and 5, of matches which readily ignite when struck on surfaces other than the prepared surface of the container in which they are sold, the same being commonly designated as "strike-anywhere matches", packed in small boxes and labeled "Safety First Diamond Matches", the said boxes being of the same size and general appearance as the boxes in which matches which readily ignite only when struck on the prepared surface of the container in which they are sold and which are known as "strike-on-the-box matches" and have been generally designated "Safety Matches" are packed, or packed in boxes similar to those described in paragraph 5, the same being the larger size box, has the capacity and tendency to confuse, deceive, and mislead purchasers of matches into the belief that "strike-anywhere matches" so packaged and labeled and sold by the respondent were, and are "strike-on-the-box matches" designated as "Safety Matches", as described in paragraph 2 hereof, and to purchase substantial quantities of said "strike-anywhere matches", packed and labeled "Safety First Diamond Matches", or packed and labeled as described in paragraph 5, as and for said "strike-on-the-box-safety-matches", in said belief and in reliance on respondent's representations contained on the boxes in which said matches are packed and sold by it.

Further, the false and misleading representations made by the respondent in packaging and selling said "strike-anywhere matches" as and for "strike-on-the-box matches" place in the hands of afore-said wholesale and retail dealers and jobbers an instrument and a means whereby said dealers and jobbers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to offer for sale, and sell the said matches packed and labeled by the respondent as "Safety First Diamond Matches" or packed and labeled as described in paragraph 5, the same being "strike-anywhere matches", as and for "Safety Matches" as described in paragraph 2, the same being "strike-on-the-box matches."

There are among the competitors of the respondent many who manufacture and sell, or import and sell, matches manufactured, packed, and labeled as described in paragraph 2 hereof, the same being "strike-on-the-box matches" and being labeled "Safety

Matches", and who rightfully and truthfully represent said matches to be "Safety Matches."

PAR. 9. The foregoing false and misleading representations of the respondent have a tendency and capacity to, and do, divert a substantial volume of trade from competitors of the respondent engaged in similar businesses, with the result that substantial quantities of said matches, labeled by the respondent as "Safety First Diamond Matches", or labeled as described in paragraph 5, are sold to said dealers and purchasers, and to the consuming public, on account of said belief induced by said false and misleading representations and as a consequence thereof, a substantial injury has been done by the respondent to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 10. The above acts, practices, and representations of the respondent have been, and 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 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."

#### 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 December 9, 1935, issued and served its amended complaint in the proceeding upon the respondent, The Diamond Match Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent filed its answer and subsequently filed a motion to withdraw said answer and filed a substituted answer in which it stated that it waived hearing on the charges set forth in the complaint, that it did not wish to contest the proceeding, that it admitted all of the material allegations of the complaint to be true, and that it consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said amended complaint and the substituted answer, and the Commission having duly

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considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Diamond Match Co., is a corporation organized and doing business under the laws of the State of Maryland. Since its incorporation in 1930, it has maintained a place of business in the city of New York, N. Y., at 30 Church Street. It also operates factories in various States of the United States for the manufacture of its products. Since its organization, respondent has sold and now sells, matches made by it in the United States that are manufactured, packed, and labeled as described in paragraph 2 hereof, said matches being "Strike-on-the-Box" matches, commonly known and designated as "Safety" matches, and has also sold, and now sells, matches manufactured, packed, and labeled as described in paragraph 3 hereof, said matches being matches that are commonly designated by the trade and the public generally as "Strike-Anywhere" matches.

The respondent, being engaged in the business of manufacturing and selling all types of matches, as hereinafter described, causes said matches, when sold to said purchasers located in various States of the United States, to be transported from its factories or places of business to the purchasers thereof located in States of the United States other than the State or States in which said shipments originated, and in the District of Columbia, and there is now, and has been, a constant current of trade and commerce in said several types of matches herein described, manufactured or sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Approximately 50 years prior to the date hereof, the sale of matches made from wood sticks or splints which had been chemically impregnated to prevent glowing of the stick or splint after the match flame is extinguished was first begun. One type of said matches is packed in small boxes usually of approximately the same size and containing approximately 40 matches each. The outer surface of one or more sides of said boxes is coated with a preparation that causes the said matches to ignite when rapidly drawn across the said coated surface and said matches readily ignite only when rapidly drawn across the coated surface of the box in which they are packed and sold. Said boxes are of a size easily and readily adaptable for use in carrying said matches on the person or in the clothing of the user thereof.

During substantially all of the time that this type of match has been made and sold to the public in the United States, it has been known and designated as "Strike-on-the-Box" type or as "Safety" matches and the boxes in which said type has been sold to dealers for resale, and to the public for use, have been marked or labeled with the words "Safety Match" or "Safety" matches. This type of match has been, and is now, identified and known by dealers and the purchasing public, in the purchase, sale, and use of said matches, as "Safety" matches. Said "Strike-on-the-Box" type has been, and is now, in demand by a substantial number of the purchasing public who, in purchasing matches labeled "Safety" matches, expect to purchase and receive matches of the "Strike-on-the-Box" type which possess the qualities hereinabove detailed.

PAR. 3. For a number of years the respondent has made and sold another type of match made from wood sticks or splints chemically impregnated to prevent glowing of the stick or splint after the flame is extinguished. This type of match is packed in small boxes of approximately the same size as the boxes in which "Strike-on-the-Box" type is packed. The outer surface of one or two sides of said boxes bears a sanded surface which causes the matches to ignite when rapidly drawn across it and, in many respects, simulates the boxes in which the "Strike-on-the-Box" type is packed and sold. This type also readily ignites when rapidly drawn across the surface of any other substance which creates friction between said substance and the match head. This type has been for many years known to the purchasing public in the purchase, sale, and use thereof as "Strike-Anywhere" matches.

The said boxes in which respondent packs said matches of the "Strike-Anywhere" type are marked and labeled by the respondent with the words "Safety First Diamond Matches" as a brand name. The matches packed in said boxes so labeled by the respondent are the "Strike-Anywhere" type and are not of the "Strike-on-the-Box" type of match known to the trade and public generally as "Safety" matches.

The respondent has also manufactured and sold throughout the United States other matches of the "Strike-Anywhere" type. These matches are identical with other matches of the "Strike-Anywhere" type in chemical composition of the tip thereof, but are slightly larger in size. They are packed in boxes bearing sanded surfaces similar to those in which the smaller size "Strike-Anywhere" type is packed, but said boxes are several times larger than the smaller size boxes. The matches packed in said boxes have for many years been likewise known to the purchasing public in the purchase, sale and use thereof as "Strike-Anywhere" matches.

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The boxes in which said larger size matches are packed by the respondent are labeled with the word "Safety", or said word has been conspicuously printed or displayed on the outside of said boxes. These matches are not of the type known to the trade and public generally as "Safety" matches but are of the type known as "Strike-Anywhere" matches.

PAR. 4. For more than 6 years, other corporations, firms, and individuals, the same being manufacturers or distributors of matches and being hereinafter referred to as sellers, located in various States of the United States, have sold, and have caused to be transported, to wholesale and retail dealers located in the various States of the United States other than the State of the seller, or the State of origin of the shipment, for display and resale to the public, matches of the "Strike-on-the-Box" type, commonly designated as "Safety" matches, made, packed in boxes and marked or labeled as described in paragraph 2 hereof.

The respondent, in the course and conduct of its business, has been, since 1930, engaged in substantial competition with said sellers, in commerce among and between the various States of the United States and in the District of Columbia in the manufacture, importation, distribution and sale of matches of the several types hereinabove described.

PAR. 5. The acts of the respondent in labeling the boxes of its small size "Strike-Anywhere" type matches with the words "Safety First Diamond Matches" as a brand name, and in labeling the boxes of its larger size "Strike-Anywhere" type with the word "Safety", serve as representations to the purchasing public that said matches so marked or labeled, are in fact "Safety" matches of the "Strike-on-the-Box" type. Said acts and representations have the capacity and tendency to confuse, deceive and mislead purchasers of matches into the belief that matches of the "Strike-Anywhere" type so packaged, labeled and sold by the respondent, are in fact "Safety" matches of the "Strike-on-the-Box" type. As a result of this erroneous belief, and acting in reliance on respondent's representations, the public has purchased substantial quantities of matches of the "Strike-Anywhere" type that are packed and labeled "Safety First Diamond Matches", or that are packed and labeled, among other words, with the word "Safety" as and for "Safety" matches of the "Strike-on-the-Box" type.

Further, the representations made by the respondent in packaging and selling said matches of the "Strike-Anywhere" type as and for "Strike-on-the-Box" type, place in the hands of aforesaid wholesale

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and retail dealers an instrument and a means whereby said dealers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to offer for sale, and sell the said matches packed and labeled by the respondent as "Safety First Diamond Matches", or packed and labeled with the word "Safety", the same being "Strike-Anywhere" matches, as and for "Safety" matches, the same being of the "Strike-on-the-Box" type.

There are among the competitors of the respondent many who manufacture and sell, or import and sell, matches manufactured, packed, and labeled as described in paragraph 2 hereof, the same being "Strike-on-the-Box" type and being labeled "Safety" matches, and who rightfully and truthfully represent said matches to be "Safety" matches.

PAR. 6. The representations of the respondent, as above set out, have a tendency and a capacity to, and have, diverted a substantial volume of trade from competitors of the respondent engaged in similar businesses who do not engage in similar practices. As a result thereof, a substantial quantity of said matches of said "Strike-Anywhere" type labeled by the respondent as "Safety First Diamond Matches" or labeled by use of the word "Safety", are sold to dealers and to the consuming public on account of the beliefs induced, as herein set out. Substantial injury has been done by the respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

## CONCLUSION

The acts and practices of the respondent are each and all to the prejudice of the public, and to the 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 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 matter coming on to be heard by the Commission upon the amended complaint filed herein on December 9, 1935, and the substituted answer, the respondent, The Diamond Match Co., having filed its answer to the complaint in this proceeding and having subsequently filed a motion to withdraw the answer heretofore filed and tendered in lieu thereof a consent answer, in which answer respondent states that it desires to waive hearing and not to contest the proceeding, and that it admits all of the material allegations of the com-

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plaint to be true, and consents that the Commission may, without trial, without further evidence, and without intervening procedure, make, enter, issue, and serve upon the respondent, its findings as to the facts and its conclusion thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the amended complaint and said substituted answer, and being fully advised in the premises;

*It is now ordered*, That the respondent, The Diamond Match Company, be, and it is hereby, permitted to withdraw the answer heretofore filed by it under date of November 8, 1935, and to file a consent answer in lieu thereof and the substituted answer tendered by it is herewith received and filed.

*It is also ordered*, That the respondent, The Diamond Match Company, its officers, agents, servants, and employees, in connection with the manufacture, offering for sale and sale, of matches, in commerce among and between the various States of the United States and in the District of Columbia, cease and desist from:

1. The use of the word "Safety" as part of any brand name used by it in labeling matches that are in fact matches of the type commonly known and designated as "Strike-Anywhere" matches.

2. Using the word "Safety", either alone or in conjunction with the word "First", or in conjunction with other words, or in any way, as a brand name, or to designate or describe any type of match other than the type commonly designated as "Strike-on-the-Box" matches which readily ignite only when the head thereof is drawn across a specially prepared coating on the box in which said matches are sold.

*It is further ordered*, That respondent shall, within 90 days from the date of service upon it of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which it has complied with the order herein set forth by the Commission.



## Syllabus

## IN THE MATTER OF

T. O. LOVELAND AND J. L. RECORDS, DOING BUSINESS  
AS COMMERCIAL MANUFACTURING COMPANY AND  
BRENARD MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2617. Complaint, Nov. 7, 1935—Decision, Mar. 17, 1936*

Where two individuals engaged in the sale and distribution of radios—

- (a) Represented themselves through advertising booklets, price lists, letter-heads, distributors' agency agreements, and other advertising literature as manufacturers of the radios distributed and sold by them and featured their two trade names, in each of which was included word "Manufacturing", on all their said literature, facts being that they were not manufacturers of said radios, but were engaged solely in distributing and selling such products made by others;
- (b) Falsely represented their said radios in their advertising literature as of superior quality and sold at exceptionally low prices, facts being that said products were only of average quality, lacked many features included in first-class radios, and were priced higher than comparable products of competitors;
- (c) Grossly misrepresented, in soliciting through salesmen supplied with their said advertising literature, execution of their dealer agency agreements and purchase of the demonstrator units and payment of sums called for thereby, advantages to dealer as to supposed exclusive territory, guaranteed profits or sales, relief of and reimbursement for unsold stock, furnishing of floor stocks, consignment shipments, liberal credit and handling of dealer customers' installment paper, and advertising and sales assistance to be rendered by them, reason for required deposit, and their own role as simply that of establishing dealers and opening up new territory at no profit or even initial loss, and set forth that they were selling their products in cooperation with dealer, through the direct advertising system, and if dealer could not make a profit, neither could they; facts being they made a substantial profit on demonstrator units, cost to them of their said products was considerably less than represented, retailers could not reasonably expect to sell the same on the open market at any price closely approximating that fixed or suggested, and said representations and promises as to credit and other assistance and all other matters were entirely or substantially false and unfulfilled;

With result that they placed in the hands of their said salesmen a means whereby the unscrupulous were enabled to commit a fraud upon retail dealers, a substantial number of such dealers and of the purchasing public were misled into the belief that they were manufacturers and their said products were of superior quality and low priced, and that dealers would receive exclusive territory, credit, and other benefits above set forth and suggested, a number of retailers executed said agreements which substantiated aforesaid claims or were susceptible of such interpretation and did

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not clearly demonstrate the exaggerated, misleading, and untrue nature thereof, substantial quantities of their said radios were sold to dealers and consuming public on account of such erroneous beliefs, and a substantial volume of trade was diverted from competitors, among whom there were those who truthfully represented themselves as manufacturers of such products, those who neither made the radios they dealt in nor represented themselves as so doing, those who made and sold products of superior quality, those who did not falsely represent themselves as so doing, and many who did not enter into agency agreements with retailers and misrepresent their terms and conditions; to the substantial injury of substantial competition:

*Held*, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Joseph A. Simpson*, trial examiner.

*Mr. J. T. Welch* for the Commission.

## COMPLAINT

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 having reason to believe that T. O. Loveland and J. L. Records, trading and doing business under the names "Commercial Manufacturing Company" and "Brenard Manufacturing Company", hereinafter designated as respondents, are now, and have been, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondents, T. O. Loveland and J. L. Records, trading and doing business under the trade names, "Commercial Manufacturing Company" and "Brenard Manufacturing Company", have their office and principal place of business located at Iowa City, in the State of Iowa, and are now, and have been for a period of more than 2 years last past, engaged in the business of distributing and selling, principally, radios, but also selling and distributing refrigerators, oil burners for furnaces, and air conditioners to retail dealers for resale, all of said products hereinafter for brevity referred to as appliances.

PAR. 2. Said respondents, being engaged in the business of distributing and selling said appliances hereinabove referred to, cause said appliances, when sold to dealers and purchasers located in various cities in the several States of the United States, to be transported from their principal place of business in the State of Iowa to the purchasers thereof located in other States of the United

States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said appliances, distributed and sold by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents, in the course and conduct of their business, are, and have been at all times mentioned herein, engaged in substantial competition with other individuals, partnerships, and corporations engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, distribution, and sale, or in the distribution and sale, of similar appliances to retail dealers for resale.

PAR. 4. Respondents, in the course and conduct of their business, as detailed in paragraphs 1 to 3 hereof, and for the purpose of inducing individuals, firms, and corporations to purchase said appliances, have had printed and circulated to customers and prospective customers throughout the various States of the United States, through the United States mails and through other means, advertising booklets or pamphlets, price lists, letterheads, invoices, so-called distributor's agency agreements, and other advertising literature wherein they claim and represent themselves to be the manufacturer of the hereinabove-mentioned appliances distributed and sold by them and wherein their two trade names, "Commercial Manufacturing Company" and "Brenard Manufacturing Company", are prominently displayed. In the so-called distributor's agency agreements hereinabove referred to respondents, in addition to using the two trade names containing the word "Manufacturing", make use of other statements such as the following:

\* \* \* becomes a contract between the Commercial Manufacturing Company and the undersigned for the purchase and sale of the Commercial Manufacturing Company line of Plymouth Radio Receiving Sets \* \* \*.

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\* \* \* Ship the undersigned at your earliest convenience f. o. b. factory or distributing point one Plymouth Receiving Set \* \* \*.

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\* \* \* diligent efforts in promoting sale of Commercial Manufacturing Company products \* \* \*.

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Commercial Manufacturing Company warrants its products against defects of material or workmanship and agrees to repair or replace defective parts at the factory.

In the distributor's agency agreement above referred to issued by the respondents under the name "Brenard Manufacturing Company", that trade name is substituted for the trade name "Commercial Manufacturing Company", the statements and representations being identical to, or of similar import to, the statements hereinabove detailed.

The use of the word "Manufacturing" in respondents' trade names, as indicated on the advertisements, booklets, distributor's agency agreements, and other business correspondence, together with the statements and representations appearing therein as hereinabove detailed, purports to be descriptive of the respondents' business and the products sold by them.

In all of said advertising literature above referred to respondents represent that the appliances, particularly the radios designated as "Plymouth" and "Concord" radios, are "as good as the best, better than the rest", and that said radios are laboratory tested and guaranteed. Respondents further represent, in their advertising literature and in the direct mail advertising sent to the prospects furnished by the retail dealer, that the said radios are of a superior quality and are priced at an exceptionally low price.

PAR. 5. Respondents do not own, operate, or control any plant or machinery for the manufacture of the various appliances hereinabove named. The respondents are not engaged in the business of manufacturing and are not manufacturers as that term is understood by the trade and the public generally. Respondents are engaged solely in the business of distributing and selling radios, refrigerators, oil burners for furnaces, and air conditioners that have been manufactured by others.

In truth and in fact, the appliances, particularly the radios designated by the respondents as "Plymouth" and "Concord" radios, are not "as good as the best and better than the rest", but are inferior, off-brand radios that do not contain many of the features included in standard first-class radios and are not laboratory tested, the respondents do not have laboratory facilities for making said tests, and the respondents do not guarantee the radios or make good the defects arising in said radios. The radios sold by the respondents are not priced at low prices but are sold for prices several times in excess of the purchase price paid by the respondents therefor, and competitors of the respondents sell radios of similar character, quality, and design at and for prices substantially lower than the prices designated by the respondent as being the retail value of said radios.

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PAR. 6. A substantial portion of the retail dealers and distributors of the appliances hereinabove referred to prefer to purchase direct from the manufacturer of said products, and a substantial portion of the purchasing public prefer to purchase said appliances, or similar appliances, when they cannot purchase them from the manufacturer thereof, from the authorized agency distributor of said manufacturer and not from a distributor of one who purchases in large quantities from said manufacturer and is not the agent thereof. Both the dealers and distributors, and the general public, believe that they secure closer prices and superior quality in dealing direct with the manufacturer of the articles hereinabove described rather than with a selling agency or middleman.

PAR. 7. For more than a year last past, in the course of the operation of their said business, the respondents, acting either by themselves or in conjunction and cooperation with their traveling representatives, have engaged in a scheme to defraud, and have defrauded, the retail dealers executing the so-called distributor's agency agreement and purchasing the appliances, distributed and sold by the respondents, in the following manner:

Respondents have employed a number of traveling representatives for the purpose of securing the execution of distributor's agency agreements by, and the sale of the particular appliance described in the agency agreement to, said retail dealers and distributors, said representatives traveling throughout the several States of the United States in furtherance of their employment for the purposes hereinabove detailed. Each of said traveling salesmen is provided, by respondents, with a salesman's kit in which are included a number of blank distributor's agency agreements, distributor's promotional expansion checks, reorder blanks, advertising booklets describing the appliances, particularly radios, distributed and sold by the respondents, together with other advertising literature and instructions to the salesman.

The traveling representative, being supplied by the respondents with the said salesman's kit and its contents, calls on and visits dealers located in various States of the United States and solicits said retail dealers to become distributors for the radios, or other appliances, distributed and sold by the respondents. Said traveling representative, realizing that retail dealers who can be interested in entering into said agency agreement will be only those dealers possessing insufficient financial responsibility and credit rating to enable them to enter into agency agreements, providing for liberal credit terms or the placing of merchandise with said dealers on a

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consignment basis, with reputable and responsible manufacturers and distributors, and for the purpose of carrying out and furthering the design, on the part of the respondents and said salesman, of securing the execution of said agency agreements through fraudulent and misleading representations, calls on and solicits prospective agents that do not have high credit ratings and are unable on account thereof to secure attractive agency agreements from said reputable manufacturers and distributors.

In making said solicitations said traveling representative, acting under instructions from the respondents, as contained in memoranda placed in the hands of said representative by said respondents, and as otherwise given to said traveling representative by respondents, or acting with the respondents' full knowledge and consent, uses a sales talk for the purpose of inducing the prospective agent to execute the distributor's agency agreement. In this sales talk the representative of respondents first represents that the respondents are the manufacturers of the products distributed and sold by them. The representative next represents: (1) That, upon execution of the agency agreement, the retail dealer will secure an exclusive franchise for several counties in connection with the sale of the various appliances named in the agreement; (2) that the respondents will enter into an extensive advertising campaign, upon the retail dealer furnishing names of prospective purchasers, and will furnish said dealer with movie trailer ads to be used at the local theaters; (3) that the respondents guarantee a certain number of sales and a certain profit to the distributor as a result of his execution of the agency agreement and the advertising campaign conducted by the respondents; (4) that if the appliances are not sold, they will be taken off the dealer's hands and the dealer's money refunded together with interest; (5) that the respondents are not attempting to sell the retail dealer a stock of appliances but are establishing dealers; (6) that the respondents, with the cooperation of the dealer, sell the appliances through their direct advertising system; (7) that, for the protection of respondents, a temporary deposit to the extent of the amount of the distributor's agency agreement is required so as to secure the cooperation of the dealer in furnishing the names necessary in respondents' advertising campaign and to demonstrate the good faith of the retail dealer; (8) that upon the execution of the agreement and the purchase of the demonstrator unit appliance, respondents will ship to said dealer, as a floor stock, a supply of the various types of the appliance named in the agency agreement, ranging from 5 to 10 units, the floor stock to be either placed with the dealer or distributor on a consignment basis or on open account for

90 days, with a 90-day extension, all unsold units to be taken up by the respondents at the expiration of this period; (9) that the intent and purpose of the agreement is, primarily, to promote business in the particular trade territory and to open up the territory adjacent to the dealer for the sale of the appliances sold by the respondents; (10) that if the dealer cannot make a profit, the respondents cannot make a profit; (11) that the retail dealer will be granted the privilege of selling said radios, or other appliances, to responsible people on the installment plan and the respondents will handle the installment paper of said responsible parties who purchase said appliances from the distributor or dealer, either with or without the endorsement of said dealer thereon; and (12) that the respondents operate their business on liberal credit terms for reorders and that the said dealers, after executing the agency agreement and purchasing the demonstrator unit, can easily qualify for extension of credit by respondents and will be enabled to do a considerable volume of business as a result of respondents' liberal credit arrangements and respondents' financing of time purchases made by the dealer's customers without the necessity of the dealer placing any considerable amount of money into stocking, at the dealer's expense various models of the appliances sold by the respondents.

Further, the representative, in his said sales talk, represents that the execution of the agency agreement and the opening of a new agency franchise is attended by heavy initial expense in the way of salesman's commission, advertising matter, and direct mailing expense and the so-called benefits accruing to the dealer from the warranties, exclusive territory, etc., contained in the agreement; that the respondents cannot break even on the first franchise order at the discounts allowed on reorders and that the first order is priced at approximately the suggested retail price of said appliances so as to defray the initial expense claimed to be incurred by the respondents, which cost is represented as being so close to the amount agreed to be paid by the dealer in connection with the execution of the agreement as to leave substantially no profit on the sale of the demonstrator unit and the other benefits.

PAR. 8. As a result of the said sales talk, as set out in paragraph 7, and as a result of the confidence and reliance placed in the statements and representations made by the said traveling representative, a number of retail dealers have executed, and they continue to execute, said distributor's agency agreements. The several forms of printed distributor's agency agreements used by the respondents under both trade names hereinabove set out in selling their various appliances, such as "Concord" radios and "Plymouth" radios, are

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incorporated herein by reference and made a part hereof the same as if copied herein in full. The agreement, in vague and indefinite language, substantiates the claims and representations made by the traveling representative in the sales talk used by him in securing the execution of said agreement. The terms and conditions as set out in said agreement, while not being as definite and positive with respect to the benefits that may be expected to accrue to the prospective distributor executing the agency agreement, are couched in such language as to be reasonably interpreted by said retail dealer to grant and provide to said dealer the privileges enumerated by the representative as set out in the representations in paragraph 7, and do not contradict said representations or demonstrate clearly and accurately the fact that said representations, when made by said traveling representative, are grossly exaggerated, misleading, and untrue in fact.

The respondents instruct the traveling representative to make and utter the representations and statements detailed in paragraph 7, or they are aware that said representative is making, and has made, said representations and statements, or similar ones, and have failed to instruct said representative to refrain from making said representations or to take away from him the agreement and other literature used in making said representations.

PAR. 9. In truth and in fact, the respondents do not grant an exclusive franchise for any particular territory to the dealers executing said agreement but, by using the two trade names hereinabove indicated, different traveling representatives with overlapping territories and appliances, particularly radios, of slightly different design and of different name, attempt to secure, and in many instances do secure, the execution of agency agreements on the part of other dealers in the same territory under the guise of competing manufacturers and competing lines of radios. The respondents do not enter into any extensive advertising campaign but when furnished names of prospective purchasers merely send out one mimeographed letter, containing the name and address of the dealer and other advertising matter, to the prospects named by said dealer, and no follow-up advertising is sent said prospects. The respondents do not furnish the movie trailer ads for use at local theaters.

The respondents, by reason of their refusal to place stocks on consignment, to grant lenient credit terms, or to handle installment papers acquired by the dealers in selling their appliances, make it impossible for said retail dealers executing the agency agreements to buy the necessary quantity of said appliances in order to enable them to make use of the promotional expansion checks issued to them



and to secure the discounts offered them on reorders of said appliances, and as a result thereof, the respondents are not required, as represented in the sales talk and as set out in the agreement, to buy back the demonstrator unit and refund the money advanced the said dealers, or in any way protect said dealers from resulting losses; said respondents and their agents knowing, or having reason to believe, at the time of the execution of the agency agreement or before the shipment of the merchandise, that said dealers would not be able to comply with respondents' requirements so as to secure credit and that said dealers could not carry out the terms of the agreement if required to buy a large number of units at the high and exorbitant prices charged, and to pay cash therefor, as a condition to placing themselves in a position whereby they can take advantage of respondents' guarantee of a sale of the appliances, a repurchase thereof or the redemption of the promotional expansion checks.

The respondents, through the aid and cooperation of their representatives as hereinabove detailed, are interested not in establishing any agency for the distribution of the appliances sold by them but in the sale to the dealer of the original so-called demonstrator order at and for a high, exorbitant, and fictitious price.

Respondents do not ship to said dealers, as a floor stock, a supply of the various types of the appliances named in the agency agreement and have not devised, and do not follow, a plan of merchandising whereby the retail dealers executing the agreements are placed in a position to handle the appliances distributed by said respondents without any considerable outlay of money. Although the sales talk of the said representative and the agency agreement itself provide for the extension of credit to dealers approved by the credit department, the respondents actually sell a very small percentage of the radios, and other appliances sold by them, on credit to anyone, and it is impossible for dealers executing the agency agreement to obtain the benefits of the credit arrangements represented. The respondents do not enter into time-payment financing arrangements with said dealers to such an extent as to enable said dealers to handle a large volume of business with a small outlay of cash, and they do not arrange for the carrying of time-payment paper taken by said dealers as a result of the representations made by the salesman and contained in the agency agreement, but refuse to accept said time-payment notes of purchasers without even making investigations as to the worth of said time-payment notes.

The cost of the various demonstrator units named in the several agency agreements is considerably less than represented by the re-

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spondents and their salesmen. In the case of the radios described in a number of the agency agreements, said radios cost the respondents 25 percent or less of the amount for which they are sold to the dealer. The cost of the advertising campaign carried on by the respondent for the benefit of said dealers is slight and said promotional expansion checks have no value whatever, except upon reorders, which checks the respondents, by reason of their credit policy as hereinabove detailed, make it impossible for the dealer to use.

The various types of appliances distributed and sold by the respondents are of inferior quality, and the retail dealer thereof cannot reasonably expect to sell the same on the open market to purchasers for any price closely approximating the price fixed or suggested by the respondents. In truth and in fact, the net price of the appliances, after deducting the value of the promotional expansion check, as paid by the agents upon reordering after the purchase of the demonstrator, is approximately the price at which similar appliances, of like quality and character, are sold in the usual course of trade by competitors of said dealers. The said respondents, although representing that substantially no profit is made on the demonstrator unit when sold to said dealers, actually make a very substantial profit that is not disclosed to the dealer executing said agreement.

PAR. 10. All of the representations and statements hereinabove set out as contained in the sales talk made by the representative of respondents, under their instruction and direction, or with their knowledge and consent, and as set out in the written agency agreement, are used as a snare and a lure to induce prospective purchasers to sign the agency agreement and purchase the demonstrator unit in the manner hereinabove detailed. After the purchase of the demonstrator unit for a high, exorbitant, and fictitious price, respondents then adopt an attitude and a course of action calculated and designed to hamper and prevent, and having the result of hampering and preventing, said dealers from securing additional similar appliances at fair and reasonable prices and on fair and reasonable terms and from securing the benefits of an exclusive agency for the distribution of appliances sold by the respondents.

PAR. 11. The false and misleading advertising and representations on the part of the respondents, as hereinabove set out, place in the hands of the aforesaid traveling representative an instrument and a means whereby the said representative may commit a fraud upon a substantial number of retail dealers by enabling such representative to represent, offer for sale, and sell the appliances sold and distributed by the respondents under the pretense of selling demonstrator units to dealers executing agency agreements.

PAR. 12. Many of respondents' competitors manufacture the radios, and other appliances, distributed and sold by them and truthfully represent themselves to be the manufacturers thereof. Many of the respondents' competitors do not manufacture radios, and other appliances, distributed by them and do not in any manner hold themselves out to be the manufacturers thereof. Likewise, many of respondents' competitors manufacture and distribute radios of superior quality and so advertise their products, and many others of respondents' competitors do not manufacture or distribute radios or other appliances of superior quality and do not advertise their products to be of such superior quality. Many of respondents' competitors enter into lawful and legitimate agency agreements with retail dealers throughout the several States of the United States and do not falsely represent any of the terms or conditions of said agreements, but faithfully carry out all of the provisions thereof.

PAR. 13. The effect of the foregoing false and misleading representations on the part of both respondents and their traveling representatives is to mislead a substantial number of retail dealers, as well as a substantial portion of the consuming public, in the several States, by inducing them to believe: (1) That the respondents are the manufacturers of the various appliances sold and distributed by them; (2) that said appliances are of superior quality, are laboratory tested and guaranteed, and are priced at low prices; and (3) that said dealers will receive all of the benefits represented by the traveling representatives as accruing to said dealers upon the execution of the agreement and as set out in said agreement, said representations being set out in full in paragraphs 7 and 8.

The foregoing false and misleading statements and representations on the part of the respondents serve as inducements for a substantial number of retail dealers, as well as consuming purchasers, to buy the appliances distributed and sold by the respondents and to execute the so-called agency agreements hereinabove referred to, and said false and misleading statements and representations have a tendency and a capacity to, and do, divert a substantial volume of trade from respondents' competitors engaged in similar businesses, with the result that substantial quantities of said appliances sold and distributed by the respondents are sold to said dealers and to the consuming public on account of said beliefs induced by said false and misleading representation. As a consequence thereof a substantial injury has been done by the respondents to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 14. The above foregoing acts, practices, and representations have been, and are, all to the prejudice of the public and respondents' competitors, and have been, and are, unfair methods of competition within the meaning and intent 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.

#### 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 November 7, 1935, issued and served its complaint in this proceeding upon the respondents, T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, an agreed statement of facts was dictated into the record by J. T. Welch, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, and said agreed statement of facts and exhibits in connection therewith were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, and the agreed statement of facts stipulated into the record; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, T. O. Loveland and J. L. Records, trading and doing business under the trade names Commercial Manufacturing Co. and Brenard Manufacturing Co., have their office and principal place of business in Iowa City, in the State of Iowa. For a period of more than 2 years, the respondents have been engaged in the business of distributing and selling radios.

PAR. 2. Said respondents, being engaged in the business of distributing and selling radios, cause said radios, when sold to dealers and purchasers located in various cities in the several States of the United States, to be transported from their principal place of busi-

ness in the State of Iowa to the purchasers thereof located in other States of the United States. There is now, and has been at all times mentioned herein a constant current of trade and commerce in said radios distributed and sold by the respondents between and among the various States of the United States. The net volume of respondents' business, from November 1, 1934, to January 10, 1936, amounted to \$22,961.85.

PAR. 3. At all times since the respondents' entry into the business of distributing and selling radios, other individuals, partnerships, and corporations have been engaged in similar businesses in various States of the United States and there has been, at all times, substantial competition between the respondents herein and their various competitors in the distribution and sale of said radios in commerce among and between the various States of the United States.

PAR. 4. Respondents, for the purpose of inducing the purchase of radios sold by them, have had printed, and circulated to customers and prospective customers throughout the various States of the United States, advertising booklets or pamphlets, price lists, letterheads, distributor's agency agreements, and other advertising literature. In all of said literature, hereinabove referred to, the respondents represent through various statements and representations that they are the manufacturers of the radios distributed and sold by them and their trade names Commercial Manufacturing Co. and Brenard Manufacturing Co. are prominently displayed on all of said literature.

The respondents further represent, in their advertising literature and in other ways, that the radios distributed and sold by them are of a superior quality and are priced at exceptionally low prices.

PAR. 5. The respondents do not own, operate, or control any complete plant or machinery for the manufacture of the various radios sold by them, and are not engaged in the business of manufacturing, and are not manufacturers of said radios, but are engaged solely in the business of distributing and selling radios manufactured by others. The radios designated as Plymouth and Concord radios, respectively, that are sold by the respondents and that are represented as being as good as the best and better than the rest, are radios of average quality. Radios are manufactured that are superior in quality to those distributed and sold by the respondents. Radios sold by the respondents do not contain many of the features included in first-class radio sets and said radios are not furnished at prices substantially lower than those of other manufacturers or distributors and competitors of the respondents selling radios of similar character, quality, and design. These competitors, in some instances, sell radios of similar character, quality,

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and design for prices substantially lower than the prices designated by the respondents as being the retail value or list price of said radios.

PAR. 6. A substantial portion of the retail dealers and distributors of radios prefer to purchase said radios direct from the manufacturer of said product. A substantial portion of the purchasing public prefer to purchase said radios, when they cannot purchase them direct from the manufacturer thereof, from the authorized agency distributors of said manufacturer and not from a distributor or one who merely purchases in large quantities from the manufacturer and is not the authorized agent thereof. A substantial portion of the purchasing public believe that they can secure closer prices and superior quality in dealing direct with the manufacturer of radios rather than dealing with a selling agency or middleman.

PAR. 7. The respondents have employed a number of traveling salesmen to secure the execution of distributor's agency agreements by, and the sale of radios to, retail dealers and distributors. These salesmen travel throughout the various States of the United States in furtherance of their employment. All of the advertising literature used by said salesmen is furnished by the respondents, and the respondents suggest the methods to be used by the salesmen in making their sales talks or presentations.

In soliciting retail dealers to become distributors for radios distributed and sold by the respondents, the traveling salesmen, acting under instructions from the respondents as contained in the bulletins and letters of instruction furnished by the respondents or acting with the respondent's full knowledge and consent, represent that the respondents are the manufacturers of the radios sold by them. The salesmen also make a number of representations that are in some instances without respondent's knowledge or consent, but the respondents are generally familiar with the representations so made by their salesmen and have assumed full responsibility for said representations. These representations are as follows:

1. That upon execution of the agency agreement, the retail dealer will secure an exclusive franchise for several counties or a certain trade territory in connection with the sale of the radios named in the agreement;

2. That the respondents will enter into an extensive advertising campaign upon the retail dealer furnishing names of prospective purchasers and will furnish said dealers with movie trailer ads to be used at the local theaters.

3. That the respondents guarantee a certain number of sales and a certain profit to the distributor as a result of his execution of the agency agreement and the advertising campaign conducted by the respondents;

4. That if the radios are not sold they will be taken off of the dealer's hands and the dealer's money refunded, together with interest;

5. That the respondents are not attempting to sell the retail dealer a stock of appliances, but are establishing dealers;

6. That the respondents, with the cooperation of the dealer, sell the appliances through their direct advertising system;

7. That for the protection of respondents, a temporary deposit to the extent of the amount of the distributor's agency agreement is required, so as to secure the cooperation of the dealer in furnishing the names necessary in respondents' advertising campaign and to demonstrate the good faith of the retail dealer;

8. That upon the execution of the agreement and the purchase of the demonstrator unit radio, the respondents will ship to said dealer as a floor stock, a supply of the various types of radios named in the agency agreement, ranging from 5 to 10 units, the floor stock to be either placed with the dealer or distributor on a consignment basis, or an open account for 90 days, with a 90-day extension, all unsold units to be taken up by the respondents at the end of the expiration of this period;

9. That the intent and purpose of the agreement is primarily to promote business in a particular trade territory and to open up the territory adjacent to the dealer for the sale of the radios sold by the respondents;

10. That if the dealer cannot make a profit, the respondents cannot make a profit;

11. That the retail dealer will be granted the privilege of selling said radios to responsible people on the installment plan, and the respondents will handle the installment paper of said purchaser who purchased their radios from the distributor or dealer, either with or without his endorsement;

12. That the respondents operate their business on liberal credit terms on reorders, and that the dealers, after executing the agency agreement and purchasing the demonstrator unit, can easily qualify for extensive credit by the respondents and will be enabled to do a considerable volume of business as a result of respondents' liberal credit arrangement and financing of time purchases without the necessity of the dealer placing any considerable amount of money into stocking at his own expense various models of the radios sold by the respondents;

13. That the opening of a new agency franchise is attended with heavy expense to such an extent that the respondents cannot break even on the first franchise order and that there is substantially no profit on the sale of the first unit to the dealer.

PAR. 8. As a result of the sales presentation and the confidence and reliance in the statements and representations made by said salesmen, a number of retail dealers have executed the distributor's agency agreements used by the respondents in their business. The written agency agreement to some extent substantiates the claims and representations, as above indicated, made by the salesmen, and its terms are couched in such language that they may be interpreted by retail dealers to grant and provide to said dealers the privileges enumerated by the representatives as shown in paragraph 7 hereof and do not contradict said representations or clearly and accurately demonstrate that the representations are exaggerated, misleading, or untrue.

PAR. 9. Respondents do not generally grant exclusive franchises for any particular territory and do not have overlapping territories

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at the same time, but whenever a dealer falls down on his agreement with the respondents acting under one trade name, other dealers in the same territory are approached by the respondents under their other trade name and a franchise closed with said dealers. The respondents do not conduct extensive direct-mail advertising but merely send out one mimeographed letter and a pamphlet depicting several of the radios sold by them. No other advertising material is furnished and the respondents do not furnish movie trailer ads for use in theaters and do not enter into extensive advertising campaigns. They do not place stocks of radios on consignment and do not grant liberal credit terms. During the period from November 1, 1934, to January 10, 1936, the respondents' total credit business amounted to \$63.40. During the period from November 1, 1934, to January 10, 1936, the respondents have handled no installment paper such as purchasers' notes taken by the retail dealers in selling said radios. During this same period of time, the respondents' reorder business from dealers who had already purchased the demonstrator unit amounted to \$1,334.63. During the same period of time, only 77 promotional expansion checks had been redeemed from a total of 56 different distributors. The average order received is approximately \$40 to \$50 and approximately 400 to 500 dealers have executed agency agreements between November 1, 1934, to January 10, 1936. During this same period of time, the respondents have not been required, as represented in the salesmen's representations and as set out in the agreement, to buy back any distributor's demonstrator unit or to refund the money advanced by any dealer or in any way make good the guarantee set out in the agency agreement.

The respondents do not in any case ship a supply of radios to dealers on consignment and have not devised and do not follow any plan of merchandising whereby the dealers executing the agreements are enabled to handle the radios sold by the respondents without any considerable outlay of cash except in cases where the dealer is in a position to pay for each unit purchased. The cost to the respondents of the various radios sold by them is considerably less than that represented by the salesmen to the distributors. Some of the radios cost the respondents approximately one-third of the amount for which they are sold to the dealer on the original order. The cost of the advertising campaign carried on by the respondents for the benefit of the dealers is slight. The promotional expansion checks have no value except on reorders. The retail dealer cannot reasonably expect to sell the radios distributed by the respondents on the open market to purchasers for any price closely approximating the



price fixed or suggested by the respondents. The net cost to the dealer of said radios, after the purchase of the demonstrator unit and after deducting the value of the promotional expansion check, is approximately the same as the price at which some competitors of said distributors can sell radios of similar grade and quality to members of the purchasing public. The respondents actually make a substantial profit upon the sale of the demonstrator unit to the retail dealer.

PAR. 10. The various representations made by the traveling salesmen, as herein enumerated in paragraph 7, are made for the purpose of inducing prospective purchasers to sign the agency agreement and purchase the radios in connection therewith.

PAR. 11. The various advertising literature and representations made by the respondents has placed in the hands of the traveling salesmen a means whereby unscrupulous salesmen are enabled to commit a fraud upon a substantial number of retail dealers.

PAR. 12. Many of respondents' competitors manufacture and sell radios and truthfully represent themselves as the manufacturers thereof, and many of respondents' competitors do not manufacture the radios sold by them and do not, in any way, represent themselves to be the manufacturers thereof. Many of respondents' competitors manufacture and sell radios of superior quality and many other of respondents' competitors do not manufacture or sell radios of superior quality and do not advertise their products to be of such superior quality. Many of respondents' competitors enter into agency agreements with retail dealers and do not, in any way, misrepresent any of the terms or conditions of said agreements.

PAR. 13. The operation of the respondents' business has been such as to lead a substantial number of retail dealers, as well as of the purchasing public, to believe that the respondents are the manufacturers of the radios sold by them, that said radios are of the superior quality and are priced at low prices, and that the dealers will receive all of the benefits represented by the traveling salesmen as accruing to said dealers upon the execution of the agency agreement, said representations being set out in full in paragraph 7.

The statements, acts, and representations of the respondents and their traveling salesmen, for whom the respondents have assumed full responsibility, have a tendency and a capacity to divert, and have diverted, a substantial volume of trade from respondents' competitors engaged in similar businesses. Substantial quantities of the radios sold by the respondents are sold to the dealers and to the consuming public on account of the erroneous beliefs, herein set out

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induced by the representations and acts of the respondents. Substantial injury has been done by the respondents to substantial competition in commerce among the several States of the United States.

## CONCLUSION

The acts and practices of the respondents are each and all to the prejudice of the public, and to the competitors of the respondents and constitute unfair methods of competition in 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 powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed herein on November 7, 1935, and the answer to said complaint filed November 25, 1935, by T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., respondents herein, an agreed statement of facts stipulated into the record before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the charges to said complaint and in opposition thereto, 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 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 respondents, T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., their agents, servants, representatives, and employees, in connection with the sale and offering for sale, in commerce between and among the several States of the United States and in the District of Columbia, of radios, cease and desist from:

1. The use of the word "Manufacturing" as a part of, or in connection with, any trade name under which they carry on their said business of selling radios; or the use of the word "Manufacturing" or words of similar import, in any manner, in their various types of advertising literature as descriptive of the business conducted by them, unless and until they own, operate, and control a complete factory or factories in which they manufacture said radios sold by them.

2. Representing, directly or by implication, through advertising literature, distributor's agency agreements and contracts, or through representations and statements made by their traveling representatives or salesmen, or in any manner whatever:

(a) That the retail dealer upon execution of an agency agreement, will secure an exclusive franchise for any particular trade territory for the sale of the radios named in the agreement;

(b) That they will enter into any extensive advertising campaign or furnish the retail dealer with movie trailer ads for use at local theaters;

(c) That they guarantee any certain number of sales or a certain profit to the distributor as a result of the execution of the agency agreement;

(d) That the radios will be taken off of the dealer's hands and his money, together with interest, refunded in the event the radios are not sold within a stated period of time;

(e) That they are establishing dealers and not attempting to sell the retail dealer a stock of radios;

(f) That the sale of the radios is made through their direct-advertising campaign and the retail dealer is required only to cooperate in said campaign to accomplish the sale of said radios;

(g) That the amount paid by the retailer in acquiring the original shipment of radios is a temporary deposit for their protection to secure the full cooperation of the dealer in the advertising campaign and to demonstrate his good faith;

(h) That they will ship to said dealer, as a floor stock, a supply of the various types of radios named in the agency agreement, said floor stock being placed with the dealer either on a consignment basis or on a 90-day credit basis with a 90-day extension, all unsold units to be taken up by them at the expiration of this period;

(i) That the intent and purpose of the agreement is primarily to open up the territory adjacent to the dealer for the sale of the radios sold by them;

(j) That they make no profit unless the dealer makes a profit;

(k) That the retail dealer will be granted the privilege of selling said radios to responsible people on an installment plan and that they will handle the installment paper of such purchasers who purchase radios from the retail dealer, either with or without his endorsement;

(l) That they operate their business on liberal credit terms on reorders;

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(m) That the dealer, after executing the agency agreement and purchasing the demonstrator unit, can easily qualify for extensive credit;

(n) That the radios sold by them are of superior quality or are sold by them at exceptionally low prices;

(o) That the expense incident to the execution of the agency agreement and the advertising campaign is so high that they make no substantial profit on the sale of the original unit to the retailer.

*It is further ordered,* That the respondents, T. O. Loveland and J. L. Records, trading and doing business under the names Commercial Manufacturing Co. and Brenard Manufacturing Co., shall 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 the compliance of each of them with this order.

## Complaint

## CONSOLIDATED TRADING CORPORATION

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

*Docket 2680. Complaint, Jan. 6, 1936—Decision, Mar. 17, 1936*

Where a corporation engaged as a jobber in the sale and exportation of various articles of merchandise including hosiery, underwear, raincoats, cosmetics, and other articles and general wearing apparel—

Represented itself as a manufacturer or mill operator through letterheads, billheads, invoices, correspondence, and advertising matter, and made such use of its corporate or trade name including the word "Mills" that customers or prospective customers were led to believe that it was such an operator or manufacturer, facts being it did not make any of the products dealt in by it nor own, operate or control any plant or factory making the same;

With capacity and tendency to mislead and deceive purchasers into the belief that in buying from it they were dealing with a manufacturer or operator of established business standing and thereby benefiting by saving the middleman's profit, and to confuse, mislead, and deceive a substantial number of purchasers into the belief that it was such a manufacturer or operator, and into buying its product in such erroneous belief, and with effect of diverting trade to it from competitors, including those manufacturers and distributors of products similar to those sold by it in foreign commerce, as above set forth, who do not misrepresent their status as manufacturers or operators, and those who as similarly engaged jobbers, do not thus misrepresent themselves, and with capacity and tendency so to do, to said competitors' substantial injury and prejudice:

*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.

Before *Mr. John J. Keenan*, trial examiner.

*Mr. T. H. Kennedy* for the Commission.

*Mr. William Biel*, of New York City, for respondent.

## COMPLAINT

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, having reason to believe that Consolidated Trading Corporation, a corporation, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, in violation of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be

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in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Consolidated Trading Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with principal place of business in the city of New York, State of New York. It is, and for more than 1 year last past has been, engaged in the sale and distribution of various items of merchandise, such as fountain pens, pencils, slippers, men's shirts, undergarments, hosiery, dresses, shoes, cosmetics, rain-coats, sanitary napkins, to customers located in foreign countries, in commerce between the United States and various foreign countries, causing the same when sold to be shipped from its place of business in the State of New York or other States of the United States to purchasers thereof located in various foreign countries. In the course and conduct of its business said respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in foreign commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, said respondent adopted as and for its trade name the words Modex Mills under which to carry on its business, and which trade name, containing the word "Mills", it has used continuously for several years last past and is now using in soliciting the sale of and selling its said products in foreign commerce. Respondent has caused said trade name "Modex Mills" to appear on its letterheads, billheads, invoices, and advertising matter distributed in foreign commerce. In truth and in fact respondent does not make or manufacture the products sold by it in foreign commerce, nor does it own or operate or directly and absolutely control any mill or mills wherein the products sold by it are made or manufactured, but, on the contrary, the products sold by respondent are made or manufactured in a mill or mills or factories which respondent does not own, operate, or control.

PAR. 3. There are certain corporations, associations, individuals, firms, and partnerships doing an export business in the United States, who are competitors of respondent in foreign commerce, who actually manufacture the products sold and distributed by them in foreign commerce, who truthfully represent themselves to be manufacturers, and there are certain other corporations, associations, individuals, firms, and partnerships doing an export business in the United States in competition with respondent in foreign commerce, who do not manufacture the products sold and distributed by them in foreign commerce, who do not falsely represent themselves to be

manufacturers, and respondent, by the use in its trade name and otherwise of the word "Mills", has an unfair advantage over all of said competitors. There is a preference on the part of certain purchasers in foreign countries for goods, wares, and merchandise bought directly from the manufacturer thereof, because such purchasers believe that by dealing directly with such manufacturer they eliminate the profit of the middleman and can buy goods or merchandise at a lower price or on more favorable terms than they can by buying said products from jobbers or others who do not themselves manufacture said products, and such purchasers further believe that a more uniform line of goods can be purchased from mill operators or manufacturers than from those who do not operate mills or factories. The use by respondent of the word "Mills" in its trade name, letterheads, stationery, or otherwise, has a tendency and capacity to mislead and deceive the purchasing public into the belief that respondent actually owns and operates, or directly and absolutely controls, the mill or mills or factory or factories in which such products are produced or manufactured, or that respondent itself makes or manufactures said products, thereby unfairly diverting trade from the competitors of respondent who do manufacture their products, as well as from competitors who do not so manufacture and who do not falsely so represent.

PAR. 4. The practices of respondent hereinabove described are all to the prejudice of the public and respondent's competitors and have been and are unfair methods of competition in foreign 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."

#### 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 6, 1936, issued and served its complaint in this proceeding upon the respondent, Consolidated Trading Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the expiration of the time within which respondent was allowed to answer, a hearing was held before John J. Keenan, an examiner of the Commission, theretofore duly designated by it, at which hearing respondent, through its attorney, made a statement for the record in which it admitted all

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the material allegations in the complaint to be true and waived all further hearings in the matter. Thereafter the proceeding came on regularly for final hearing before the Commission on the said complaint and the testimony of respondent's representatives given at the hearing hereinabove referred to, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Consolidated Trading Corporation, is a Delaware corporation, organized in 1932, and since such date and now has its principal place of business at 15 Moore Street, New York, N. Y.

PAR. 2. Respondent is and has been since the 30th day of July 1934, engaged as a jobber in the export business and as such, in the sale and exportation of various articles of merchandise, including hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel, to purchasers thereof located in various foreign countries, among them Venezuela, Colombia, Peru, and South Africa, and has caused and still causes said products, when so sold by it, to be transported in commerce from its principal place of business in New York City, N. Y., or from other places in the United States to the said purchasers located in various foreign countries.

PAR. 3. During the time above mentioned and referred to, other individuals, firms, and corporations located in various States of the United States have been engaged in the manufacture and sale of similar articles of merchandise to those hereinabove referred to, which they have sold and still sell to the purchasers thereof located in various foreign countries. The respondent during the aforesaid time was and still is in competition in commerce in the sale of said products with said individuals, firms, and corporations likewise engaged in the sale and distribution of said or similar products in foreign commerce.

PAR. 4. The respondent, during the aforesaid time, in connection with the offering for sale and the sale of the aforesaid products, represented and still represents, through letterheads, billheads, invoices, correspondence, and advertising matter, that it is a manufacturer or mill operator, and respondent has and does use the word "Mills" in its trade name in such a way that its customers or prospective customers are led to believe that respondent is a mill operator or manufacturer; when in truth and in fact respondent does not manufacture any of the products offered for sale and sold by it, and



does not own or operate, or directly or absolutely own, operate, or control any plant or factory in which any of said products offered for sale and sold by it are made or manufactured.

PAR. 5. It is the common belief among purchasers of respondent's products located in foreign countries that the products above referred to can be purchased directly from a manufacturer or mill operator at a considerable saving in price. There are those among the purchasers or prospective purchasers of respondent's products located in foreign countries who prefer to purchase said products direct from the manufacturer or mill operator, and from manufacturers, mill operators, and dealers of established business standing. The representations made by respondent above referred to have the capacity and tendency to mislead and deceive the purchasers of respondent's products into the belief that when purchasing said products from respondent they are dealing with a manufacturer or mill operator of established business standing and thereby are gaining an advantage by saving the middleman's profit.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive a substantial number of the purchasers of respondent's products into the belief that respondent is a manufacturer or mill operator and to purchase respondent's products in such erroneous belief.

PAR. 7. There are among the competitors of respondent manufacturers and distributors of products similar to those sold by respondent in foreign commerce, who do not misrepresent their status as manufacturers or mill operators, who likewise sell and distribute products similar to those sold and distributed by respondent in various foreign countries, and there are jobbers engaged in business similar to that conducted by respondent who do not represent themselves to be mill owners or operators. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

#### 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 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.

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## ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed herein on January 6, 1936, and upon the testimony given at a hearing held before John J. Keenan, an examiner of the Commission theretofore designated by it, at which hearing the respondent admitted all the material allegations of the complaint to be true and consented that the Commission might find the facts in this matter as alleged in the complaint, 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 ordered,* That the respondent, Consolidated Trading Corporation, trading as Modex Mills, and its agents, representatives, servants, and employees, in connection with the offering for sale and sale of hosiery, underwear, raincoats, dresses, shoes, cosmetics, sanitary napkins, and general wearing apparel in foreign commerce, cease and desist from representing, directly or indirectly through and by the use of its trade name, or in any other manner, that respondent is a manufacturer, mill operator, or mill owner.

*It is further ordered,* That the respondent above named within 30 days after the service upon him of this order shall file with the Commission a report in writing, setting forth in detail the manner in which this order has been complied with.

## Complaint

## IN THE MATTER OF

JULIUS ABRAHAMS, TRADING AS PHILADELPHIA  
BADGE COMPANY

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

*Docket 2700. Complaint, Jan. 31, 1936—Decision, Mar. 17, 1936*

Where an individual engaged in the manufacture and sale of stamp photos, falsely and misleadingly represented that his said products were purchased, used, or endorsed by the Government through stating that "among our national known users are \* \* \* United States Government" in periodical and other advertising and otherwise; with effect of misleading and deceiving substantial parts of the purchasing public and inducing them to buy said products in and because of the erroneous belief that it was purchased in large quantities by the Government, and, by inference, was endorsed thereby, and of diverting to himself trade from competitors among whom there are those who truthfully represent their products as being thus purchased and those who do not misrepresent their products as thus purchased, when such is not the case, and with capacity and tendency so to mislead, deceive, and divert; to the substantial injury of substantial competition in commerce:

*Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. Joseph C. Fehr* for the Commission.

*Mr. Maurice Stern*, of Philadelphia, Pa., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Julius Abrahams, an individual trading as Philadelphia Badge Co., has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Julius Abrahams is an individual trading as Philadelphia Badge Co., with his principal place of business in the city of Philadelphia, in the State of Pennsylvania. He is now and, for more than 1 year last past, has been engaged in the business of manufacturing, selling, and transporting in commerce stamp photos, causing said products, when sold, to be shipped from his place of

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business in the State of Pennsylvania, to purchasers thereof located in a State or States of the United States other than the State of Pennsylvania, and in the District of Columbia. In the course and conduct of his business, respondent has at all times herein referred to been in competition with other individuals, partnerships, corporations, and firms likewise engaged in the sale and distribution, in interstate commerce, of similar products and commodities.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his stamp photos in interstate commerce, has by advertising in various periodicals, advertising literature, and otherwise made the following statement and representation:

"Among our national known users are \* \* \* United States Government."

PAR. 3. The said statement and representation when applied to respondent's products and commodities 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 public, and causes them to purchase said product and commodity in and because of the erroneous belief that said product and commodity is purchased in large quantities by the Government of the United States, and, by inference, is endorsed by the Government.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof, and have been for more than 1 year last past, manufacturers and distributors of stamp photos and similar products and commodities who truthfully advertise and represent that their products and commodities are purchased by the Government of the United States, or any department thereof, when such is the case. There are also among such competitors of the respondent and have been for more than 1 year last past manufacturers and distributors of stamp photos and similar products and commodities who do not falsely represent that such products and commodities have been or are purchased by the Government of the United States or any department thereof when they are not in fact so purchased.

PAR. 5. The use by the respondent of the aforementioned statements and representations in its advertisements and otherwise has had and still has the capacity and tendency to and has diverted and still diverts trade to respondent from his competitors who truthfully represent their products and commodities, and thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 6. The acts and practices set forth herein are to the prejudice of the public and all respondent's competitors, and constitute unfair

methods of competition within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 31st day of January 1936, issued and served its complaint in this proceeding upon the respondent, Julius Abrahams, an individual, trading as Philadelphia Badge Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer thereto the respondent through his attorney, Maurice Stern, Esq., filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in and by which it was agreed that the statement of facts contained in the complaint 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 in which said stipulated answer it was provided that the Commission might proceed upon the statement of facts as set forth in the complaint to make its report, its findings as to the facts (including inferences which it might draw from said facts as agreed upon), and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Julius Abrahams is an individual trading as Philadelphia Badge Co., with his principal place of business in the city of Philadelphia in the State of Pennsylvania. He is now, and for more than 1 year last past has been engaged in the business of manufacturing, selling, and transporting in commerce stamp photos, causing said products, when sold, to be shipped from his place of business in the State of Pennsylvania to purchasers thereof located in a State or States of the United States other than the State of Pennsylvania and in the District of Columbia. In the course and conduct of his business, respondent has at all times herein referred

## Conclusion

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to been in competition with other individuals, partnerships, corporations, and firms likewise engaged in the sale and distribution, in interstate commerce of similar products and commodities.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his stamp photos in interstate commerce, has by advertising in various periodicals, advertising literature, and otherwise made the following statement and representation:

"Among our national known users are \* \* \* United States Government."

PAR. 3. The said statement and representation when applied to respondent's products and commodities 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 public, and causes them to purchase said product and commodity in and because of the erroneous belief that said product and commodity is purchased in large quantities by the Government of the United States and, by inference, is endorsed by the Government.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof, and have been for more than 1 year last past, manufacturers and distributors of stamp photos and similar products and commodities who truthfully advertise and represent that their products and commodities are purchased by the Government of the United States, or any department thereof, when such is the case. There are also among such competitors of the respondent and have been for more than 1 year last past, manufacturers and distributors of stamp photos and similar products and commodities who do not falsely represent that such products and commodities have been or are purchased by the Government of the United States or any department thereof when they are not in fact so purchased.

PAR. 5. The use by the respondent of the aforementioned statements and representations in its advertisements and otherwise has had and still has the capacity and tendency to and has diverted and still diverts trade to respondent from his competitors who truthfully represent their products and commodities, and thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

## CONCLUSION

The acts and practices set forth herein are to the prejudice of the public and all respondent's competitors, and constitute unfair methods of competition within the intent and meaning of Section 5 of an

Act of Congress, approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

The respondent herein, having filed his answer to the complaint in this proceeding, and having subsequently filed with this Commission a motion that he be permitted to withdraw his said answer and that he be permitted to file in lieu thereof, as a substitute answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion;

*It is hereby ordered*, That the said motion be, and the same hereby is, granted; that the answer be, and the same hereby is, withdrawn; and that the said proposed substituted answer be, and the same hereby is, filed in lieu of the said answer hereby withdrawn.

The said respondent, in and by his said substituted answer, having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in his said substituted answer that he does not contest the said proceeding and that he admits all of the material allegations of the complaint to be true, and that he consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon him an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises;

*It is ordered*, That the respondent, Julius Abrahams, an individual trading as Philadelphia Badge Co., his agents, servants, representatives, and employees, in connection with the sale or offering for sale of stamp photos in interstate commerce and in the District of Columbia, do forthwith cease and desist from—

Representing through advertisements in newspapers and magazines and through circulars, labels, or in any other form of printed matter, or by radio broadcasting, or in any other way or manner, that his said products are purchased, used, or endorsed by the United States Government, or by any branch or agency thereof, or from making any similar representations or representations of like import or effect;

*It is further ordered*, That the said respondent shall, within 60 days from the date of the service upon him of this order, file with this Commission a report in writing, setting forth the manner and form in which he has complied with this order.

## Complaint

22 F. T. C.

IN THE MATTER OF  
ROMA WINE COMPANY, INC.

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

*Docket 2713. Complaint, Feb. 5, 1936—Decision, Mar. 19, 1936*

Where the term "Chateau Yquem" had long had a definite significance to wholesalers and retailers and the consuming public as meaning a wine produced from grapes grown upon the estate of a certain Marquis in the Sauterne Country in the province of Bordeaux, France, and made, aged, processed and bottled at the Chateau Yquem upon said estate, and such wine, by reason of the particular composition of the soil, favorable climatic conditions and extreme care used in growing the grapes, had become known throughout the world for its distinctive taste and flavor, and said name had acquired geographic significance as distinctively designating and distinguishing from all others the aforesaid wine, which was preferred by a substantial portion of the purchasing public to imitations thereof bearing the same name; and thereafter a corporation engaged in California in growing and cultivating grapes and manufacturing, selling and distributing wines therefrom—

Represented through use of words "Chateau Yquem" on stationery, invoices, advertising matter and labels and in various other ways that its product was the specific wine produced and grown in France as aforesaid, and thereby furnished its customers with the means of similarly misrepresenting said domestic product to retailers and consuming public, notwithstanding fact it was not the genuine French wine as hereinabove set forth;

With effect of misleading and deceiving dealers and purchasing public into the belief that its said product was the specific and genuine Chateau Yquem, and of inducing their purchase of its said wines in such belief, and thereby diverting trade to it from competitors, including those who purchase, import and sell genuine Chateau Yquem wines and those who sell wines of that type without thus misrepresenting them, and with capacity and tendency so to mislead and deceive; to the substantial injury of substantial competition:

*Held*, That such acts and practices, under the conditions and 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. Albert Picard*, of San Francisco, Calif., for respondent.

## COMPLAINT

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, having reason to believe that Roma Wine Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State. It is now, and for more than one year last past has been, engaged in the business of growing and cultivating grapes and of manufacturing wines therefrom, in the State of California, and of selling and distributing said wines in commerce between and among various States of the United States and the District of Columbia, causing said products, in the course and conduct of its business when sold to be shipped from its said place of business in San Francisco, Calif., into and through various States of the United States and the District of Columbia to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of purchasing, importing, and producing wines, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of importing, processing, manufacturing, and bottling still wines and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the term "Chateau Yquem" has had and still has a definite significance and meaning to the minds of wholesalers and retailers and the consuming public, to wit, a wine which is produced from grapes grown upon the estate of the Marquis de Lur-Saluze, located in the Sauterne Country in the Province of Bordeaux, France, and manufactured, aged, processed, and bottled at the Chateau Yquem situated upon said estate. Because of the particular composition of the soil, the favorable climatic conditions,

## Complaint

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the extreme care used in the growing of said grapes, said wine has become known throughout the world for its distinctive taste and flavor, and the said name has acquired a geographic significance, distinctively designating the specific wine aforesaid, and distinguishing it from all other wines, and the use of said name "Chateau Yquem" when applied to any wine not produced in France as aforesaid is false and misleading, and a substantial portion of the purchasing public prefers to buy genuine "Chateau Yquem" produced at the place and in the manner aforesaid rather than imitations thereof bearing the same name. Said original "Chateau Yquem" is sold by said estate to distributors in the city of Bordeaux, France; and sold and shipped by such distributors to importers, wholesalers, and retailers in all parts of the world, including the United States. Said importers in the United States sell said wines in the regular course and conduct of their business to wholesalers, retailers, and consumers in the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the words "Chateau Yquem" in designating the brand of wine manufactured and sold by it, as aforesaid, on its stationery, invoices, and advertising matter, on the labels attached to the bottles in which said respondent ships said wine, and in various other ways, said respondent represents to its customers, and furnishes said customers with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said wine so sold is the specific wine distinctively designated "Chateau Yquem" produced and grown in France as aforesaid, when as a matter of fact the said wine so sold by respondent is not that specific wine, but a wine produced by respondent on its place of business from grapes grown in the vineyards of respondent in the State of California.

PAR. 4. Pursuant to an Act of Congress approved August 29, 1935, entitled "Federal Alcohol Administration Act", and for the purposes of administering and giving effect to the provisions thereof, on December 30, 1935, there were promulgated and published by the Administrator certain rules and regulations, duly approved by the Secretary of the Treasury, known as "Regulation No. 4 Wine Misbranding and Advertising Regulations", Section 25 of which reads in part as follows:

(a) A name of geographic significance for a wine of the particular class or type to which it in fact conforms but which is not in and of itself the designation of such class or type, shall be deemed the distinctive designation of a specific wine only if the administrator finds that such name is known to the consumer and to the trade to distinguish a specific wine of a particular place or region from all other wines, and such distinctive designation shall be

used to designate only the specific wine of the particular place or region indicated by such name.

The Administrator has found that "Chateau Yquem" is a name of geographic significance known to the consumer and to the trade to distinguish the specific wine hereinbefore described in paragraph 2 hereof, and has officially deemed it the distinctive designation of that specific wine.

PAR. 5. There are among the competitors of respondent engaged in the sale of wine, as set forth in paragraph 1 hereof, corporations, firms, partnerships, and individuals who purchase, import, and sell in interstate commerce wines under the name of "Chateau Yquem" the specific wine of that distinctive geographical designation as aforesaid, and others who sell in interstate commerce wines conforming to the type of Chateau Yquem, who do not represent such wines as being the specific wine properly and distinctively designated as "Chateau Yquem" on their labels, nor on their stationery, invoices, or other advertising matter.

PAR. 6. The representations by respondent, as hereinabove set forth, are calculated to, and have a capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the belief that the wine sold by respondent is that specific wine distinctively designated by the geographical term "Chateau Yquem" as aforesaid, and have the capacity and tendency to, and do induce dealers and the purchasing public, acting in such belief, to purchase the said wines of the respondent, thereby diverting trade to respondent from its competitors who do not misuse the said name of "Chateau Yquem" or in any other manner misrepresent the nature, type, source, or origin of their wines, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

#### 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 5, 1936, issued and served its complaint in this proceeding upon respondent, Roma Wine Com-

## Findings

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pany, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint respondent answered, stating that it desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding, and further stating that it admitted all of the material allegations of the complaint to be true, and that without further evidence or other intervening procedure the Commission might make, issue, and serve upon the respondent findings as to the facts and an order to cease and desist from the violations of law charged in the complaint, and said answer was duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for consideration by the Commission upon the said complaint and answer thereto, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State. It is now, and for more than one year last past has been, engaged in the business of growing and cultivating grapes and of manufacturing wines therefrom, in the State of California, and of selling and distributing said wines in commerce between and among various States of the United States and the District of Columbia, causing said products, in the course and conduct of its business when sold to be shipped from its said place of business in San Francisco, Calif., into and through various States of the United States and the District of Columbia to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of purchasing, importing, and producing wines, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of importing, processing, manufacturing, and bottling still wines and in the sale thereof in com-

merce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the term "Chateau Yquem" has had and still has a definite significance and meaning to the minds of wholesalers and retailers and the consuming public, to wit, a wine which is produced from grapes grown upon the estate of the Marquis de Lur-Saluze, located in the Sauterne Country in the Province of Bordeaux, France, and manufactured, aged, processed, and bottled at the Chateau Yquem situated upon said estate. Because of the particular composition of the soil, the favorable climatic conditions, the extreme care used in the growing of said grapes, said wine has become known throughout the world for its distinctive taste and flavor, and the said name has acquired a geographic significance, distinctively designating the specific wine aforesaid, and distinguishing it from all other wines, and the use of said name "Chateau Yquem" when applied to any wine not produced in France as aforesaid is false and misleading, and a substantial portion of the purchasing public prefers to buy genuine "Chateau Yquem" produced at the place and in the manner aforesaid rather than imitations thereof bearing the same name. Said original "Chateau Yquem" is sold by said estate to distributors in the city of Bordeaux, France, and sold and shipped by such distributors to importers, wholesalers and retailers in all parts of the world, including the United States. Said importers in the United States sell said wines in the regular course and conduct of their business to wholesalers, retailers and consumers in the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the words "Chateau Yquem" in designating the brand of wine manufactured and sold by it, as aforesaid, on its stationery, invoices and advertising matter, on the labels attached to the bottles in which said respondent ships said wine, and in various other ways, said respondent represents to its customers and furnishes said customers with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said wine so sold is the specific wine distinctively designated "Chateau Yquem" produced and grown in France as aforesaid, when as a matter of fact, the said wine so sold by respondent is not that specific wine, but a wine produced by respondent on its place of business from grapes grown in the vineyards of respondent in the State of California.

PAR. 4. Pursuant to an Act of Congress approved August 29, 1935, entitled "Federal Alcohol Administration Act", and for the purposes of administering and giving effect to the provisions thereof, on

December 30, 1935, there were promulgated and published by the Administrator certain rules and regulations, duly approved by the Secretary of the Treasury, known as "Regulation No. 4, Wine Misbranding and Advertising Regulations", Section 25 of which reads in part as follows:

(a) A name of geographic significance for a wine of the particular class or type to which it in fact conforms but which is not in and of itself the designation of such class or type, shall be deemed the distinctive designation of a specific wine only if the administrator finds that such name is known to the consumer and to the trade to distinguish a specific wine of a particular place or region from all other wines, and such distinctive designation shall be used to designate only the specific wine of the particular place or region indicated by such name.

The Administrator has found that "Chateau Yquem" is a name of geographic significance known to the consumer and to the trade to distinguish the specific wine hereinbefore described in paragraph 2 hereof, and has officially deemed it the distinctive designation of that specific wine.

PAR. 5. There are among the competitors of respondent engaged in the sale of wine, as set forth in paragraph 1 hereof, corporations, firms, partnerships and individuals who purchase, import and sell in interstate commerce wines under the name of "Chateau Yquem", the specific wine of that distinctive geographical designation as aforesaid, and others who sell in interstate commerce wines conforming to the type of Chateau Yquem, who do not represent such wines as being the specific wine properly and distinctively designated as "Chateau Yquem" on their labels, nor on their stationery, invoices or other advertising matter.

PAR. 6. The representations by respondent, as hereinabove set forth, are calculated to, and have a capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the belief that the wine sold by respondent is that specific wine distinctively designated by the geographical term "Chateau Yquem" as aforesaid, and have the capacity and tendency to, and do induce dealers and the purchasing public, acting in such belief, to purchase the said wines of the respondent, thereby diverting trade to respondent from its competitors who do not misuse the said name of "Chateau Yquem" or in any other manner misrepresent the nature, type, source or origin of their wines, and thereby respondent does substantial injury to substantial competition in interstate commerce.

#### CONCLUSION

The acts and practices of the said respondent, under the conditions and circumstances hereinbefore described, are to the prejudice of

the public and respondent's competitors, 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 come on to be heard by the Federal Trade Commission upon the complaint of the Commission issued and served February 5, 1936, and the answer of respondent thereto admitting to be true all of the material allegations of the complaint and waiving all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that respondent has violated 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."

*It is ordered*, That the respondent, Roma Wine Company, Inc., its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of wines, do forthwith cease and desist from:

Representing by statements on its stationery, invoices, advertising matter, labels attached to the bottles in which respondent ships said wine, or in any other manner, that any wine by it sold is "Chateau Yquem" except when the wine so labeled, designated, and advertised is produced from grapes grown upon the estate of the Marquis de Lur-Saluze, located in the Sauterne country in the Province of Bordeaux, France, and manufactured, aged, processed, and bottled at the the Chateau Yquem situated upon said estate.

*It is further ordered*, That the said 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 and has complied with the order to cease and desist hereinabove set forth.

Complaint

22 F. T. C.

IN THE MATTER OF  
FEDERAL DISTILLED PRODUCTS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3  
OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

*Docket 2413. Complaint, May 24, 1935—Decision, Mar. 24, 1936*

Where a corporation engaged as rectifier and wholesaler of liquors—  
Featured its corporate name including words "Distilled Products" and "Federal" with phrases "Prepared by" or "Bottled by", in smaller type on labels and together with smaller type legends "Rectifiers and Blenders" on stationery and "Manufacturing Rectifiers", on price lists, and set forth words "A Federal Product" on bottle caps and, at one time, "A Federal Product . . . Federal Distilled Products, Milwaukee", on paste board cartons in which bottles were shipped, and sold bottled liquor thus labeled and containered in substantial competition with actual producers of distilled spirits from the grain and with rectifiers who do not by use of such words as "Distilled" misrepresent their status to the trade;

With effect of misleading and deceiving dealers and purchasing public into belief that it was engaged in manufacture of distilled spirits from the grain and of inducing retailers and public to purchase liquors bottled and sold by it in such belief, and thus divert trade to it from competitors who do not thus misrepresent themselves as manufacturers, and with capacity and tendency so to mislead, deceive, and induce; to the substantial injury of substantial competition:

*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.

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

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Ralph J. Gutgsell*, of Chicago, Ill., for respondent.

COMPLAINT<sup>1</sup>

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, having reason to believe that Federal Distilled Products, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act", and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public

<sup>1</sup> Dismissed as to count two, charging violation of National Industrial Recovery Act.



## Complaint

interest, hereby issues its complaint, stating its charges in that respect as follows:

*Count 1*

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Wisconsin, with its office and principal place of business in the city of Milwaukee, in said State. It is now, and has been since its organization in October 1934, engaged in the business of a rectifier and wholesaler of liquors, purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Wisconsin and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the words "distilled products" when used in connection with the liquor industry have had and still have a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, spirituous beverages prepared and bottled at a distillery by the distillers thereof, who have manufactured such beverages by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers and manufacturers thereof.

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PAR. 3. In the course and conduct of its business as aforesaid, by the use of the words "Distilled Products" in its corporate name, and the words "prepared by" and the words "a Federal product" printed on its stationery, cartons, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery", "distilleries", "distillers", "distilling", or "distilled products" as a part of their corporate or trade names and on their stationery, cartons, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery", "distilleries", "distilling", "distillers", or "distilled products" as a part of their corporate or trade names, nor on their stationery, cartons, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of

whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

*Count 2*

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Wisconsin, with its office and principal place of business in the city of Milwaukee, in said State. It is now, and has been since its organization in October 1934, engaged in the business of a rectifier and wholesaler of liquors, purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Wisconsin and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PARAGRAPHS 2, 3, 4 and 5. As grounds for these paragraphs of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraphs 2, 3, 4, and 5 of count 1 of this

## Complaint

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complaint to the same extent as though the several allegations thereof were set out at length and in separate paragraphs herein, and the said paragraphs 2, 3, 4, and 5 of count 1 of this complaint are incorporated herein by reference and adopted as the allegations of paragraphs 2, 3, 4, and 5, respectively, of this count, and are hereby charged as fully and as completely as though the several averments of the said paragraphs of count 1 were separately set out and repeated verbatim.

PAR. 6. Under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195 C. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345, of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture certain of the powers vested in the President of the United States by the aforesaid act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to Section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December, 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said Code in the following words, to wit:

"That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry."

By his approval of the said Code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of Article V of said Code became and still is one of the standards of fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said Industry and this respondent:

"The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

"Section 1. *False Advertising*.—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression."

PAR. 7. The use by respondent of the words "Distilled Products" in its corporate name, together with the phrases "prepared by" and "a Federal product" printed upon its stationery, cartons and on the labels attached to the bottles in which it sells and ships such products, and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said Article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits from mash, wort or wash, that the spirituous beverages by it so sold and transported have been prepared and bottled by the original distillers thereof, and that the whiskies, gins, and other spirituous beverages sold by respondent have been manufactured and distilled by it from mash, wort or wash as aforesaid, all contrary to the provisions of Section 1, Article V, of the Code aforesaid.

PAR. 8. The above alleged methods, acts and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Acts as amended.

## 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 May 24, 1935, issued and served its complaint in this proceeding upon respondent, Federal Distilled Products, charging it with the use of unfair methods of competition in commerce in violation of said act.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Addison, examiner for the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Ralph J. Gutgsell, attorney for the respondent, and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and evidence, and brief in support of the complaint, oral argument and brief of counsel for the respondent having been waived, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Federal Distilled Products, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, originally incorporated in May 1934 under the name "Federal Distillers Products", for the purposes of manufacturing, buying, selling, dealing in, distributing, storing, warehousing, and exporting whiskey of all kinds, high wines, spirits, alcohol, and gins of all kinds, and to do and perform all kinds of distilling, redistilling, and rectifying, and to engage in business at wholesale or retail as principal or broker or agent, and for other purposes, with 500 shares of common capital stock without par value. Concluding that the aforesaid name "Federal Distillers Products" would be misleading, the company applied for and in October 1934, by amendment of its charter, changed its name to its present corporate name, to wit, "Federal Distilled Products". Its principal office and place of business is located at 425 North Water Street in the city of Milwaukee, Wis., in a plant operated under the latter name, and there it is and has been since the issuance of its permit on February

15, 1934, engaged in the distilled spirits rectifying industry, more particularly as a rectifier and wholesaler of liquors, purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States.

The aforesaid permit was issued by the Federal Alcohol Control Administration and designated as Permit R-302, and was issued subject to compliance with all State and Federal laws, under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195, C. 90), and was a basic permit for respondent's operations up to May 27, 1935, the date of the decision of the United States Supreme Court in the case of *A. L. Schechter Poultry Corporation, etc. vs. United States* (295 U. S. 495). The Federal Alcohol Administration Act, approved August 29, 1935 (Public No. 401, 74th Congress) provided in Section 4 (a) thereof that any person who on May 25, 1935, held a basic permit as a distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government shall, on application therefor, be entitled to a basic permit to engage in the same business, and at the time of the issuance of the complaint herein, up to and including October 25, 1935, the last day of the taking of testimony, this respondent was so engaged.

Respondent never applied for a distiller's permit, was never authorized by the Government to produce any distilled spirits from the grain, never distilled and never owned a still, but purchases all of its distilled spirits requirements in bulk from distilleries or distilling companies, rectifies, bottles, labels, and sells same by the package almost exclusively to wholesale liquor dealers for resale in bottles under its own brand names. The words "Bottled by Federal Distilled Products" appear on ten of the sixteen labels of respondent admitted in evidence, and the words "Prepared by Federal Distilled Products" appear on six. In each instance the name of respondent is in substantially larger type than either the phrase "Bottled by" or "Prepared by", and the phrase "Prepared by" where it appears is in larger type than the phrase "Bottled by" where it appears on the labels.

Also in the course and conduct of its business respondent uses its name on its stationery accompanied in smaller type by the phrase "Rectifiers and Blenders", and on its price lists which also carry the phrase "We are Manufacturing Rectifiers", and places the words "A Federal Product" on caps used to cover the bottles in which it sells and ships its goods. At one time in 1934 it caused to be placed on the pasteboard cartons in which it shipped some of said bottles the

words "A Federal Product . . . Federal Distilled Products, Milwaukee". It bought from 5,000 to 10,000 of these cartons but did not use all of them, having discontinued their use more than a year prior to the trial of this case.

When sold, respondent ships its bottled liquors so labeled, and in numerous instances when contained in the aforesaid cartons, to its customers from its principal place of business aforesaid into and through various States of the United States to the purchasers thereof located in the States of the United States other than Wisconsin, although during the year 1935 no shipments were made outside of the State. During 1934 very substantial shipments were made to Illinois and to Minnesota, and respondent's president, Mr. Israel Magidson, testified that if any orders came in from other States the company would fill them.

The National Distilling Company, Milwaukee, Fruit Industries, Ltd., in California, Liquor Dealers Supply Company, at Chicago, and many other corporations, partnerships, or individuals at various points in the United States are likewise engaged in the business of selling whiskies, gins, and other spirituous beverages at wholesale to respondent's customers and others in the same localities in which respondent makes its sales and of causing the goods so sold to be transported from their respective points of location through and into other States of the United States and there delivered to the purchasers thereof. Some of these concerns actually distill from mash, wort or wash the products which they so sell and use the words "distilling", "distiller" or "distillery" as a part of their corporate or trade names on their stationery, cartons, and labels on the bottles in which they sell and ship their products. The name so used on said labels is commonly preceded by the words "distilled by". Others of them buy, rectify, blend, and bottle the beverages which they so sell and neither do any distilling nor use the words "Distilling", "distiller" or "distillery" as a part of their corporate or trade names or on their stationery, cartons, or labels.

The monthly sales of respondent's merchandise have ranged from \$4,000 to \$18,000. Its premises are on one floor, occupying a space of 45 feet by 150 feet. It employs five or six persons.

The Commission therefore finds that respondent is and has been in substantial competition with actual distillers who produce distilled spirits from the grain, and also with other rectifiers who do not by the use of such words as "Distilled" or "Federal Distilled Products" as a part of their corporate or trade names misrepresent their status to the trade.

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients



with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

PAR. 2. A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 ft. or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they came from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ----- Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may and does put "Distilled and Bottled by ----- Company". If, in the distillery's rectifying plant, other spirits have been blended or rectified he puts "Blended and Bottled by ----- Company". Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-302" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit, and at least one large distiller, namely, Hiram Walker & Sons, uses its "R number" exclusively. Knowledge of these details is not widespread among the retail trade and very limited to the general public. All whiskies, whether emanating from distilleries or rectifiers, are generally in the trade conceded to be "distilled products".

It is not alway possible to determine from the presence of the phrase "Blended and Bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

The words "Distilled Products" of and in themselves would not, in the opinion of the Commission, constitute a misrepresentation

inasmuch as this respondent is engaged in the business of handling distilled products, namely, alcoholic beverages which originated in a distillery and may or may not have been rectified or blended. However, this respondent represented its products as "Federal" products, "Federal Distilled Products", that is, the product of the respondent "prepared by" respondent and "Federal Distilled", from which the Commission infers a distinct tendency, if not an intention, to mislead and deceive the public, a substantial portion of which prefers to buy spirituous liquors prepared and bottled by distillers.

The Commission finds that in the course and conduct of its business, as aforesaid, the manner in which respondent makes use of the phrase "Distilled Products" as a part of its corporate name, conspicuously printed on its stationery, advertising, price lists, and other printed matter, and on the labels and caps attached to the bottles in which it sells and ships its said liquors, has the capacity and tendency to, and does, mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller or distilling company engaged in the business of manufacturing distilled spirits from the grain and that the whiskies, gins, and other alcoholic beverages sold by the respondent are by it manufactured and distilled from mash, wort, or wash, as aforesaid; and has the capacity and tendency to, and does, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other alcoholic beverages, and that thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 3. No one who had bought goods bearing respondent's label in the belief that respondent was a distiller was produced as a witness. The Commission's counsel wrote letters to several of respondent's customers inquiring whether they had been deceived as to respondent's status. Only four customers of respondent answered. Three of these said they had not made their purchases from respondent in the belief that it was a distillery. By stipulation of counsel these three letters were offered and received in evidence. The fourth customer was a dealer at Columbia, Mo. For four or five months in 1934 respondent rectified a so-called "Prescription Whiskey" and shipped it to fill orders taken by the owner of the brand, allowing the said owner a commission on the sales. Respondent did not place its name on the labels attached to any of the bottles containing this

whiskey but allowed the brand owner space in its premises for the purpose of carrying on its business. The owner of this brand made such use of respondent's corporate name in inducing a sale of this whiskey to the aforesaid fourth customer at Columbia, Mo., as led that customer to buy the whiskey in the belief that respondent was a distiller of it. Two dealers testified that they had bought goods from respondent but knew at the time that respondent was a rectifier and not a distiller, though one of these said that the words "distilled products" on a label would lead him to a certain extent to believe the goods came from a distillery.

Ten witnesses not connected with the liquor industry gave their understanding of respondent's name. Four of these regard the name as describing a dealer and not a distiller. A fifth understands the name "Federal Distilled Products" to mean that the concern using it handles Federal-government-distilled products; and to a sixth the name means the Federal government has charge. A seventh says the name alone would lead him to believe that respondent bought raw products and redistilled them to some specific specification. He does not make it clear whether his understanding would be the same if the name on the label were preceded by the words "bottled by". The other three understand respondent's name to indicate that respondent is a distillery, or place where liquors are evaporated and condensed from raw products, or a plant fully equipped to distill alcoholic spirits from raw materials, or is engaged in distilling alcohol from bran, mash, or other organic substance. One of these three, an engineer, would be a little suspicious, though, if respondent's name on the label were preceded by "bottled by". He favors labels saying "distilled by" over those saying "bottled by". Another, an optometrist, says, if some labels say "distilled by" and others "bottled by", he would think the latter were not bottled by a distiller but by some one else.

The evidence also shows that often members of the public actually purchase bottled whiskies and other distilled spirits, being influenced in their selections by well-advertised brand names and without noticing the name of the producer, maker, or bottler. Most of the instances in this record where such was shown by the evidence were selections of whiskies which were bottled by actual distilleries either at the distillery, in the bonded warehouse or in a rectifying plant owned by the distillery.

From the testimony of members of the public adduced in this record, the Commission infers that the portion of the public which might be and is influenced to exercise the aforesaid preference is sufficiently substantial to create a competitive advantage in the respondent over those of its competitors who are distillers and those

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who are rectifiers but do not characterize themselves as distillers or distilling companies.

PAR. 4. The Commission finds that there is, and has been, some commercial advantage to this respondent through the use which it has made of its name "Federal Distilled Products". The testimony of other competitors, both rectifiers not designating themselves as distillers, and of actual distillers, shows that such commercial advantage takes the form of increased sales resistance to concerns not indulging in the practice. A substantial number of liquor dealers, both wholesale and retail, prefer to buy for resale liquors packaged or bottled by the distiller who makes the liquor by distillation from mash. The record shows that they think that by doing so they save either middleman's profits or get a better product.

Certain prestige attaches to the use of the term "Distilling" which is an advantage to the person using it in the liquor trade. The evidence shows this to be of tremendous value on account of the investment, stability and backing of an organization of the character of the ordinary distilling company or distillery to stand back of the merchandise it sells. The record shows that there exists a preference on the part of a dealer customer to buy goods bearing the label of a distilling company rather than goods which bear only the label of a distributing company, wholesaler or rectifier. No specific instance is shown in this record of a competitor losing a sales order to this particular respondent, but the record is replete with proof that competitors in the field frequently met with competition from other rectifiers who were following the identical practices of respondent in this regard, and that such practices operated and had a tendency to divert trade through increased sales resistance and because of the unfair competitive advantage accruing to the rectifier misrepresenting itself to be a distilling company. From these facts the Commission infers that this respondent's practices would have the same effect in any sales territory in which it competed in the sale of liquor with actual distillers or with rectifiers not so misrepresenting.

## CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, 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 issued and served May 24, 1935, the answer of the respondent thereto, testimony and evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief filed herein by PGad B. Morehouse, counsel for the Commission, counsel for the respondent having waived filing of brief on its behalf and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated 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, Federal Distilled Products, its agents, salesmen and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages, do forthwith cease and desist from:

Representing, through the use of the word "Distilled" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships its said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins or any other alcoholic beverages; or (b) that the said whiskies, gins or other alcoholic beverages were by it manufactured through the process of distillation; or (c) that it owns, operates or controls a place or places where such products are by it manufactured through a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

*It is further ordered*, That the said complaint be and the same is hereby dismissed as to count 2 thereof.

*It is further ordered*, That the said respondent within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports 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

## LUR-EYE PRODUCTS, INC. (A NEW YORK CORPORATION), LUR-EYE PRODUCTS, INC. (A DELAWARE CORPORATION), AND W. R. ROBINSON COMPANY

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

*Docket 2579. Complaint, Feb. 15, 1936<sup>1</sup>—Decision, Mar. 24, 1936*

Where two corporations engaged in the production, distribution, and sale to wholesale and retail cosmetic dealers and to others of a so-called eyelash developer—

Falsely represented in newspaper and periodical advertisements, through the mails, and otherwise and on containers and display cards of said product that it would promote the growth and change the texture of eyelashes, constituted a competent treatment for inflamed eyes or eyelids, would penetrate the follicles of the eyelashes, benefit the inner membranes, and relieve eye strain, facts being it did not have the medicinal ingredients claimed in sufficient quantities to produce such results, did not function as represented, and aforesaid representations and statements were false, misleading, and grossly exaggerated;

With result of placing in the hands of retailers and purchasers for resale an instrument enabling them to commit a fraud upon a substantial part of the purchasing public through representing said preparation as a product that would produce the results claimed and to sell substantial quantities of such preparation thereby, and with tendency and capacity to mislead and deceive a substantial number of the purchasing public into the belief that said preparation would actually develop the eyelashes and make them longer, silkier, and lovelier, and that it had the qualities and would accomplish the results hereinabove indicated, and into purchasing substantial quantities thereof in such erroneous belief, and with effect of diverting a substantial volume of trade from similarly engaged competitors who do not in any way falsely represent their products; to the substantial injury of substantial competition:

*Held*, That such acts and practices were each and all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

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

*Mr. J. T. Welch* for the Commission.

COMPLAINT<sup>1</sup>

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, having reason to believe that Lur-Eye

<sup>1</sup> Amended.

Products, Inc., a New York corporation; Lur-Eye Products, Inc., a Delaware corporation; and W. R. Robinson Co., an Illinois corporation; hereinafter designated as respondents, are now, and have been, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondent, Lur-Eye Products, Inc., a New York corporation, is now, and has been for a period of 2 years immediately preceding the date hereof, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1501 Broadway, in the city of New York and State of New York; respondent, Lur-Eye Products, Inc., a Delaware corporation, is now, and has been for a period of 2 years immediately preceding the date hereof, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 1501 Broadway, in the city of New York and in the State of New York; and respondent, W. R. Robinson Co., a corporation, is now, and has been for a period of 4 years immediately preceding the date hereof, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Kankakee, in the State of Illinois, c/o H. L. Topping; and said respondents are now, and have been at all time mentioned herein, engaged in the business of producing, distributing, and selling to wholesale and retail dealers in cosmetics for resale and to others for consumption, certain cosmetic specialties, including Lur-Eye Lash Developer.

The connection and affiliation between the several respondents are as follows:

Respondent, W. R. Robinson Co. was organized in the year 1931 and manufactured and sold, and now manufactures and sells, to various wholesale and retail dealers, as well as members of the consuming public, in various States of the United States the product known as Lur-Eye Lash Developer. This respondent maintained a plant for the manufacture of Lur-Eye Lash Developer at Kankakee, Ill. In 1933 this respondent entered into an exclusive sales contract with one B. A. Barron, which contract was subsequently transferred to respondent, Lur-Eye Products, Inc., a New York corporation. During the entire life of the exclusive sales contract above referred to, W. R. Robinson Co. continued to exclusively manufacture Lur-

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Eye Lash Developer and delivered the said product to respondent, Lur-Eye Products, Inc., a New York corporation, in New York, N. Y. During the period of the life of this contract, respondent, Lur-Eye Products, Inc., a New York corporation, sold said Lur-Eye Lash Developer in substantial quantities to wholesale and retail dealers and other purchasers located in various States of the United States and continues to have in stock a substantial quantity of said product manufactured by the respondent, W. R. Robinson Co., and continues to sell said product to various purchasers located in the several States of the United States. The Lur-Eye Lash Developer sold by respondent, Lur-Eye Products, Inc., a New York corporation, was, and now is, packaged, labeled, and distributed in packages or other containers upon which its corporate name is prominently displayed.

PAR. 2. Said respondents, being engaged in the business of producing, distributing, and selling cosmetic specialties, including said Lur-Eye Lash Developer, causes said cosmetics, when sold to wholesale and retail dealers located in various cities in several States of the United States, to be transported from their respective principal places of business in the States of New York and Illinois, to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said cosmetic specialties, including said Lur-Eye Lash Developer, produced, distributed, and sold by the respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents are now, and have been at all times mentioned herein, engaged in substantial competition with other corporations, firms, and individuals likewise engaged in the business of producing, distributing, and selling cosmetic supplies, including eyelash developers, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondents, in the course of the operation of their respective businesses as detailed in paragraphs 1 to 3, inclusive, and for the purpose of inducing individuals, corporations, and firms to purchase said Lur-Eye Lash Developer, have from time to time caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and have printed and circulated throughout the several States to customers and prospective customers, through the United States mails and through other means, numbers of letters of solicitation, price lists, sample books, pamphlets, folders, and other advertising literature in which respondents have



**A.**

**HOW TO HAVE  
SOFTER  
SILKIER  
LONGER  
LASHES**

(Picture of Girl and Lur-Eye  
Lash Carton)

**MONEY  
BACK IF NOT  
SATISFIED**

**DOES NOT SMART OR STING**

**B. Eye Lash Developer** grows softer, silkier, and longer eye-lashes—and relieves tired, inflamed, bloodshot eyes and granulated lids. Does not smart or sting.

**LUR-EYE**

5. When applied to the eyelash, a certain amount of Lur-Eye enters the eye itself, relieving blood-shot conditions and soothing the inner membranes which tends to relieve eye strain insofar as surface applications can relieve eye strain.

### D. DEVELOPS LONG SILKEN EYELASHES

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together with other advertisements containing the same or similar representations. The container in which respondents' product is marketed contains thereon the following advertising matter:

**DEVELOP LONG SILKEN LASHES****LUR-EYE LASH DEVELOPER**

Develops long silken lashes

Apply "Lur-Eye" each night. It will not only develop your lashes—it will relieve tired, bloodshot or inflamed eyes, and granulated lids. Will not smart or sting.

Display cards furnished by the respondents for use by retail distributors of the product sold by the respondents under the name Lur-Eye Lash Developer have printed thereon the following:

**LUR-EYE**

(Picture of a girl—slot for insertion of package of Lur-Eye Lash Developer)

Develops long silken lashes. Results Guaranteed. Three Months' Treatment \$1.00

Respondents, in the course and operation of their respective businesses as hereinabove detailed, have also made use of a number of radio broadcasts for the purpose of advertising their product and inducing the purchase thereof by the general consuming public. In said radio broadcasts the respondents have caused oral representations and statements, similar to those hereinabove detailed with respect to its written advertisements, to be uttered and spoken by the announcers in connection with said radio broadcasts.

All of said statements and representations, contained in said written advertising matter or in radio announcements, purport to be descriptive of the product sold by the respondents under the name of Lur-Eye Lash Developer, and of the benefits that may be reasonably expected to be obtained from the use of said product by the user thereof.

PAR. 5. The product produced, distributed, and sold by the respondents under the name Lur-Eye Lash Developer does not contain ingredients of such a nature as to warrant the respondents in advertising: (1) That said preparation will grow eyelashes, promote the growth of eyelashes, or increase the length of eyelashes; (2) that said preparation will change the texture of eyelashes; (3) that said preparation is a competent treatment for inflamed eyes, bloodshot eyes, or granulated eyelids; (4) that said preparation will penetrate to or reach the follicles or papillae of the eyelashes; (5) that said

preparation will reach the inner shafts of eyelashes; (6) that said preparation will have any effect upon the sebaceous glands or inner membranes; (7) that said preparation will relieve eyestrain; or (8) that the results claimed will be obtained to such an extent as to justify the representation that results are guaranteed.

In truth and in fact, the cosmetic preparation marketed under the name of Lur-Eye Lash Developer does not have the medicinal qualities claimed by the respondent, as set out in paragraph 4, in such quantities as to produce the results claimed, and the representations and statements therein set out with respect to the nature of the product itself and its efficacy for relieving eye troubles therein named are false, misleading, and grossly exaggerated.

PAR. 6. A substantial portion of the purchasing public has indicated, and has a decided preference for cosmetic preparations that are accurately and truthfully advertised with respect to the results that can be reasonably expected to be obtained after a use thereof over cosmetic preparations that are not advertised accurately and truthfully with respect to the results that can be reasonably expected to be obtained after a use thereof.

PAR. 7. The false and misleading advertising and representations made by the respondents, as hereinabove set out, place in the hands of retail dealers and purchasers for resale an instrument and a means whereby said dealers may commit a fraud on a substantial portion of the consuming public by enabling such dealers to represent, offer for sale, and sell the said product known as Lur-Eye Lash Developer as a product that will produce the results claimed by the respondents in the aforementioned advertising matter after a use thereof for a reasonable period of time.

There are among the competitors of the respondents many who deal in cosmetic preparations designed for similar usage and who rightfully and truthfully represent the nature of the product, its medicinal value, and the efficacy of its use.

PAR. 8. The effect of the foregoing false and misleading advertisements and representations is to mislead a substantial number of wholesale and retail merchants, as well as a substantial portion of the consuming public in the several States, by inducing them to believe: (1) That the product marketed as Lur-Eye Lash Developer contains ingredients of a medicinal quality and of such a character and in such quantity as to effect the results claimed by the respondents from the use thereof after a reasonable time; (2) that the product will actually develop the eyelashes of the user and make them longer, silkier, and lovelier; (3) that the product will actually relieve tired, bloodshot, or inflamed eyes; and (4) that the product will relieve

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the condition created by the presence of granulated eyelids, and to purchase substantial quantities of said product known as Lur-Eye Developer in such erroneous belief.

PAR. 9. The foregoing false and misleading statements and representations are added inducements for a substantial number of wholesale and retail merchants, as well as consumer purchasers, to buy the product known as Lur-Eye Lash Developer, manufactured and offered for sale by the respondents' corporations, and have a tendency and a capacity to, and do, divert a substantial volume of trade from the competitors of the respondents engaged in similar businesses with the result that substantial quantities of said product are sold to said dealers and purchasers and to the consuming public on account of said beliefs induced by said false and misleading representations, and, as a consequence thereof, a substantial injury has been done by the respondents to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 10. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

## 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 15, 1936, issued and served its amended complaint in this proceeding upon the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, each respondent filed an answer in which it stated that it waived hearing on the charges set forth in the complaint, that it did not wish to contest the proceeding, that it admitted all of the material allegations of the complaint to be true, and that it consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods

of competition alleged in the complaint. Thereafter, the proceedings regularly came on for final hearing before the Commission on said amended complaint and the respective answers of the respondents, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Lur-Eye Products, Inc., is a corporation under the laws of the State of New York with its office and principal place of business at 1501 Broadway, in the city of New York, in said State. Respondent, W. R. Robinson Co., is a corporation under the laws of the State of Illinois with its office and place of business in the city of Kankakee, in the State of Illinois. Both respondents have been, for a period of several years, engaged in the business of producing, distributing, and selling to wholesale and retail dealers in cosmetics for resale and also to others for consumption, a cosmetic specialty known as Lur-Eye Lash Developer.

PAR. 2. Both respondents, being engaged in the business of producing, distributing, and selling the cosmetic specialty known as Lur-Eye Lash Developer, for a period of several years, have caused said products, when sold by either of them to purchasers located at points in various States of the United States, to be transported from their respective places of business in the States of New York and Illinois to said purchasers in States of the United States other than the State of origin of said shipment.

There are other corporations, firms, and individuals likewise engaged in the business of producing, distributing, and selling cosmetic specialties, such as eyelash developers, in commerce, among and between the various States of the United States and in the District of Columbia, and the said respondents are now, and have been for several years, engaged in substantial competition with said competitors.

PAR. 3. In the course and operation of their respective businesses, the respondents, for the purpose of inducing the purchase of said Lur-Eye Lash Developer, have caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and have also printed and circulated, through the United States mails and through other means, throughout the various States, various types of advertising literature in which they have caused their respective corporate names to be prominently and conspicuously displayed, together with various statements, purporting

to be descriptive of the product itself and of the benefits that may be reasonably expected to be obtained from the use of said product by the user thereof. The boxes or containers in which the Lash Developer is packed and the display cards used in connection with the sale of said Lash Developer also contain statements similar in nature.

The various statements, with reference to the efficacy of said preparation and the results that may be reasonably expected to be obtained upon the use thereof, made by the said respondents in all of their advertising literature, above referred to, serve as representations: (1) That it would grow eyelashes, promote the growth of eyelashes or increase the length thereof; (2) that it would change the texture of eyelashes; (3) that it is a competent treatment for inflamed eyes, bloodshot eyes, or granulated eyelids; (4) that it will penetrate to or reach the follicles or papillae of the eyelashes; (5) that it will reach the inner shafts of eyelashes; (6) that it would have a beneficial effect upon the sebaceous glands or inner membranes; or (7) that it will relieve eyestrain.

The cosmetic preparation marketed by the respondents under the name Lur-Eye Lash Developer does not have the medicinal ingredients claimed by the respondents in such quantities as to produce the results claimed, and the representations and statements made by the respondents with respect to the nature of the product itself and its efficacy for relieving eye troubles are false, misleading, and grossly exaggerated. The preparation will not grow, promote the growth of, increase the length of, or change the texture of eyelashes. It is not a competent treatment for inflamed or bloodshot eyes or for granulated eyelids. It will not penetrate to or reach the follicles or papillae of the eyelashes, or the inner shafts thereof and does not have any beneficial effect upon the sebaceous glands or inner membranes. Said preparation does not relieve eyestrain.

PAR. 4. A substantial portion of the public has indicated, and has, a preference for cosmetic preparations that are accurately and truthfully advertised with respect to the results that can be reasonably expected to be obtained after a use thereof.

The acts and representations of the respondents place in the hands of retail dealers and purchasers for resale an instrument and a means whereby said dealers may commit a fraud on a substantial portion of the purchasing public by enabling such dealers to represent said preparation as a product that will produce the results claimed and sell substantial quantities of said preparation on account thereof.

Many of the respondents' respective competitors deal in cosmetic preparations designed for similar usages and rightfully and truthfully represent the nature of their respective products, their medicinal value, and the degree of benefit that may be reasonably expected to be obtained from a use thereof.

PAR. 5. The representations and statements made by said respondents have a tendency and a capacity to mislead and deceive a substantial number of the purchasing public in the various States into the beliefs: (1) That the product marketed as Lur-Eye Lash Developer contains medicinal ingredients of such character and in such quantity as to effect the results claimed by the respondents from the use thereof after a reasonable time; (2) that the product will actually develop the eyelashes of the user and make them longer, silkier, and lovelier; (3) that the product will actually relieve tired, bloodshot, or inflamed eyes; and (4) that the product will relieve the condition created by the presence of granulated eyelids, and to purchase substantial quantities of said product known as Lur-Eye Lash Developer in such erroneous beliefs.

As a result of the erroneous and mistaken beliefs on the part of the consuming public as induced by the representations and statements of the respondents, a substantial volume of trade has been diverted from competitors of the respondents engaged in similar business who do not, in any way, falsely represent their respective products and substantial injury has been done by the respondents to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

#### CONCLUSION

The acts and practices of the respondents are each and all to the prejudice of the public, and to the competitors of the respondents and constitute unfair methods of competition in 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 powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon an amended complaint filed herein on February 15, 1936, and the respective answers submitted by the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, in which answers each respondent states that it desires to waive hearing and not to contest the proceeding, and that it ad-

mits all of the material allegations of the complaint to be true and consents that the Commission may, without trial, without further evidence, and without intervening procedure, make, enter, issue, and serve upon said respondent its findings as to the facts and its conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the amended complaint and said answers, and being fully advised in the premises;

*It is now ordered*, That the time within which answers may be filed by said respondents be extended to this date and the respective answers of the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, be received and filed.

*It is further ordered*, That the respondents, Lur-Eye Products, Inc., a New York corporation, and W. R. Robinson Co., an Illinois corporation, their respective officers, agents, servants, and employees, in connection with the distribution and sale of an eyelash developer, the same being a cosmetic specialty known as Lur-Eye Lash Developer, in interstate commerce, cease and desist from:

Advertising or representing, directly or by implication, in newspapers, magazines, radio broadcasts, circulars, display cards, or any other form of advertising literature, or in any other way, that said cosmetic preparation: (a) Will grow, promote the growth of, increase the length of, or change the texture of eyelashes; (b) that said preparation is a competent treatment for inflamed or bloodshot eyes or granulated eyelids; (c) that said preparation will penetrate to or reach the follicles or papillae or inner shafts of eyelashes; (d) that said preparation will have any beneficial effect upon the sebaceous glands or inner membranes; or (e) that said preparation will relieve eyestrain.

*It is further ordered*, That the proceeding, insofar as it affects Lur-Eye Products, Inc., a Delaware corporation, be and the same is hereby closed on the ground that said respondent is not engaged in commerce of any character.

*It is further ordered*, That respondents shall, within 60 days from the date of service upon them of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which they have complied with the order herein set forth by the Commission.



## Syllabus

IN THE MATTER OF  
JOHNSON MANUFACTURING COMPANY AND JOHN C.  
JOHNSON

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

*Docket 2514. Complaint, Aug. 14, 1935—Decision, Mar. 31, 1936*

Where a corporation engaged in the sale of iron cooking utensils through solicitation by its agents or representatives, in competition with others engaged in the sale of like articles including aluminum cooking utensils, and acting at the instance of its president and principal stockholder—

(a) Included in its corporate or trade name the word "Manufacturing", notwithstanding fact it was not a manufacturer, but contracted with foundries or factories for the manufacture to its specifications of the goods which it sold; with effect of misleading and deceiving a substantial number of the purchasing public into the false belief that in buying from its representatives they were purchasing directly from the manufacturer and thereby effecting a financial saving through elimination of the profit of the middleman, and of causing a substantial diversion of trade from competitors; and

Where said corporation and said individual, in soliciting the purchase of their said products—

(b) Exhibited to customers a paper slip displaying said company's name and words "Regular price \$7.50—Advertising price \$4.50" and represented that \$7.50 was the regular price, but that special price of \$4.50 would be allowed to customer contacted, facts being that \$4.50 was the usual price at which product was and had been continually offered to the public; with intent and effect of misleading and deceiving a substantial number thereof into belief that by making purchase at figure offered they were securing a greater value than they might otherwise have secured, and were effecting a financial saving from the purported usual price of \$7.50 by purchasing then and there, and of causing a substantial diversion of trade from competitors; and

(c) Circulated through the various States pamphlets and advertising matter containing statements to effect that use of aluminum cooking utensils was deleterious to health and poisonous and furthered growth of cancer, and other statements of similar tenor, and caused their agents or representatives to circulate such statements orally, facts being that medical and scientific evidence produced was to effect that aluminum utensils did not have any such results and said statements were false; with effect of misleading and deceiving a substantial number of the purchasing public and inducing them to purchase commodities offered in reliance upon such mistaken belief, and of causing a diversion of trade from substantial numbers of competitors engaged in sale of such aluminum, or iron utensils without such misrepresentation, and with capacity and tendency so to mislead and deceive:

*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.

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

*Mr. Alden S. Bradley* for the Commission.

*Mr. Jesse R. Johnson*, of Birmingham, Ala., for respondent.

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## COMPLAINT

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, having reason to believe that Johnson Manufacturing Co., a corporation, and John C. Johnson, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Johnson Manufacturing Co., is a corporation, incorporated under the laws of the State of Alabama, and having its principal office and place of business in the city of Birmingham, State of Alabama. The respondent, John C. Johnson, is a natural person, president of and chief stockholder of such corporation above named, and has his principal office and place of business in the city of Birmingham, State of Alabama. The principal business of such corporation consists of the sale and offering for sale of iron cooking utensils through the medium of personal solicitation and contacts, and it now maintains and has, since December 1, 1934, maintained a constant current of trade and commerce among the various States of the United States and the District of Columbia. The general method of effecting sales consists of the distribution of certain pamphlets, the statements of which are hereafter set forth, and said pamphlets constitute a disparagement of other cooking utensils of a different metal, and specifically aluminum.

The tenor and effect of the contents of the pamphlets herein referred to consists of statements falsely alleging that aluminum used in cooking utensils is poisonous. The pamphlets further contained false statements allegedly having been made by doctors in support of such contention that aluminum used in cooking utensils is poisonous and is an irritant to living tissues. Further statements to the effect that aluminum used in cooking utensils causes or furthers the growth of cancers are contained in such pamphlets.

PAR. 2. The said respondents and each of them have been and now are engaged in the selling and offering for sale in the various States of the United States and in the District of Columbia of merchandise of a general character known as and classified to be cooking utensils, and they are now and have been, since the date of their undertaking such endeavor, to wit, December 1, 1934, in substantial competition with other corporations, firms, and copartnerships engaged in the

sale of like articles between and among the various States of the United States and the District of Columbia.

PAR. 3. The uttering and issuing of the pamphlets as herein complained constitute a detriment and injury to, and consist in themselves of unfair methods of competition with competitors of the respondents within their own industry. Such false disparagement of those articles offered for sale by competitors of the respondents occasion and entail an actual loss of revenue and of profit by such competitors.

PAR. 4. The respondent corporation, under the direction and control of its president and principal stockholder, John C. Johnson, falsely maintains and causes to be maintained as part of the corporate name of respondent corporation the word "Manufacturing" when, in fact, the said corporation does not maintain a factory and does not manufacture the goods offered by it for sale, and the maintaining of the word "Manufacturing" as a part of the corporate name of the respondent corporation has a capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the belief that the goods so offered by the respondents for sale are in fact manufactured by the respondent corporation.

There are among the members of the purchasing public a substantial number who have an actual preference for purchasing merchandise directly from manufacturers, and the false use of the word "Manufacturing" as above related, does, among other things, mislead and deceive such portion of the purchasing public into the belief that they are in fact purchasing directly from a manufacturer, and are avoiding the payment of the so-called middleman's profit.

PAR. 5. In the furtherance by respondents of their efforts to effectuate sales they consistently offer for sale to members of the purchasing public the goods herein described, and exhibit to such potential purchasers an order blank whereon is the statement that the regular price of said commodities offered for sale is \$7.50, and that an advertising price may be obtained at \$4.50. Such statement is false for the reason that the regular and habitual price of the commodities so represented is \$4.50, and the false representation to the purchasing public that the regular price thereof is \$7.50, but that an advertising price may be obtained at \$4.50, has a capacity and tendency to and does in fact mislead and deceive the members of the purchasing public so contacted and causes them to believe that such merchandise is of a substantially better grade and higher value than merchandise offered by competitors for an equal sum, and the habitual and continuous use of such false representation

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constitutes a substantial injury to a substantial number of competitors of the respondents.

PAR. 6. There are in the various States of the United States and in the District of Columbia other corporations, firms, persons, and copartnerships engaged in the business of selling and offering for sale cooking utensils of various derivatives and manufacture, and made of and from various metals among which is aluminum, and pursuant to such sales, such firms, persons, corporations, and copartnerships make shipments from their various respective places of business and places of storage to the purchasers of such materials in the various States of the United States and the District of Columbia.

PAR. 7. The acts and practices of the respondents as above set forth are prejudicial and injurious to the competitors of such respondents, and have occasioned and now occasion substantial injury to substantial competition in interstate commerce.

The acts and practices done and caused to be done by the respondents were and are, each and all, to the prejudice of the public and of the respondents' competitors, because there are among the members of the purchasing public a substantial number who are materially influenced and affected by the acts hereinabove complained of, and such members of the purchasing public are persuaded thereby to purchase the goods offered for sale by the respondents in preference to the goods of like metal and for like purpose which may be offered for sale by competitors of the respondents, and such acts and practices above related constitute unfair methods of competition in commerce within the meaning and intent 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.

## 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 the 14th day of August 1935, issued and served its complaint in this proceeding upon the respondents, Johnson Manufacturing Co., a corporation, and John C. Johnson, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint the respondent, John C. Johnson, filed an answer thereto; the respondent, Johnson Manufacturing Co., a corporation, was in default of an answer. Testimony and evidence

in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it and in defense of the allegations of the complaint by J. R. Johnson, attorney for the respondent, J. C. Johnson; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, brief in support of the complaint and each of the above-named respondents being in default of a brief and not being represented at the time and place of such final hearing, the cause was submitted without argument; and the Commission having duly considered the same and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** The respondent, Johnson Manufacturing Co., is a corporation existing under and by virtue of the laws of the State of Alabama having its principal office and place of business in the city of Birmingham, and State of Alabama.

Respondent, John C. Johnson, is an individual, is president and principal stockholder of Johnson Manufacturing Co., and has his principal office and place of business in the city of Birmingham and State of Alabama.

**PAR. 2.** The principal business of each of the respondents is the sale of iron cooking utensils of various shape and design through the medium of sales solicitation by agents or representatives of the respondents. The respondents and each of them have caused and now cause agents or representatives throughout the State of Alabama and various other States of the United States other than the State of Alabama to make personal contact with potential customers for the purpose of selling to such potential customers the products manufactured by the respondents. Such agents or representatives procure orders for the commodities manufactured by the respondents and such orders are filled by the respondents and the respondents constantly and continuously sell, ship, and transport, and cause to be sold, shipped, and transported from the State of Alabama, and to and throughout the various States of the United States other than the State of Alabama, the commodities manufactured by it and sold in the manner above related.

**PAR. 3.** In the conduct of the business aforesaid respondents are now and have been in substantial competition with other corpora-

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tions, firms, and copartnerships engaged in the sale of like articles between and among various States of the United States. Among the competitors of the respondent are those who manufacture and sell in the various States of the United States cooking utensils made of aluminum.

PAR. 4. In the conduct of its business as aforesaid the respondent, Johnson Manufacturing Co., a corporation, acting under the direction and at the instance of the individual respondent, John C. Johnson, has used and now uses as a part of the corporate or trade name of the respondent, Johnson Manufacturing Co., the word "manufacturing."

The respondent, Johnson Manufacturing Co., a corporation, is not a manufacturer and maintains, owns, or controls no factory or foundry in which the goods vended by the respondents as aforesaid are manufactured.

The respondent, Johnson Manufacturing Co., contracts with foundries or factories to manufacture for the respondent the goods sold by the respondents as aforesaid upon specifications furnished by the respondent, Johnson Manufacturing Co., through the respondent, John C. Johnson.

PAR. 5. There is a common belief among members of the purchasing public that in making purchases direct from the manufacturer of commodities a substantial financial saving is effected in that the profit of the middleman is thereby eliminated and the sums of money represented by the usual profit of such middleman are directly saved the purchaser or purchasers. There is a preference among a substantial number of the members of the purchasing public for purchasing commodities direct from the manufacturer of the same for the purpose of effecting such a financial saving.

PAR. 6. In the conduct of the business of the respondents and in soliciting customers or potential customers to purchase the products offered by them for sale they now use and have used in connection with the solicitation in the manner above set out, a paper slip whereon appear the words "The Johnson Manufacturing Company" and the words "Regular price \$7.50—Advertising price \$4.50", which said slip of paper was exhibited to customers or prospective customers for the purpose of inducing them to purchase the commodities offered for sale by the respondents. The respondents represented and caused to be represented in addition thereto to potential customers in the solicitation of orders that the regular price of the commodities vended was \$7.50 but that a special price of \$4.50 would be allowed to the customer contacted.

The price at which such commodity was offered to the purchasing public was almost invariably, if not invariably, \$4.50, and such price was and is the usual and customary price at which such commodity now is and has been continuously offered to the purchasing public.

The purpose and intention of the respondents in making and causing to be made the representations aforesaid was to induce members of the purchasing public to purchase the commodity so offered in the belief that they were obtaining such commodity at a financial saving and in the belief that if such commodity was not then purchased the regular price of \$7.50 would later be asked; and a substantial number of the members of the purchasing public formed such impression and belief, and relying upon such erroneous belief purchased the commodities so offered by the respondent.

PAR. 7. In the conduct of the business aforesaid the respondents and each of them published and circulated and caused to be published and circulated throughout the various States of the United States, various and sundry pamphlets, advertisements, and other written matter containing statements to the effect that the use of aluminum cooking utensils was and is deleterious to the health, that it is poisonous, that the same furthers the growth of cancer, and other statements of like tenor and effect. The respondents and each of them likewise caused agents or representatives orally to circulate statements of the same portent.

The medical and scientific evidence produced in the instant case is to the effect that the use of aluminum cooking utensils is not deleterious to health, is not poisonous, and does not have the tendency to further the growth of cancer.

PAR. 8. In the conduct of their business respondents caused their agents or representatives to go into States other than the State of Alabama to solicit orders for the commodities manufactured and sold by the respondents. Such agents or representatives procured numerous orders and sold and delivered goods to the purchasers thereof, and the respondents shipped, transported, and delivered to agents or representatives in States other than the State of Alabama the commodities listed in such orders.

In connection with the solicitation of orders as aforesaid in States other than the State of Alabama, the agents and representatives of the respondents used in connection with their solicitations oral statements, pamphlets, circulars, and other written matter containing statements substantially to the effect that the use of aluminum cooking utensils was poisonous, was deleterious to the health, furthered growth of cancer, and other similar statements concerning such utensils.

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PAR. 9. The use of the word "manufacturing" in connection with the corporate or trade name of respondent had and has the tendency and capacity to and did, and does, mislead and deceive a substantial number of the members of the purchasing public into the false belief that they, in purchasing from agents or representatives of such Johnson Manufacturing Co., were and are purchasing directly from the manufacturer of the commodities offered by the said respondents for sale and were and are thereby effecting a financial saving through the elimination of the profit of the middleman.

PAR. 10. The use of the paper slip exhibited to customers and potential customers in the solicitation of orders as above related, upon which slip appear words and letters indicating that the price of \$4.50, for which price the commodity was offered to the person to whom such slip was exhibited, was a special price and that the price of \$7.50 also exhibited on such paper slip was the usual and customary price of such commodity, was deceptive. The oral representations of the agents or representatives to the same effect was likewise deceptive. Such a practice had a capacity and tendency to, and did, mislead and deceive a substantial number of the members of the purchasing public into the false belief that by making the purchase of the commodity at the price of \$4.50 they were securing a greater value than they might otherwise have secured and that by making the purchase at that particular time and place they were effecting a financial saving from the purported usual and customary price of \$7.50.

Such a practice had and has a capacity and tendency to mislead and deceive the purchasing public to their injury and has caused and now causes a substantial diversion of trade from a substantial number of competitors of the respondents in interstate commerce.

PAR. 11. The use by the respondents Johnson Manufacturing Co., in connection with its business in interstate commerce, of the word "manufacturing" had and has caused a substantial diversion of trade from competitors of the respondent in interstate commerce who do not falsely represent, by the use of the word "manufacturing" in connection with the use of their corporate or trade name, that they are manufacturers of the commodity or commodities vended by them and has likewise caused a diversion of trade from a substantial number of competitors in interstate commerce who actually manufacture the commodity or commodities vended by them.

PAR. 12. The use by the respondents and each of them in connection with the conduct of their business in interstate commerce as aforesaid of pamphlets, circulars, and other methods of advertising containing statements and representations that the use of aluminum cooking utensils is deleterious to health, is poisonous, promotes the



growth of cancer, and other statements and representations of similar import, had and has the capacity and tendency to, and did and does, mislead and deceive a substantial number of the members of the purchasing public into the false belief that the statements and representations therein were and are true and a substantial number of the members of the purchasing public believe such statements and representations to be true and have acted upon them and have been thereby induced to purchase the commodities of the respondents.

Such acts and practices likewise have caused a diversion of trade from a substantial number of competitors engaged in the sale or offering for sale in interstate commerce of iron cooking utensils who do not falsely represent that aluminum cooking utensils are deleterious to health, are poisonous, further the growth of cancer, or other statements of the same import.

Such practices likewise have caused and now cause diversion of trade from a substantial number of competitors of the respondents engaged in the sale or offering for sale in interstate commerce of aluminum cooking utensils.

#### 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 before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence taken herein, brief filed on behalf of the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion that the respondents, Johnson Manufacturing Co., a corporation, and John C. Johnson, 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 respondent, Johnson Manufacturing Co., a corporation, its officers, agents, representatives, and employees,

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in connection with the sale or offering for sale in interstate commerce of cooking utensils, cease and desist from:

Representing through the use of its corporate or trade name and through the use of advertising literature, through oral statements, or in any other manner, that said respondent is a manufacturer of kitchen utensils.

*It is further ordered*, That the respondents, Johnson Manufacturing Co., a corporation, and John C. Johnson, an individual, and the representatives, agents, servants, and employees of each of them, in connection with the sale or offering for sale in interstate commerce of cooking utensils by them or either of them, cease and desist from:

(1) Representing that the usual, regular, and customary selling price of said cooking utensils is a special or advertising price, and from representing that a fictitious or marked-up price of said cooking utensils is the customary, usual, or regular price;

(2) Representing or causing to be represented, through advertising literature, oral statements, or in any other manner, that the use of aluminum cooking utensils is deleterious to the health, is poisonous, or that said use furthers the growth of cancer, and from making other statements or representations of similar tenor and effect, falsely disparaging or tending falsely to disparage the quality or value of such aluminum cooking utensils with respect to the effect the use of the same might have on the health of the user or users thereof.

*It is further ordered*, That the respondents and each of them shall within 90 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 and conformed to this order.

Syllabus

IN THE MATTER OF

EDS MANUFACTURING COMPANY ET AL.

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

*Docket 2660. Complaint, Dec. 18, 1935—Decision, Mar. 31, 1936*

Where 11 corporations engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes and in the sale thereof to photoengraving houses and large newspaper chains located in other States, and together making and selling more than 90 percent of the total volume of such products used for such purpose and sold in commerce—

(a) Entered into an understanding or agreement among themselves, and with their association formed pursuant to such undertaking, to fix and maintain uniform prices, terms, and discounts for the sale of such products and to cooperate with each other in the enforcement and maintenance of such prices, etc., by exchanging information through said association as to the prices, etc., at which they were selling and offering to sell such products as aforesaid; and

Where said association, organized as aforesaid—

(b) Acted as a clearing house for the exchange of information submitted by said members, including reports as to sales of zinc and copper plates together with prices, discounts, and terms at which said zinc and copper plates were sold or offered, and held regular meetings at which its said members attended and at which they discussed trade and competitive conditions in said industry, and agreed upon and established trade policies to be followed and prices to be charged in the sale and distribution of their said products; and

Where four individuals, officers of such association and as such in full and complete charge of its activities—

(c) Conducted the meetings of its members and collected statistical information therefrom and compiled and disseminated the same thereto, all in pursuance and furtherance of the object and aims of the association as hereinabove set forth;

With the result of unduly tending to substantially lessen, restrict, and suppress competition in the sale of zinc and copper engravers plate throughout the several States and particularly in prices quoted and discounts allowed, and to enhance prices thereof above those which had theretofore prevailed and which would prevail under normal, natural, and open competition between said members, and to tend to a monopoly in said corporations in the manufacture and sale of such plates in commerce:

*Held*, That such acts and practices were to the prejudice of the buying public generally and customers of said members in particular, and constituted unfair methods of competition.

*Mr. Everett F. Haycraft and Mr. Reuben J. Martin for the Commission.*

*Mr. Sol A. Rosenblatt, of New York City, for respondents.*

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## COMPLAINT

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, having reason to believe that Edes Manufacturing Co., The American Steel & Copper Plate Co., New York Steel & Copper Plate Co., Rolled Plate Metal Co., National Steel & Copper Plate Co., Harold M. Pitman Co., Pacific Steel & Copper Plate Co., American Zinc Products Co., American Nickeloid Co., C. G. Hussey & Co., and Bridgeport Engravers Supply Co., hereinafter referred to as corporate respondents and the Photo Engravers Copper & Zinc Grinders Association, hereinafter referred to as the respondent association, and Oliver L. Edes, Harold M. Pitman, Walter Pitman, and J. Peter Lally, individually, hereinafter referred to as individual respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said corporate respondent, Edes Manufacturing Co., is a corporation organized under the laws of the State of Massachusetts in 1850, with its principal office located in the town of Plymouth within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Massachusetts, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts. Said corporate respondent is the leading manufacturer of zinc and copper plates for use by photoengravers and, as such, occupies a dominant position in said industry.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 2. Said corporate respondent, The American Steel & Copper Plate Co., is a corporation organized under the laws of the State of New Jersey in 1905, with its principal office located at 101 Fairmount Avenue in Jersey City, within said State. Said corporate respondent, since the date of its organization, has been and now is

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engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of New Jersey, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of New Jersey, to the purchasers thereof located in States other than the State of New Jersey.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 3. Said corporate respondent, New York Steel & Copper Plate Co., is a corporation organized under the laws of the State of New York in 1889, with its principal office located at 61 Clymer Street in the city of Brooklyn within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of New York, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of New York to the purchasers thereof located in States other than the State of New York.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 4. Said corporate respondent, Rolled Plate Metal Co., is a corporation organized under the laws of the State of New York in 1904, with its principal office located at 196-210 Van Brunt Street, in the city of Brooklyn within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of New York, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of New York to the purchasers thereof located in States other than the State of New York.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 5. Said corporate respondent, National Steel & Copper Plate Co., is a corporation organized under the laws of the State of Illinois in 1903, with its principal office located at 720 South Dearborn Street in the city of Chicago within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Illinois, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 6. Said corporate respondent, Harold M. Pitman Co., is a corporation organized under the laws of the State of Illinois, with its principal office located at South 51st Street and 133d Street in the city of Cicero within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Illinois, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 7. Said corporate respondent, Pacific Steel & Copper Plate Co., is a corporation organized under the laws of the State of California in 1917, with its principal office located at 416 Jackson Street in the city of San Francisco within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of California, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of California to the purchasers thereof located in States other than the State of California.

Said corporate respondent is now and has been since August 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association.

PAR. 8. Said corporate respondent, American Zinc Products Co., is a corporation organized under the laws of the State of Indiana in 1925, with its principal office located in the city of Greencastle, within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Indiana, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Indiana to the purchasers thereof located in States other than the State of Indiana.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 9. Said corporate respondent, American Nickeloid Co., is a corporation organized under the laws of the State of Illinois, with its principal office located at 1501 Second Street in the city of Peru within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Illinois, causing said zinc plates when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

Said corporate respondent is now and has been for more than 1 year last past a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association.

PAR. 10. Said corporate respondent, C. G. Hussey & Co., is a corporation organized under the laws of the State of Pennsylvania in 1931, with its principal office located at 2850 Second Avenue in the city of Pittsburgh within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Pennsylvania, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

Said corporate respondent is now and has been since July 1933 a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 11. Said corporate respondent, Bridgeport Engravers Supply Co., is a corporation organized under the laws of the State of Connecticut on February 27, 1935, with its principal office located at 774 East Main Street in the city of Bridgeport within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Connecticut, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Connecticut to the purchasers thereof located in States other than the State of Connecticut.

Said corporate respondent is now and has been since its organization a member of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and has been represented at the meetings of said association.

PAR. 12. Said corporate respondents, acting in cooperation with each other and through and in cooperation with said respondent association and said individual respondents, for more than 1 year last past, and particularly since July 1933, have entered into an understanding, agreement, combination, or conspiracy among themselves and with and through said respondent association and said individual respondents, to restrict, restrain, and suppress competition in the sale and distribution of zinc plates and copper plates to photoengraving customers and to newspaper customers located throughout the several States of the United States, as aforesaid, by agreeing to fix and maintain uniform prices, terms, and discounts at which said zinc plates and said copper plates are to be sold, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent association as to the prices, terms, and discounts at which said corporate respondents have sold and are offering to sell said zinc plates and said copper plates to said photoengraving customers and to said newspaper customers.

PAR. 13. Said corporate respondents, in furtherance of their aforesaid understanding, agreement, combination, or conspiracy, in July 1933, organized said respondent association, Photo Engravers Copper & Zinc Grinders Association. Said respondent association, the aforesaid Photo Engravers Copper & Zinc Grinders Association, is a voluntary, unincorporated trade association, composed of



manufacturers of zinc and copper engravers' plate, located throughout the several States of the United States, and has as its principal members said corporate respondents herein named, which said corporate respondents manufacture and sell more than 90 percent of the total volume of zinc and copper plates used for engraving purposes and sold in interstate commerce in the United States. Said respondent association was organized in the city of Pittsburgh within the State of Pennsylvania, and since its organization has acted as a clearing house for the exchange of information submitted by said corporate respondents, including reports as to the sales of zinc and copper plates, together with prices, discounts, and terms at which said zinc and copper plates are sold or offered to be sold. Headquarters of said respondent association since its organization have been and now are maintained at 101 Fairmount Ave. in Jersey City within the State of New Jersey, and regular meetings of the members of said respondent association have been and are held from time to time at convenient locations within the United States, at which said meetings said corporate respondents discuss trade and competitive conditions in said zinc and copper plate industry, and agree upon and establish trade policies to be followed and prices to be charged by said corporate respondents in the interstate sale and distribution of their zinc and copper plates and carry out and perform the acts and things hereinbefore alleged in paragraph 12.

PAR. 14. Said individual respondents, Oliver L. Edes, Harold M. Pitman, Walter Pitman, and J. Peter Lally, are now and have been since organization the officers of said respondent association, and as such officers have had and now have full and complete charge of the activities of said respondent association, conducting the meetings of said members of said respondent association and collecting said statistical information from the members of said respondent association and compiling and disseminating the same to the said members afore-said, all in pursuance and furtherance of the objects and aims of said respondent association as hereinbefore set forth in paragraph 13.

PAR. 15. The result of the acts and conduct of the said corporate respondents and the said respondent association and said individual respondents, as set out hereinbefore in paragraphs 12, 13, and 14, has been and now is to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of zinc and copper engravers plate throughout the several States of the United States, particularly in the prices quoted and discounts allowed by said corporate respondents, and to enhance the prices of said zinc and copper engravers plates above the prices which had theretofore prevailed, and which would prevail under normal, natural, and open competition between said corporate respondents, and also to tend to create a monopoly

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in the said corporate respondents in the manufacture and sale of zinc and copper engravers plates in interstate commerce.

PAR. 16. The foregoing alleged acts and practices of the said corporate association and individual respondents have been and still are to the prejudice of the buying public generally, and customers of said corporate respondents in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on December 18, 1935, issued and served its complaint in this proceeding upon the respondents Edes Manufacturing Co., The American Steel & Copper Plate Co., New York Steel & Copper Plate Co., Rolled Plate Metal Co., National Steel & Copper Plate Co., Harold M. Pitman Co., Pacific Steel & Copper Plate Co., American Zinc Products Co., American Nickeloid Co., C. G. Hussey & Co., Bridgeport Engravers Supply Co., Photo Engravers Copper & Zinc Grinders Association, and Oliver L. Edes, Harold M. Pitman, Walter Pitman, and J. Peter Lally, individually and as officers of the Photo Engravers Copper & Zinc Grinders Association, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint said respondents filed their answers thereto, admitting for the purpose of this proceeding all the material allegations of the complaint to be true, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, Edes Manufacturing Co., is a corporation organized under the laws of the State of Massachusetts in 1850, with its principal office located in the town of Plymouth within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large news-

paper chains located in States other than the State of Massachusetts, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts. Said corporate respondent is the leading manufacturer of zinc and copper plates for use by photoengravers, and as such occupies a dominant position in said industry.

PAR. 2. Said corporate respondent, The American Steel & Copper Plate Co., is a corporation organized under the laws of the State of New Jersey in 1905, with its principal office located at 101 Fairmount Ave. in Jersey City, within said State. Said corporate respondent since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of New Jersey, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of New Jersey, to the purchasers thereof located in States other than the State of New Jersey.

PAR. 3. Said corporate respondent, New York Steel & Copper Plate Co., is a corporation organized under the laws of the State of New York in 1889, with its principal office at 61 Clymer Street in the city of Brooklyn within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of New York, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of New York to the purchasers thereof located in States other than the State of New York.

PAR. 4. Said corporate respondent, Rolled Plate Metal Co., is a corporation organized under the laws of the State of New York in 1904, with its principal office located at 196-210 Van Brunt Street, in the city of Brooklyn within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of New York, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of New York to the purchasers thereof located in States other than the State of New York.

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PAR. 5. Said corporate respondent, National Steel & Copper Plate Co., is a corporation organized under the laws of the State of Illinois in 1903, with its principal office located at 720 South Dearborn Street in the city of Chicago within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Illinois, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 6. Said corporate respondent, Harold M. Pitman Co., is a corporation organized under the laws of the State of Illinois, with its principal office located at South 51st Street and 133d Street in the city of Cicero within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Illinois, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 7. Said corporate respondent, Pacific Steel & Copper Plate Co., is a corporation organized under the laws of the State of California in 1917, with its principal office located at 416 Jackson Street in the city of San Francisco within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of California, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of California to the purchasers thereof located in States other than the State of California.

PAR. 8. Said corporate respondent, American Zinc Products Co., is a corporation organized under the laws of the State of Indiana in 1925, with its principal office located in the city of Greencastle, within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Indiana, causing said zinc plates and said

copper plates when sold to be transported from the place of manufacture within said State of Indiana to the purchasers thereof located in States other than the State of Indiana.

PAR. 7. Said corporate respondent, Ameriran Nickeloid Co., is a corporation organized under the laws of the State of Illinois, with its principal office located at 1501 Second Street in the city of Peru within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Illinois, causing said zinc plates when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 10. Said corporate respondent, C. G. Hussey & Co., is a corporation organized under the laws of the State of Pennsylvania in 1931, with its principal office located at 2850 Second Ave. in the city of Pittsburgh within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Pennsylvania, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 11. Said corporate respondent, Bridgeport Engravers Supply Co., is a corporation organized under the laws of the State of Connecticut on February 27, 1935, with its principal office located at 774 East Main Street in the city of Bridgeport within said State. Said corporate respondent, since the date of its organization, has been and now is engaged in the manufacture of zinc and copper plates suitable for photoengraving purposes, which it sells to photoengraving houses and large newspaper chains located in States other than the State of Connecticut, causing said zinc plates and said copper plates when sold to be transported from the place of manufacture within said State of Connecticut to the purchasers thereof located in States other than the State of Connecticut.

PAR. 12. Said corporate respondents are now, and have been since July 1933, members of said respondent association, Photo Engravers Copper & Zinc Grinders Association, and have been represented at the meetings of said association, except said respondent, American Nickeloid Co., which is now and has been for more than 1 year last

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past a member of said respondent association but which has not been represented at the meetings of said association.

PAR. 13. Said corporate respondents, acting in cooperation with each other and through and in cooperation with said respondent association and said individual respondents, on or about July 1933, entered into an understanding or agreement among themselves and said respondent association and said individual respondents to fix and maintain uniform prices, terms, and discounts at which said zinc plates and copper plates, suitable for photoengraving purposes, are to be sold, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent association as to the prices, terms, and discounts at which said corporate respondents have sold and are offering to sell said zinc plates and said copper plates to said photoengraving customers and to said newspaper customers.

PAR. 14. Said corporate respondents, in furtherance of their aforesaid understanding and agreement in July 1933, organized said respondent association, Photo Engravers Copper & Zinc Grinders Association, which is a voluntary, unincorporated trade association, composed of manufacturers of zinc and copper engravers plate, located throughout the several States of the United States, and has as its principal members said corporate respondents herein named, which said corporate respondents manufacture and sell more than 90 percent of the total volume of zinc and copper plates used for engraving purposes and sold in interstate commerce in the United States. Said respondent association was organized in the city of Pittsburgh within the State of Pennsylvania, and since its organization has acted as a clearing house for the exchange of information submitted by said corporate respondents, including reports as to the sales of zinc and copper plates, together with prices, discounts, and terms at which said zinc and copper plates are sold or offered to be sold. Headquarters of said respondent association since its organization have been and now are maintained at 101 Fairmont Ave. in Jersey City within the State of New Jersey, and regular meetings of the members of said respondent association have been and are held from time to time at convenient locations within the United States, at which said meetings said corporate respondents discussed trade and competitive conditions in said zinc and copper plate industry, and agreed upon and established trade policies to be followed and prices to be charged by said corporate respondents in the interstate sale and distribution of their zinc and copper plates.

PAR. 15. Said individual respondents, Oliver L. Edes, Harold M. Pitman, Walter Pitman, and J. Peter Lally, are now and have been since organization the officers of said respondent association.

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and as such officers have had and now have full and complete charge of the activities of said respondent association, conducting the meetings of said members of said respondent association and collecting said statistical information from the members of said respondent association and compiling and disseminating the same to the said members aforesaid, all in pursuance and furtherance of the object and aims of said respondent association as hereinbefore set forth in paragraph 14.

PAR. 16. The result of the acts and conduct of the said corporate respondents and the said respondent association and said individual respondents, as set out hereinbefore in paragraphs 13, 14, and 15, has been and now is to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of zinc and copper engravers plate throughout the several States of the United States, particularly in the prices quoted and discounts allowed by said corporate respondents, and to enhance the prices of said zinc and copper engravers plates above the prices which had theretofore prevailed, and which would prevail under normal, natural, and open competition between said corporate respondents, and also to tend to create a monopoly in the said corporate respondents in the manufacture and sale of zinc and copper engravers plates in interstate commerce.

## CONCLUSION

The foregoing acts and practices of the said corporate association and individual respondents have been and still are to the prejudice of the buying public generally, and customers of said corporate respondents in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and 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 come before the Federal Trade Commission upon the complaint of the Commission, the answers of respondents admitting all the material allegations of the complaint to be true, 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 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 said corporate respondents, their subsidiaries, officers, agents, and employees and each of them, cease and desist from acting in cooperation with each other and through and in

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cooperation with said respondent association and said individual respondents by entering into agreements to fix and maintain uniform prices, terms, and discounts at which zinc plates and copper plates are to be sold to photoengraving customers and to newspaper customers located throughout the several States of the United States, in interstate commerce; and to enforce and maintain said fixed prices, terms, and discounts by exchanging information through said respondent association as to the prices, terms, and discounts at which said corporate respondents have sold and are offering to sell said zinc plates and said copper plates to said photoengraving customers and to said newspaper customers located throughout the several States of the United States, in interstate commerce.

*It is further ordered,* That the said respondent association, its officers, agents, and employees cease and desist from cooperating with said corporate and individual respondents by holding meetings of the members of said respondent association, at which said meetings said corporate respondents enter into agreements to fix prices, discounts, and terms at which said zinc and copper plates are sold or offered to be sold by said corporate respondents to said photoengraving customers and to said newspaper customers, located throughout the several States of the United States, in interstate commerce; and by acting as a clearing house for the exchange of information submitted by said corporate respondents, including reports as to the sales of zinc and copper plates together with prices, discounts, and terms at which said zinc and copper plates are sold or offered to be sold in interstate commerce, as aforesaid, in the enforcement and maintenance of said agreements.

*It is further ordered,* That said individual respondents cease and desist as officers of said respondent association, or otherwise, in the enforcement and maintenance of said agreements, from conducting meetings of said members of said respondent association, at which said meetings said corporate respondents enter into agreements to fix prices, discounts, and terms at which said zinc and copper plates are sold or offered to be sold by said corporate respondents to said photoengraving customers and to said newspaper customers located throughout the several States of the United States, in interstate commerce, and for such purposes from collecting statistical information from the said members of said respondent association, including reports as to the sales of zinc and copper plates, together with prices, discounts, and terms at which said zinc and copper plates are sold or offered to be sold, in interstate commerce, as aforesaid; and for such purposes from compiling and disseminating said statistical information to the said members of said respondent association, aforesaid.



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*It is further ordered,* That the respondents shall within 30 days after the service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
EDWIN CIGAR COMPANY, INC., AND JAMES B. HALL, JR.,  
INC.

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

*Docket 2363. Complaint, Apr. 12, 1935—Decision, Apr. 6, 1936*

Where two corporations engaged in the manufacture of cigars and leaf tobacco, and in the sale and distribution thereof direct to the consuming public by mail order in the case of one, and at wholesale to jobbers and retailers in the case of the other, and controlled and directed, in the case of both, by the same individual, of long experience and expert in the business, and president of each, and with the same general officers, of whom two were members of said president's immediate family—

- (a) Designated and labeled as "Factory Seconds", "Odd Lots", "Factory Throw Outs" and "Throw Outs" several types of cigars which they sold and distributed at prices ranging from 1 to 4½ cents, but, generally, at 3 cents, and represented in newspaper and periodical advertising of general interstate circulation that said cigars were in fact "Factory Seconds", etc., as above set forth, facts being they were not, as thereby understood by trade and purchasing public, products of high grade tobacco and high quality which could not be sold at the regular, intended price, because of slight color variations or imperfections which do not affect the enjoyment thereof, but were made from cheap, damaged, old, or inferior tobacco, and composed about 60 percent of their annual production of 14,000,000 cigars;

With capacity and tendency to deceive dealers and purchasing public and create impression that such cigars were made of a grade of tobacco superior to that actually used and to mislead and deceive them into belief that in buying such cigars at prices charged they were obtaining a product of high quality that could not be sold for price intended on account of imperfections, and with effect of diverting trade unfairly to said corporations from individuals and concerns engaged in sale and distribution of genuine "Factory Seconds", etc., thus truthfully represented by them, and from competitors engaged in sale and distribution of comparable, cheap, and inferior cigars, truthfully designated and advertised by them as to character and quality;

- (b) Designated certain types of their cigars as "Finest Havana Filler" and thus represented same in newspaper and periodical advertising of general circulation and as guaranteed of 15-cent quality and priced at 3 to 4½ cents each on account of slight color variations and imperfections, and represented other types of their cigars as made from or filled with Havana or Cuban tobacco through use of such words as "Havana", "Havana Long Filler" or "Havana Filler", and so advertised and represented certain types of their said products, composed of a brand of Havana and other types of tobacco filler as to convey to dealers and purchasers impression that filled portion thereof was made entirely of Havana tobacco, facts being that in manufacture of their said "Havana", "Havana Filler" or "Havana Filled" cigars they ignored recognized standards of the industry in the

making of cigars so designated and did not use finest Havana filler, but purchased the cheapest type of filler, composed of storm-broken, scrap tobacco, full of holes and not identifiable as Havana tobacco at all, substituted binders for filler in order to use damaged, defective binder leaf in place of good quality filler leaves, made it their practice and policy to purchase such cheap and damaged tobacco for use in making their said cigars, used multiple number of binder leaves and sometimes as many as eight in manufacture of their product designated as made from Havana filler, their various types designated as filled with Havana tobacco contained undetermined percentages thereof, if any at all, and their various cigars advertised as guaranteed 15-cent quality, etc., were not made of quality of tobacco, used in 15-cent cigars but were made of cheap and inferior grades of said product;

With tendency and capacity to mislead and deceive members of trade and consuming public into erroneous belief that the cigars thus variously designated and described were actually made wholly from the finest quality of tobacco leaf imported from Cuba, or that filler thereof was thus made, or was composed wholly of Cuban or Havana tobacco, or they were duly and properly filled with such Cuban tobacco leaf in conformity with accepted and well known customs and standards, and with result that many dealers and members of said public purchased various types of their cigars in preference to those of their competitors who, in sale of cigars not made entirely of Havana tobacco or not filled entirely therewith, or not made of finest grade thereof, do not represent in any way that their said products are so made or filled and do not use terms "Havana Filler", "Havana Filled", "Finest Havana Filler" or similar terms in any way to create confusion in minds of purchasers of said cigars as to nature or quality thereof, and with effect of diverting unfairly trade from said competitors to themselves and also from competitors who actually make, distribute, and sell cigars made wholly from or filled wholly with Havana tobacco, or made of the finest grade of Cuban tobacco, and who truthfully advertise and represent the nature and quality of cigars made and sold by them, to the substantial injury of such various competitors in the conduct of their respective businesses; and

Where said mail order corporation, in the operation of its business—

- (c) Made many false and disparaging statements in its advertisements with respect to certain types of tobacco used by various competitors, warning dealers and public against use of "American Sumatra", Florida, and Georgia tobacco, used largely by trade and by said corporation itself in many of its products; with tendency and capacity to create in minds of dealers and members of purchasing public the impression and belief that said American tobacco was inferior to leaf tobacco used by it and to cause them to refuse to purchase cigars made from American Sumatra, and with effect of unfairly diverting trade to it from competitors likewise engaged in manufacture and sale of cigars made with American Sumatra wrapper; and

Where the other corporation, engaged in making cigars from inferior and cheap tobacco imported from the Philippines, and in distribution and sale thereof at wholesale to jobbers and retailers—

- (d) Unfairly disparaged cigars imported from said islands by its competitors or otherwise, in advertising and soliciting sale of cigars made by it, through statements and representations indicating that excessive period of time

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was required to transport cigars from Manila to the United States, and that said cigars there made, and imported therefrom, are wormy and not of good quality, facts being such cigars as a class are neither wormy nor of inferior grade; with capacity and tendency to deceive dealers and purchasing public into believing such cigars wormy, and to cause them to refuse purchase thereof on such account; and

- (e) Purported to set out the trade or brand name of Philippine cigars thus disparaged as wormy, as "Pacific-O", fact being "Pacifco" was trade name adopted by a competitor for a brand of cigars, which said competitor imported from said islands; with effect of confusing in the minds of dealers and members of the purchasing public, the cigars sold by it with those sold by said competitor; and

With effect of unfairly diverting trade to it from competitors engaged in sale and distribution of cigars made in the Philippine Islands, and imported into the United States:

*Held*, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John W. Hildrop* and *Mr. Marshall Morgan* for the Commission.

*Mr. Bennett E. Siegelstein*, of New York City, for respondents.

## COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Edwin Cigar Co., Inc., a corporation, and James B. Hall, Jr., Inc., a corporation, and hereafter referred to respectively, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Both respondents, Edwin Cigar Co., Inc., and James B. Hall, Jr., Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, both with their principal offices and places of business in the city of New York in said State. While each of the respondents is a separate corporate entity, they both have the same president and other executive officers and the same stockholders, and have the same place of business and the business of each is the business of the other and they are, insofar as the conduct of their respective businesses is concerned, one and the same corporation, and the acts of each are the acts of the other. Respondents are now and for more than 2 years last past have been engaged in the manufacture of cigars and in the sale thereof between and among the various States of the United

States, other than the State of origin. They cause such cigars when sold by them to be transported to the purchasers thereof in the State of New York and to other purchasers located in various States of the United States, and there is now and has been for more than 2 years last past a constant current of trade and commerce by respondents in such cigars between and among the various States of the United States. In the course and conduct of their said business the respondents are now and for more than 2 years last past have been in substantial competition in commerce between and among the various States of the United States with various other corporations and with individuals, partnerships, and firms engaged in the sale of cigars.

PAR. 2. In the course and conduct of their said business the respondents in soliciting the sale of their cigars between and among the various States of the United States advertise and for more than 2 years last past have advertised in newspapers, magazines, journals, and periodicals having interstate circulation, and by circulars, labels, and circular letters, their said cigars or portion thereof as being "Factory Seconds", "Odd Lots", "Factory Throw Outs", and "Throw Outs." Typical of such advertisements is the following, to wit:

From Time to Time There Accumulate a Limited Number of  
Factory Seconds and Odd Lots Representing the above brands.  
These are disposed of at \$2.75 net per hundred, and are not sub-  
ject to any discounts or special offerings made on our regular  
brands.

James B. Hall, Jr., Inc.

Manufacturers of Fine Havana cigars.

33 Irving Place, New York.

PAR. 3. For many years the terms "Factory Seconds", "Odd Lots", and "Factory Throw Outs" have each meant and each still means, and have been used and understood and are still used and understood by manufacturers of cigars, by wholesalers and retailers thereof, and by the purchasing public to mean that the cigars to which such designations have been and are applied are made of high grade tobacco, that cigars made of such tobacco are of high quality, but that such "Factory Seconds", "Odd Lots", and "Factory Throw Outs" because of slight color variations and slight imperfections which do not affect the smoking enjoyment thereof could not be sold at the regular price for which they were intended, but by reason of such slight color variations and slight imperfections would be advertised and sold at reduced prices.

PAR. 4. The cigars of respondents advertised and sold by respondents as aforesaid were not and are not in truth and in fact "Factory Seconds", "Throw Outs", or "Odd Lots", but were and are of an

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inferior quality and were and are made by respondents for the purpose of selling as "Factory Seconds", "Throw Outs", and "Odd Lots." The false and misleading statements of respondents hereinbefore set out were and are made for the purpose of deceiving the dealers and the purchasing public and to create an impression and understanding upon dealers and the purchasing public that the cigars so advertised and sold as "Factory Seconds", "Throw Outs", and "Odd Lots" were and are made of a superior grade of tobacco than that of which they were and are actually made, and such representations have had and still have the capacity and tendency to and have and do mislead and deceive the dealers and the purchasing public into such beliefs. Such false and misleading representations have had and still have the capacity and tendency to and have and do unfairly divert trade to respondents from other individuals, partnerships, firms, and corporations selling in commerce between and among the various States of the United States "Factory Seconds", "Throw Outs", and "Odd Lots", said individuals, partnerships, firms, and corporations truthfully representing them to be such and from individuals, partnerships, firms, and corporations selling in commerce between and among the various States of the United States cheap and inferior cigars of the same quality as those manufactured and sold by respondents but who truthfully and properly designate and advertise the same.

PAR. 5. Respondents from time to time have made and still make false and disparaging statements in their advertising concerning the goods of their competitors. Typical of such false and disparaging statements is one used by respondent James B. Hall, Jr., Inc., in the April 23, 1933, issue of the New York Times, a newspaper of wide circulation between and among the various States of the United States which said advertisement is as follows:

HAND MADE

LONG FILLER

Cigars imported from Philippine Islands

which are in the

PACIFIC O.

A BOX OF 100 CIGARS FOR 50 CENTS

These cigars that we offer represent a close-out of cigars imported from the Philippine Islands, located in the PACIFIC Ocean, and are usually sold at retail for 2½ cents each.

The cigars are not fresh (it takes about six to eight weeks to deliver these Manila cigars to New York from the Philippine Islands, where they are hand made by native Filipinos) and they are in some cases

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wormy, although they are practically all packed in Cellophane. While these cigars cannot be classed as "firsts" (they are "returns"), they still retain their distinctive taste associated with all Philippine (Manilla) cigars.

The manufacturing of cigars many of which are sold and shipped into the United States is a large industry in the Philippine Islands. Such cigars are not wormy and the foregoing representations in the said advertisements have had and still have a capacity and tendency to deceive the dealers and the purchasing public that Philippine cigars are wormy and in such beliefs to refuse to buy Philippine cigars. Such representations have had and still have a capacity and tendency to unfairly divert trade to respondents from their competitors engaged in the sale in the United States of cigars made in the Philippine Islands.

PAR. 6. During the year 1933, respondent, Edwin Cigar Co., Inc., made and has since made false and disparaging statements in its advertisements regarding the tobacco used by certain of its competitors in the manufacture of cigars made by such competitors. Typical of such false and disparaging statements was the following:

For God's sake and your own sake, do not use American Sumatra.

The foregoing and similar statements were in disparagement of Florida Sumatra wrappers which are extensively used in the manufacturing of cigars and constitute a large and important industry in the State of Florida and have had and still have a tendency and capacity to and do create in the minds of individuals, associations, firms, and corporations engaged in the manufacture of cigars, and on the minds of the purchasing public the impression that American Sumatra is inferior to leaf tobaccos or wrappers then being used by respondent, Edwin Cigar Co., and had a tendency and capacity to unfairly divert trade to respondents from its competitors engaged in a similar and like business because in truth and in fact the Florida Sumatra wrapper has long been recognized as and is a high quality wrapper for the manufacture of cigars.

PAR. 7. Respondent, Edwin Cigar Co., Inc., from time to time inserts and causes to be inserted in newspapers and magazines in different States of the United States, all of which have an interstate circulation, the following advertisement:

Finest Havana filler, Connecticut wrapper, broadleaf binder. 50 cigars \$1.50 postpaid, guaranteed 15 cents quality, 3 cents each for factory fresh cigars, representing 50 of the 100 cigars mild, mellow, deliciously fragrant cigars put aside by our inspectors for slight color variations, etc. We guarantee on a money back basis that you will smoke and enjoy every one of these fine cigars just as though you had paid the full retail price \* \* \*.

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In truth and in fact the cigars so advertised and offered for sale as "finest Havana filler" were and are only partially Havana filled. Such false and misleading advertisements have had and still have the tendency and capacity to mislead and deceive dealers and the purchasing public by creating the impression and understanding that such cigars advertised and offered for sale by respondent, Edwin Cigar Co., Inc., were entirely filled with Havana tobacco and have had and still have a tendency and capacity to unfairly divert the trade to respondent from its competitors who sell in commerce between and among the various States of the United States cigars entirely of genuine Havana filler, and from those competitors of respondent in commerce between and among the various States of the United States who sell cigars not wholly composed of Havana filler but who truthfully advertise the same.

PAR. 8. In the course and conduct of its said business, respondent, Edwin Cigar Co., Inc., advertises on the wrappers placed around the containers wherein the "odd lot" and "factory seconds" cigars are packed, as well as on its letterheads, the following:

Leaf tobacco, warehouses

323 Village Street, Hartford, Connecticut,

Suffield, Connecticut

Havana, Cuba.

and also carries on its letterhead and other advertising matter a picture of a large, 12-story building, purporting to be the factory where the products of the respondent offered for sale are manufactured. In truth and in fact, respondent has no factory in Hartford, Conn., Suffield, Conn., Havana, Cuba, or elsewhere, nor has it a 12-story building in which its parts are made, but the building so advertised is No. 2338-40 Third Avenue, New York City, one floor of which was formerly rented by respondent, Edwin Cigar Co., Inc.

PAR. 9. The foregoing false and misleading representations set out in paragraph 8 hereof are made for the purpose of misleading and deceiving the buying public with reference to the size of the business conducted by respondent, Edwin Cigar Co., Inc., and to create the impression that it is much larger and more important in the cigar industry than it actually is, and thereby to add to its sales and to unfairly divert to respondent trade from its competitors.

PAR. 10. Each and all of the foregoing false, misleading, and exaggerated statements and representations hereinbefore set out had and have the capacity to mislead and deceive dealers and purchasing public into the belief that they are true and to induce them to pur-



chase the products of respondents, and to unfairly divert trade to respondents from their competitors. Thereby substantial injury is done by respondents to substantial competition in interstate commerce.

PAR. 11. The acts and practices set forth herein are to the prejudice of the public and all respondents' competitors, and constitute unfair methods of competition within the intent and meaning of Section 5, of an Act of Congress, approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 12, 1935, issued and served its complaint in this proceeding upon the respondents Edwin Cigar Co., Inc., a corporation, and James B. Hall, Jr., Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by J. W. Hilldrop, attorney for the Commission, before E. M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Bennett E. Siegelstein, attorney for the respondents; and said testimony and evidence was duly recorded and filed at the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto; and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Edwin Cigar Co., Inc., and James B. Hall, Jr., Inc., are New York corporations with their principal offices and places of business at 100 East Sixteenth Street, New York City. They are engaged in the manufacture, sale, and distribution of cigars and leaf tobacco. Edwin Cigar Co. operates a strictly mail order business selling direct to the consuming public in direct competition with

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retailers of cigars. James B. Hall, Jr., Inc., operates a strictly wholesale business selling to jobbers and retailers.

Max Rosenbloom is president of both respondents and controls their policies and directs their activities, in effect, as one enterprise. The other officers likewise hold the same respective positions in each respondent corporation. Leonard R. Edwin, Rosenbloom's son, is vice president; J. M. Cole is secretary and general manager; and Mrs. Max Rosenbloom is treasurer. Rosenbloom, having many years' experience, is an expert in the intricacies of cigar making and is thoroughly familiar with the grades of tobacco purchased and the percentages of various kinds used in blending and with the general operation of both respondents.

The respondents, in the sale and distribution of cigars and leaf tobacco, ship said products from their factories in New York and Pennsylvania to the purchasers thereof located in various States of the United States other than New York and Pennsylvania. Other corporations, firms, and individuals are likewise engaged in the manufacture and interstate sale and distribution of cigars and leaf tobacco. Both respondents are now, and have been, actively engaged in competition with said corporations, firms, and individuals in the sale and distribution in interstate commerce of cigars and leaf tobacco.

PAR. 2. During the operation of their business over a period of several years last past, the respondents have been engaged in the manufacture and interstate sale and distribution of several types of cigars designated by them as "Factory Seconds", "Odd Lots", "Factory Throw Outs", and "Throw Outs." In soliciting the sale of these types, respondents have advertised said cigars in newspapers, magazines, and periodicals having a general interstate circulation. In said advertisements respondents have represented that the types designated and labeled "Factory Seconds", "Odd Lots", "Factory Throw Out", and "Throw Outs" are in fact "Factory Seconds", "Odd Lots", and "Throw Outs."

PAR. 3. For many years the terms "Factory Seconds", "Odd Lots", and "Factory Throw Outs", when used in the cigar-making business, have meant and have been used and understood by the manufacturers of cigars, by wholesale and retail dealers of cigars, and by the purchasing public, to mean that the cigars to which such designations have been and are applied are made of high-grade tobacco and are of high quality, but that such cigars, because of slight color variations or slight imperfections such as holes, rough ends, or over-tight or excessively loose filling, which do not affect the smoking enjoyment thereof, could not be sold at the regular price for which they were intended when manufactured. Customarily such "Factory Seconds",

"Odd Lots", and "Factory Throw Outs" are advertised and sold at prices substantially lower than the prices at which the regular grades of said cigars that do not possess such color variations and imperfections are advertised and sold.

PAR. 4. The cigars labeled and designated by the respondents as "Factory Seconds", "Odd Lots", and "Factory Throw Outs" are not "Factory Seconds", "Throw Outs", or "Odd Lots" as those terms are generally used and understood in the cigar-making industry or by the consuming public. The respondents actually manufacture relatively few high-grade cigars from which "Seconds" and "Throw Outs" could be obtained. The major portion or volume of their business is confined to the manufacture, from cheap, damaged, hail- or storm-cut, old or inferior-quality tobacco, of different cheap brands or varieties of cigars that are advertised and sold as "Factory Seconds", "Throw Outs", and "Odd Lots." These cigars are sold at prices ranging from 1 up to 4½ cents each, but generally for the price of 3 cents each. Approximately 60 percent of respondents' annual production of 14 million cigars is made up of these types that are designated as "Factory Seconds", "Throw Outs", and "Odd Lots." The statements and representations of the respondents that said cigars were in fact "Factory Seconds", "Odd Lots", and "Factory Throw Outs" have had and now have the capacity and tendency to deceive tobacco dealers and the purchasing public and to create an impression among said dealers and the purchasing public generally that the cigars so advertised and sold are made of a grade of tobacco superior to that of which they are actually made. Such statements and representations have had, and still have, the capacity and tendency to mislead and deceive said tobacco dealers and the purchasing public into purchasing said cigars in the belief that in so purchasing said cigars at, and for the prices charged they actually obtain cigars of a high quality that could not be sold for their intended sale price on account of discolorations and imperfections. The use of such false and misleading representations by the respondents in designating said cheap and inferior cigars as "Factory Seconds", "Odd Lots", and "Factory Throw Outs" serves to unfairly divert trade to the respondents from other individuals, partnerships, firms, and corporations engaged in the interstate sale and distribution of cigars that are in truth and in fact "Factory Seconds", "Throw Outs", and "Odd Lots" and who truthfully represent said cigars to be such "Factory Seconds", "Throw Outs", and "Odd Lots" and also to unfairly divert trade from competitors engaged in the interstate sale and distribution of cheap and inferior cigars of the same quality as those manufactured and sold by the respondents but who truth-

fully and properly designate and advertise the character and quality of their respective cigars.

PAR. 5. In the operation of its business the respondent, James B. Hall, Jr., Inc., has sold cigars made from inferior and cheap tobacco imported from the Philippine Islands and in advertising and soliciting the interstate sale of said cigars has made use of advertisements that unfairly disparage cigars imported from the Philippine Islands by its competitors and also unfairly disparage the quality of all cigars so imported from the Philippine Islands. The statements and representations made by said respondent, James B. Hall, Jr., Inc., indicate that an excessive period of time is required to transport cigars from Manila to the United States and that cigars so made and imported are wormy and not of good quality. Cigars imported from the Philippine Islands are not as a class wormy or of inferior grade. The statements and representations of the respondent, James B. Hall, Jr., Inc., have a capacity and a tendency to deceive tobacco dealers and the purchasing public into the erroneous belief that cigars made in the Philippines and imported to the United States are wormy and causes them to refuse to purchase said Philippine cigars on account of said belief.

One of the competitors of the respondents has adopted the trade name "Pacífico" for one brand of its cigars imported from the Philippines. Said respondent in advertising its Philippine cigars as being wormy used language that purported to set out the trade or brand name of said cigars as "Pacific-O", and that was calculated to and had the effect of confusing in the minds of dealers and members of the purchasing public the said cigars sold by it with cigars sold by said competitor. The statements and representations of said respondent unfairly disparage this brand of cigars sold and distributed by said competitor. All of said statements and representations unfairly divert trade to said respondent from competitors who are engaged in the interstate sale and distribution of cigars made in the Philippine Islands and imported into the United States.

PAR. 6. In the operation of its business the respondent, Edwin Cigar Co., Inc., has made and continues to make many false and disparaging statements in its advertisements regarding certain types of tobacco used by various competitors in the manufacture of cigars. In certain of the advertisements dealers and the public are warned against the use of American Sumatra tobacco. Such statements serve to unfairly disparage a type of tobacco grown in the States of Georgia and Florida known as American Sumatra which is used to a large extent by the trade. The respondent itself uses American Sumatra wrapper in many of its cigars but the use of said statements

has a tendency and capacity to create in the minds of tobacco dealers and members of the purchasing public the impression and belief that American Sumatra is inferior to leaf tobaccos or wrappers used by said respondent and to cause said dealers and purchasers to refuse to purchase cigars made from American Sumatra. The use of these statements serves to unfairly divert trade to said respondent from its competitors likewise engaged in manufacturing and selling cigars made with American Sumatra wrapper.

PAR. 7. In the operation of their businesses the respondents have manufactured, distributed, and now manufacture and distribute in interstate commerce certain types of cigars designated by them as being made from "Finest Havana Filler." They have inserted advertisements in newspapers and magazines of general circulation, in which they represent that said cigars are made from the "Finest Havana Filler", that such cigars are guaranteed to be 15-cent quality and are priced at from 3 to 4½ cents each on account of slight color variations and imperfections. The respondents also manufacture, distribute, and sell in interstate commerce various other types of cigars designated by use of the words "Havana", "Havana Long Filler", or "Havana Filler", or other designations, all of which serve as representations that said cigars so manufactured are made from or filled with Havana or Cuban tobacco.

From time immemorial tobacco grown on the island of Cuba has been recognized by the cigar-making industry and the consuming public as being of the very highest quality and excellence and as producing the world's finest cigar leaf. Tobacco so grown demands and receives a higher price in the market than does other tobacco and the cigars made from said tobacco generally sell for higher prices than cigars made from other tobaccos. The word "Havana" has been used and understood for many years by the cigar trade and the consuming public as the proper designation for the particular type of tobacco grown only on the island of Cuba. Havana 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. Many cigar dealers and members of the consuming public in the various States prefer to purchase cigars made from Havana tobacco rather than cigars made from tobacco grown in any other locality, and believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars. Many purchasers buy cigars advertised and labeled as "Havana", "Havana Filled", or "Havana Filler" cigars in preference to any other type and their preference is based on the presence of the word, Havana, in designating the cigars purchased.

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In the making of ordinary cigars a wrapper leaf is used as the outer cover, next inside is a binder leaf used to cover, hold, and shape the body or inside of the cigar which is composed of filler leaf. Usually one wrapper leaf and one binder leaf are used in the manufacture of such cigars. In the case of an extra long cigar two binder leaves may be used. The filler leaf comprises the remainder of the cigar and constitutes from 75 to 95 percent of the bulk or volume thereof. In Havana cigars the filler leaf and the wrapper leaf are of the same tobacco and no binder leaf whatever is used. The words "Clear Havana" or "Havana Cigar" used in describing a cigar mean and serve to designate, in the minds of the dealers and purchasers thereof, a cigar, including the wrapper, made 100 percent of Cuban tobacco. The terms "Havana Filler" and "Havana Filled" used in advertising or describing a cigar, mean and serve to designate in the minds of the dealers and the purchasers thereof a cigar the filler or filled portion of which contains nothing but Cuban or "Havana" cigar tobacco without any blending. A cigar filled with tobacco grown on the island of Cuba and with other tobacco not grown on the island of Cuba cannot properly be designated, advertised, and sold, according to the tobacco trade and the consuming public's understanding of the term, as "Havana Filler" or "Havana Filled."

The respondents ignore recognized standards of the tobacco industry in the manufacture of the cigars which they designate as "Havana", "Havana Filled", "Havana Filler", or "Finest Havana Filler." They do not use the finest Havana filler but purchase the cheapest type of filler, which is hail-cut, or storm-broken, scrap tobacco, full of holes which cannot be identified as Havana tobacco at all. In manufacturing the cigars sold by them and designated as "Havana", "Havana Filler", or "Havana Filled", the respondents substitute binders for filler, for the purpose of using damaged, defective binder leaves in the place of good-quality filler leaves. The respondents have made it a practice and policy to purchase this cheap, damaged, hail-cut and storm-broken tobacco for use in the manufacture of their cigars, and they use a multiple number of binder leaves, sometimes as many as eight, in making the cigars that are designated as being made from Havana filler. In the view and practice of the respondents, a cigar containing only 1 percent Havana tobacco would be entitled to be designated as "Havana Filled" without any further qualifications. The various types of cigars designated by respondents as being filled with Havana tobacco contain undetermined percentages of Havana tobacco if any at all. Respondents advertise and represent certain types of cigars made and sold by them which are composed of a blend of Havana and

other types of tobacco filler in such a way as to convey to the dealers and purchasers thereof the impression that the filled portion of the said cigars is made entirely of Havana tobacco. The various types of cigars made and sold by the respondents and advertised as being of guaranteed 15-cent quality and sold for prices ranging from 3 to 4½ cents each, are not made of the quality of tobacco used in 15-cent cigars, but are made of cheap, inferior grades of tobacco.

The respondents' use, in connection with the interstate advertising, distribution, and sale of the various types of cigars made by them—

(1) Of the words "Finest Havana Filler", to designate said cigars made from cheap, damaged, and inferior tobacco and scrap tobacco;

(2) Of the words "Havana", "Havana Filler", or "Havana Filled" to designate cigars the filler of which is composed either wholly or partially of tobacco other than Cuban or Havana tobacco; and

(3) Of an excessive number of binder leaves to take the place of the customary filler leaves generally used under standards recognized in the manufacture of "Havana", or "Havana Filled" or "Havana Filler" cigars;

has the tendency and capacity to mislead and deceive members of the tobacco trade and the consuming public into the erroneous and mistaken beliefs that cigars made by the respondents and thus designated or described were—

(1) Actually made wholly from, or that the filler thereof was made wholly from the finest quality of tobacco leaf imported from the Island of Cuba;

(2) Made in such a manner that the filler or filled portion of said cigars was composed wholly and entirely of Cuban or Havana tobacco; and

(3) Duly and properly filled with such Cuban tobacco leaf in conformity with accepted and well known customs and standards.

As a result of these beliefs many dealers and members of the consuming public purchase the various types of cigars made and distributed by the respondents in preference to cigars made and distributed by their competitors who, in the sale of cigars not made entirely of Havana tobacco, or not filled entirely with Havana tobacco, or not made of the finest grade of Havana tobacco, do not represent in any way that their said cigars are so made or filled entirely with Havana tobacco and do not use the terms "Havana Filler", "Havana Filled", "Finest Havana Filler", or similar terms in any way to create confusion in the minds of the purchasers of said cigars as to the nature or quality thereof.

The use of such representations as are herein set out by the respondents serves to unfairly divert trade from said competitors to

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the respondents and also to unfairly divert trade from competitors who actually make, distribute, and sell cigars made wholly from Havana tobacco or filled wholly with Havana tobacco or made of the finest grade of Cuban tobacco who truthfully advertise and represent the nature and quality of the cigars made and sold by them. The representations, acts, and practices of the respondents as herein set out also serve to substantially injure both classes of said competitors in the conduct of their respective businesses.

## CONCLUSION

The acts and practices of the respondents are each and all to the prejudice of the public and of the competitors of the respondents and constitute unfair methods of competition in commerce, within the meaning and intent 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 on the complaint of the Commission, the answer of the respondents, testimony and evidence taken before E. M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein and oral arguments by John W. Hilldrop, counsel for the Commission, and by Bennett E. Siegelstein, counsel for the respondents, 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 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 Edwin Cigar Co., Inc., a corporation, and James B. Hall, Jr., Inc., a corporation, their respective officers, agents, representatives, and employees, in connection with the distribution, offering for sale, and sale of cigars, in interstate commerce, forthwith cease and desist from:

(1) Representing in their advertising literature or in any other manner, by use of the words "Odd Lots", "Factory Seconds", and "Factory Throw Outs", or words of similar import and meaning, either directly or otherwise, that the cigars manufactured, sold, and distributed by them are factory seconds, odd lots, or factory throw-outs unless and until said cigars so manufactured, advertised, and represented are in fact factory seconds, throw-outs, and odd lots



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resulting from normal manufacturing processes and are not cigars manufactured in mass or bulk for the purpose of being designated and sold as odd lots, factory seconds, and factory throw-outs;

(2) Representing either directly or by implication that the cigars made and sold by them are composed of a grade and quality of tobacco superior to or more costly than the grade of tobacco of which said cigars are actually made; or that their cigars customarily sell, or have customarily sold, for a price substantially greater than the price at which cigars of the same grade and quality are actually and customarily made to sell or are actually sold;

(3) Representing, by use of the words "Finest Havana Filler" or words of similar import and meaning, either alone or in conjunction with other words, directly or otherwise, to describe or designate cigars made and sold by them, that said cigars are actually composed of and made from the finest Havana filler unless and until the filler of said cigars is composed wholly and entirely of the finest grade of Cuban or Havana tobacco and said cigars are made and filled in conformity with the manufacturing practices and standards obtaining in the manufacture of genuine Havana filler cigars;

(4) Representing, by use of the words "Havana Filler", "Havana Filled", or words of similar import and meaning, either alone or in conjunction with other words, directly or otherwise, that the filler or filled portion of the cigars made and sold by them is made wholly and entirely of tobacco grown in and imported from the island of Cuba unless and until the filler or filled portion of said cigars is actually composed wholly and entirely of tobacco grown in and imported from the island of Cuba and said cigars are made and filled in conformity with practices and standards followed in the manufacture of genuine Havana filled cigars; and

(5) Using the words "Havana Filler", "Havana Filled", or words of similar import and meaning either alone or in conjunction with other words, directly or otherwise, to describe and designate cigars made by them in the making of which an excessive number of binder leaves are used and in which recognized standards followed in the making of cigars containing Havana filler are not complied with.

*It is further ordered*, That Edwin Cigar Co., Inc., its officers, agents, representatives, and employees in connection with the distribution and sale in interstate commerce of cigars, forthwith cease and desist from:

Representing, circulating, publishing, or causing to be represented, published, or circulated, any false, deceptive, or disparaging statements concerning tobacco grown chiefly in the States of Georgia and Florida commonly designated as American Sumatra tobacco.

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*It is further ordered*, That James B. Hall, Jr., Inc., its officers, agents, representatives, and employees in connection with the distribution and sale in interstate commerce of cigars, forthwith cease and desist from:

(1) Representing or advertising in any way that tobacco leaf grown in, or cigars imported from, the Philippine Islands are of inferior grade or are wormy; and

(2) Representing, by using in its advertising in any way, the words "Pacific" or "Pacifico", either alone or in conjunction with other words in such a way as to import or imply to purchasers of cigars sold by it that said cigars are the cigars made and sold by any competitor under the trade name "Pacifico" or "Pacificos."

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

## Complaint

IN THE MATTER OF  
RADIATOR SPECIALTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2586. Complaint, Oct. 17, 1935—Decision, Apr. 6, 1936*

Where a corporation engaged in sale of a cleaning fluid under name "Perfo"—

- (a) Represented on labels affixed to containers of said cleaner and on showcase or display cards that said preparation would remove spots without injury to color or fabric through such statements as "Does not injure the most delicate fabrics", facts being on fabrics or material dyed with certain kinds of dyes such as nonfast dyes it impairs and affects the colors thereof by causing the same to bleed or run; and
- (b) Represented on such labels and showcards that use thereof left no spot or ring through such statements as "Absorbs the spot" and "Leaves no rings", facts being that its use on certain fabrics or materials and under certain conditions or circumstances does result in appearance of a spot or ring on such fabrics or materials;

With effect of misleading and deceiving purchasing public in aforesaid respects and inducing it to buy said cleaning product in such erroneous belief and of affording retail merchants opportunity to perpetrate a fraud on such public and of diverting unfairly trade to it from competing individuals and concerns engaged in sale of similar products truthfully and honestly advertised and labeled by them and with tendency and capacity so to mislead, deceive, and divert:

*Held*, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. Richard L. Kennedy* for the Commission.

*Mr. Richard G. Thigpen*, of Charlotte, N. C., for respondent.

## COMPLAINT

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, having reason to believe that Radiator Specialty Co., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of

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North Carolina, with its principal office and place of business at 315 East Fifth Street, Charlotte, N. C. Respondent is now and for more than 2 years last past has been engaged in the sale of a cleaning fluid advertised and sold by it as "Perfo", and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, causes and has caused said product, when sold, to be transported in interstate commerce from its place of business in the State of North Carolina, to purchasers thereof, some located in said State, and others located in various other States in the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now and has been, for more than 2 years last past, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture, sale, and distribution of cleaning fluids and similar products, in interstate commerce between and among the various States in the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's products are used.

PAR. 3. In the course and conduct of its said business, as hereinabove described, the respondent, in soliciting the sale of and selling, in interstate commerce, a cleaner sold by it under the name of "Perfo", caused, and still causes, its said product to be placed and sold in cans, or containers, with labels affixed to said containers, and with showcase, or display cards, reading:

Perfo cleans thoroughly and is safe to use. It will not burn or explode and cannot injure fabric or color;

Will not harm fabrics, material, or colors;

Will not injure fabrics or color;

Does not injure the most delicate fabrics;

Perfo absorbs the spot;

Leaves no rings.

PAR. 4. In truth and in fact the statements hereinabove in paragraph 3 set forth and respondent's representations that said product will remove spots without injury to color or fabric, and that the use of said product leaves no spot or ring are, and each of them is, extravagant, false, misleading, and deceptive. The use of said product on fabrics or materials, dyed with certain kinds of dyes, such as nonfast dyes, does impair, harm, and affect the colors of such fabrics or materials, by causing the same to bleed or run. The use of said product on certain fabrics or materials, and under certain conditions or circumstances, does result in the appearance of a spot or ring on such fabrics or materials, and in either or both of these ways such fabrics or materials are in fact injured by the use of said products thereon.

PAR. 5. Said advertisements and labels have had and still have the tendency and capacity to mislead and deceive; do mislead and deceive, and have mislead and deceived the purchasing public, by causing it to believe that respondent's cleaner removes grease spots and other spots or stains without injury to fabric or color and leaves no spots or rings on fabric or material; and do induce the purchasing public to buy respondent's cleaning fluid, hereinabove described, in such erroneous belief; afford retail merchants an opportunity to perpetrate a fraud on the purchasing public; have the capacity and tendency to divert, have unfairly diverted, and do now unfairly divert trade to respondent from competing individuals, partnerships, and corporations engaged in the sale of like or similar cleaners in interstate commerce, who truthfully and honestly advertise and label their cleaners.

PAR. 6. The acts, practices, and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and the competitors of the respondent, 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 powers 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, 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 17, 1935, issued and served its complaint in this proceeding, upon respondent, Radiator Specialty Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent neither filed an answer to the complaint nor did it otherwise enter an appearance herein, whereupon testimony and evidence in support of the allegations of the complaint were introduced by Richard L. Kennedy, attorney for the Commission before Charles F. Diggs, an examiner of the Commission, theretofore duly designated by it, and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the testimony and evidence, and brief in support of the complaint, and the Commission having duly considered the same and being fully advised in the premises, finds that the proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 315 East Fifth Street, Charlotte, N. C. Respondent is now and for more than 2 years last past has been engaged in the sale of a cleaning fluid advertised and sold by it as "Perfo", and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia causes and has caused said product, when sold, to be transported from its place of business in the State of North Carolina, to purchasers thereof, some located in said State, and others located in various other States in the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now and has been, for more than 2 years last past, in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the manufacture, sale, and distribution of cleaning fluids and similar products, in interstate commerce between and among the various States in the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's products are used.

PAR. 3. In the course and conduct of its said business, as hereinabove described, the respondent, in soliciting the sale of and selling, in interstate commerce, a cleaner sold by it under the name of "Perfo", caused, and still causes, its said product to be placed and sold in cans, or containers, with labels affixed to said containers, and with showcase, or display cards, reading:

Perfo cleans thoroughly and is safe to use. It will not burn or explode and cannot injure fabric or color;

Will not harm fabrics, material, or colors;

Will not injure fabrics or color;

Does not injure the most delicate fabrics;

Perfo absorbs the spot;

Leaves no rings.

PAR. 4. In truth and in fact the statements hereinabove in paragraph 3 set forth and respondent's representations that said product will remove spots without injury to color or fabric, and that the use of said product leaves no spot or ring, are, and each of them is, extravagant, false, misleading, and deceptive. The use of said product on fabrics or materials, dyed with certain kinds of dyes, such as nonfast dyes, does impair, harm, and affect the colors of such fabrics or materials, by causing the same to bleed or run. The use of said product on certain fabrics or materials, and under certain conditions

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or circumstances, does result in the appearance of a spot or ring on such fabrics or materials, and in either or both of these ways such fabrics or materials are in fact injured by the use of said product thereon.

PAR. 5. The said advertisements and labels used as hereinbefore described have had and still have the tendency and capacity to mislead and deceive; do mislead and deceive, and have misled and deceived the purchasing public, by causing it to believe that respondent's cleaner removes grease spots and other spots or stains without injury to fabric or color and leaves no spots or rings on fabric or material; and do induce the purchasing public to buy respondent's cleaning fluid, hereinabove described, in such erroneous belief; afford retail merchants an opportunity to perpetrate a fraud on the purchasing public; have the capacity and tendency to divert, have unfairly diverted, and do now unfairly divert trade to respondent from competing individuals, partnerships, and corporations engaged in the sale of like or similar cleaners in interstate commerce, who truthfully and honestly advertise and label their cleaners.

## CONCLUSION

The aforesaid acts and practices of respondent, Radiator Specialty Co., a corporation, are each and all to the prejudice of the public, and to the competitors of respondent, and constitute unfair methods of competition in 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 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, and the testimony and evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint, and brief filed herein by Richard L. Kennedy, counsel for the Commission, 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 ordered*, That respondent, Radiator Specialty Co., a corporation, its officers, representatives, agents, and employees, in connec-

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tion with the advertising, offering for sale, and sale in interstate commerce of its cleaning fluid designated as "Perfo" forthwith cease and desist:

From representing or claiming, through the use of advertisements, circulars, labels, or in any other manner, that respondent's cleaning fluid "Perfo" is not harmful or injurious to any fabric, material, or color; that it will absorb spots or that it does not leave a spot or ring on materials upon which it is used; and from making statements having the same or similar meaning, or which may have the capacity or tendency to lead purchasers into the belief that the colors or fabrics of materials dyed with fugitive or nonfast dyes will not be injured by the use of said product, or that said product will under no circumstances leave a ring or spot on materials on which it is used.

*It is further ordered,* That the respondent, Radiator Specialty Co., a corporation, shall within 60 days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it is complying with the cease and desist order hereinabove set forth.



## Syllabus

IN THE MATTER OF  
VICTOR SOAP COMPANY

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

*Docket 2368. Complaint, Apr. 17, 1935—Decision, Apr. 13, 1936*

Where a corporation engaged under different trade names in sale and distribution of soap through jobbers, retailers, agents, and house-to-house canvassers to purchasing and consuming public; in periodical advertising, and in circulars and pamphlets distributed by it and sent in response to inquiries from prospective salesmen—

- (a) Falsely represented that it guaranteed that persons who undertook to sell its products would meet with a marked degree of success through such statements as "House wives buy on sight", "Here's the kind of fast-selling profit maker you've been looking for. Liberal profits—up to 200%—very attractive—sells on sight", etc.;
  - (b) Falsely represented that its agents were "Cleaning up" opening up soap shops, through quoted testimonials setting forth "'\$100.00 CLEAR PROFIT THE FIRST WEEK.' 'I was working for \$1.00 a day before I took on the Victor Line. The very first week I made \$100.00 clear profit. Today I own my own soap store. I have averaged more than \$80.00 a week profit'", etc., facts being person quoted as having soap store, etc. conceded that favorable results thus portrayed did not continue as conditions became less favorable;
  - (c) Falsely represented that its agents were earning from \$50 a week to \$5,000 a year through such statements as "A CHANCE TO EARN UP TO \$15 A DAY", "AGENTS! DISTRIBUTORS! YOU CAN EARN UP TO \$5,000 A YEAR!", etc., facts being it is rarely, if ever, possible to earn up to \$5,000 a year or make \$15 a day profit, and said soap does not sell without effort or on sight, as represented;
  - (d) Falsely represented that the regular price for such soap or its said soap, as sold by it, was \$1, through such statements as "Seven cakes of finest toilet soaps in handsome packages sells for only 25¢. The kind of soap used in every home every day. Selling price marked on box, \$1.00. You sell for only 25¢", etc., facts being same assortment in retail stores does not cost \$1 nor does its soap sell for such price but in fact for only 25 cents; and
  - (e) Designated as "Germicidal Soap" one of the cakes included among its assortments, facts being the soap thus referred to does not kill germs within the standard claimed applicable to term "germicidal soap";
- With capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the belief that said statements were true and to mislead and deceive many persons into becoming its agents and offering and selling its products to such public, and with effect of causing same to buy substantial quantities of its said soap in aforesaid erroneous belief, and of diverting thereby substantial trade to it from competitors who do not misrepresent the actual or probable earnings of their agents or prospective agents or the selling price or therapeutic value

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of their product, and with tendency so to divert; to the substantial injury and prejudice of such competitors:

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

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. DeWitt T. Puckett* for the Commission.

*Moulinier, Bettman & Hunt*, of Cincinnati, Ohio, and *Estabrook, Finn & McKee*, of Dayton, Ohio, for respondent.

## COMPLAINT

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, having reason to believe that Victor Soap Co., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Victor Soap Co., is now, and has been since February 1933, a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Concord and Scoville Avenues, Dayton, Ohio. Respondent is and since February 1933, has been engaged in selling an assortment of soap, through jobbers, retailers, agents, and house-to-house canvassers, to the purchasing public. It has caused such product, when sold, to be transported to purchasers thereof from its place of business in the city of Dayton, State of Ohio, into and through the various other States of the United States. In the course and conduct of said business respondent has been and is in substantial competition with other corporations and also with individuals and partnerships engaged in the sale and transportation of soap in commerce between and among the various States of the United States.

PAR. 2. It has been and is the practice of respondent, in connection with the sale and offering for sale of its product, to advertise its soap through the media of magazines, pamphlets, circular letters, and other forms of advertising matter, which it has caused, and now causes, to be distributed among purchasers and prospective purchasers in the various States of the United States. In the course and conduct of such business it has been and is the practice of respondent to adver-

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tise for dealers or purchasers of its products under the pretense and guise of seeking agents. It represents that:

- (a) It furnishes everything needed and guarantees success;
- (b) "Victor agents everywhere are cleaning up, opening soap shops."
- (c) "Agents are making \$50.00 to \$60.00 a week easily"; "Up to \$10.00 a day"; "Up to \$150.00 a week"; "\$15.00 a day"; "\$5,000.00 a year"; "Liberal profits up to 200%."
- (d) Its soap sells on sight.
- (e) "The same assortment in retail stores would cost at least \$1.00."
- (f) One cake of the seven cakes in the box is a germicidal soap that kills germs.
- (g) The selling price of the box of soap is \$1.

Respondent makes many other statements and representations concerning its products, of like tenor and effect as the statements and representations set out hereinabove.

PAR. 3. In truth and in fact:

- (a) Respondent does not furnish everything nor guarantee success.
- (b) Victor agents everywhere are not cleaning up, opening soap shops.
- (c) Agents are not making the amounts represented by the respondent, nor any substantial portion thereof.
- (d) Respondent's soap does not sell on sight.
- (e) The same assortment in retail stores does not cost \$1 but considerably less than \$1.
- (f) Respondent's so-called germicidal soap does not kill germs.
- (g) The selling price of respondent's soap is not \$1 per box, but it sells, in fact, for 25 cents.

PAR. 4. The representations made by the respondent, as mentioned in paragraph 2 hereof, have the capacity and tendency to, and do, cause many persons to become agents for respondent and as such to sell respondent's soap by means of repeating some of the statements set out in paragraph 2 hereof, to the public, and many of the public are constrained to purchase such soap from said agents in the belief that such statements and representations are true. The aforesaid representations have tended to divert, and have diverted, trade to respondent from its competitors engaged in the sale of soap between and among the various States of the United States who truthfully represent their soap and its salability. Thereby, substantial injury is done by respondent to substantial competition in interstate commerce.

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 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.

## 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 17, 1935, issued and served its complaint in this proceeding upon respondent, Victor Soap Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts in said cause was obtained; and said stipulation of facts was duly approved, recorded, and filed in the office of the Commission. Thereafter, the proceeding came on regularly for final hearing before the Commission on the said complaint, answer thereto, and stipulation of facts; and the Commission having duly considered the same 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, Victor Soap Co., is a corporation organized under the laws of the State of Ohio in February 1933, having its principal office and place of business at Concord and Scoville Avenues, in the city of Dayton, in the State of Ohio.

PAR. 2. The respondent is, and has been at all times since the said date of its incorporation, engaged in the sale and distribution of soap through jobbers, retailers, agents, and house-to-house canvassers to the purchasing and consuming public located in the District of Columbia and in the several States of the United States, and has caused, and still causes, its said soap when so sold by it to be transported, in commerce, from its place of business in the city of Dayton, in the State of Ohio, into and through certain other States and in the District of Columbia to the said purchasers thereof. Respondent has and now does employ the trade names "Royal Soap Company" and "Heick Soap Company" in its aforesaid business.

PAR. 3. At all times since February 1933 the respondent has been in direct and substantial competition in interstate commerce with other persons, copartnerships, and corporations engaged in the sale and distribution of soap as aforesaid, and more particularly, the respondent is, and has been at all times herein mentioned, in substantial competition in interstate commerce with Crown Soap Co., of Dayton, Ohio, and Evanson Soap Co., of Camden, N. J., which said competitors sell their products respectively to purchasers lo-

cated in States other than the States of Ohio and New Jersey. In addition to the sale of the soap as hereinbefore set forth the said respondent corporation is also engaged in the sale of extracts for cooking and baking purposes and a line of toilet goods and cosmetics.

PAR. 4. Respondent, in the aid of the sale of said products, and more particularly in the sale and distribution of its soap, represents, in magazine advertisements and in circulars and pamphlets distributed by it in interstate commerce, that the respondent corporation guarantees that persons who undertake to sell its soap product will meet with a marked degree of success and that numerous persons are earning from \$50 a week to \$5,000 a year disposing of this soap which it is alleged sells on sight for 25 cents a box when the same assortment is sold in retail stores for \$1 a box and, in short, by its advertisements, seeks to convey to the public, assurance of easily earning an above-the-average income if they undertake to dispose of this soap product.

Typical of such advertisements is the following, which appeared in the Pathfinder, a magazine of general circulation in the United States:

#### SELL 7 BIG BARS

OF FINEST TOILET SOAPS FOR ONLY 25¢

A CHANCE TO EARN UP TO \$15.00 A DAY

Seven cakes of finest toilet soaps in handsome packages sells for only 25¢. The kind of soap used in every home every day. Selling price marked on box, \$1.00. You sell for only 25¢. Housewives buy on sight. Up to 150 percent profit for you. Write for money-making details and facts about other sensational Victor Soap deals. For quick action send 25¢ for actual full size sample.

VICTOR SOAP CO., DEPT. P-10, DAYTON, OHIO

The respondent admits that the soap does not generally sell for \$1 a box but that it does generally sell for 25¢ a box.

Respondent has advertised extensively in the publication Independent Salesman, a magazine of general circulation in the United States, of which the following are typical examples of its representations:

AGENTS! DISTRIBUTORS!

YOU CAN EARN UP TO \$5,000 A YEAR!

Here's the kind of fast-selling profit maker you've been looking for. Liberal profits—up to 200%—very attractive—sells on sight. This sensational seller has everything you require to make real money. Our special distributor, crew

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manager, and agents plan will surprise and delight you. Mail the coupon for Free complete catalog and details and sample offer.

**\$100.00 CLEAR PROFIT  
THE FIRST WEEK**

"I was working for \$1.00 a day before I took on the Victor Line. The very first week I made \$100.00 clear profit. Today I own my own soap store. I have averaged more than \$80.00 a week profit, and I have an established money-making business. I want everyone to know that the day I took on the Victor Line was the Happiest day of my life."

Kathryn Moser, Missouri.

**PAYS YOU UP TO 100% PROFIT!**

Everyone needs and uses this complete box of seven full-sized bars of finest toilet soaps—and everyone buys on sight when they see the gorgeously colored package, and hear the unbelievable low price—only 25¢. Just the kind of soaps used in every home every day—Baby Castile, Vegetable Wonder Soap, Cup Shaving Cream, Germicidal Soap, Jabon Glycerine, Olive Toilet Soap, all combined in one complete household package. No wonder this sensational new soap deal is proving a selling sensation. The selling price marked on box is \$1.00. Yet you can sell for only 25¢—with big, liberal, cash profits for you on every sale—up to 100%. If cash profits up to \$15.00 a day sound good to you, then mail the coupon immediately for Free details of my profit-sharing plans. For quick action send along 25¢ for actual full-sized sample box containing 7 big bars of soap.

It is rarely, if ever, possible to earn up to \$5,000 a year or make \$15 a day profit and the soap does not sell without effort on the part of the salesman—on sight—as represented. Kathryn Moser states that while the statements made in the ad were true that she, however, did not continue to make \$100 a week and says, "When this soap was something new it sold good but within a short time the sales started to fall off and of course, my profits accordingly", and "my earnings was gross profits", also "In a good territory it is easy to sell from 50 to 80 boxes but it can't be done in St. Louis any more on account of competition."

In response to inquiries received by respondent, Victor Soap Co., from prospective salesmen, a glowing circular in many colors is mailed in interstate commerce which contains among similar representations, the following:

**EARN UP TO \$100 A WEEK!**

It is not uncommon for Victor agents to earn \$50, \$60—yes, even as much as \$100 a week. If you can sell about \$30 worth of Victor products a day—it is not hard—your income will be More than \$100 a week.

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## AGENTS—

## BOOST YOUR EARNINGS

\$50 TO \$60

A WEEK—EASILY!

No matter what you're selling at the present time, you can't afford to pass up this sensational money-making opportunity—a chance to boost your earnings \$50 to \$60 a week. These unusual soap deals are sweeping the country like wildfire, and bringing distributors, crew managers, and agents more money than they ever dreamed possible. You, too, can earn real money, no matter how many sub-agents you employ. Just imagine! 3 full-sized cakes of pure Baby Castile—or 3 cakes of Palm and Olive soap—or 3 cakes of refreshing Health Soap—wrapped in glistening cellophane—that you can sell profitably for only 25¢! Our prices to you are so low that you can even sell 2 packages for the price of 1. Some agents here built up tremendous volumes on an introductory offer of 2 for the price of 1. Sounds impossible, but it's true. This same quality soap cannot be duplicated in retail stores at twice the low wholesale price of Victor soaps. No wonder you can make real money—folks buy on sight!

Respondent, Victor Soap Co., further did not deny that none of the soap in the 7 cake box is a germicidal soap that kills germs and says that they do not insist that it is a germicidal soap and that it will kill germs.

The facts are that respondent does not guarantee the financial success of its agents; Victor agents everywhere are not cleaning up opening soap shops; the majority of its agents are not making the amounts represented by respondent in its advertising matter; the same assortment in retail stores does not cost \$1 nor does respondent's soap sell for \$1 per box, but it sold in fact for only 25 cents; and the respondent's so-called germicidal soap does not kill germs within the standard claimed applicable to the term "germicidal soap".

PAR. 5. The representations of respondent, as aforesaid, have had and do have the capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the belief that said statements are true and have caused, and do cause, said purchasing public to purchase substantial quantities of respondent's soap in such erroneous belief. Said false and misleading statements have the capacity and tendency to mislead and deceive many persons who, because of such deception and relying on the truth of said statements as to actual or probable earnings, become agents for respondent. Such agents whose services are procured by respondent through and by means of said false and misleading statements offer for sale and sell respondent's products to the purchasing public, thereby diverting

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a substantial trade to respondent from those competitors who do not misrepresent the actual or probable earnings of their agents and prospective agents.

PAR. 6. There are among competitors of respondent corporations, firms and individuals who likewise sell and distribute soap among the various States of the United States and in the District of Columbia who do not in any way misrepresent the selling price or therapeutic value of their product, and who do not, in the solicitation of agents to sell their product, misrepresent the actual or possible earnings of their agents or prospective agents. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

## CONCLUSION

The aforesaid acts 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 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 matter coming on to be heard by the Commission upon the complaint filed herein on April 17, 1935, the answer to said complaint filed May 20, 1935, by Victor Soap Co., respondent herein, and a stipulation of facts in lieu of testimony, and the Commission now being fully advised in the premises:

*It is ordered*, That the respondent, Victor Soap Co., a corporation, doing business under the trade names of Royal Soap Co. and Heick Soap Co., or under any other trade name, its agents, representatives, servants, and employees, in connection with the advertising, offering for sale, or sale in interstate commerce of soap, do cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, or guarantees, or in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, letters, or otherwise:

- (1) That respondent guarantees the financial success of its agents;
- (2) That Victor agents are "cleaning up" opening soap shops;
- (3) That agents of respondent engaged in selling its products are easily making daily, weekly, or annual sums or incomes which are in fact in excess of the average daily, weekly, or annual sums or incomes



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made by the average agent employed by respondent during said period or periods;

(4) That respondent's assortments or boxes of soap are sold or offered for sale in retail stores for \$1 per box, or for any other price which is higher than the usual or customary price at which said assortments or boxes of soap are customarily and usually sold or offered for sale in said retail stores;

(5) That assortments or boxes of soap similar to respondent's are sold or offered for sale in retail stores for \$1 per box, or for any other price which is higher than the usual or customary price at which said assortments or boxes of soap are customarily and usually sold or offered for sale in said stores;

(6) That one of the seven cakes of soap in boxes or assortments sold or offered for sale by respondent is a germicidal soap or that it will kill germs;

(7) And from making any other representations of like or similar import or tenor.

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

IN THE MATTER OF  
ECONOMY RUBBER PRODUCTS COMPANY

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

*Docket 2718. Complaint, Feb. 10, 1936.—Decision, Apr. 17, 1936*

Where a corporation engaged in the sale of a brand of tire patches known to the trade as "Tiger-Grip"; in matter in advertisements and in circulars and labels directed to soliciting prospective salesmen or distributors to engage in the sale and distribution of its said product and creating demand therefor on the part of the consuming public—

- (a) Set forth that there was "Big money in Tire Patches" and that its salesmen or distributors make up to \$15 a day or earn from \$12 to \$20 daily or \$75 weekly and are guaranteed to make 100 percent profit on all sales of its said products, facts being said representations were grossly exaggerated and misleading, there is no big money to be earned as aforesaid, average wage or commission is no such amount as represented nor does average salesman and distributor earn any such amount, and few if any ever earned any such amount over a period of several days or in any 1 week, and their sales were not in fact 100 percent profit guaranteed;
- (b) Represented that its said patches renew old blown out tires instantly, insure permanent tire repairs and permanently repair blowouts, rim cuts, etc. by self vulcanizing and save motorists 50 percent in mileage and cost compared with results obtained from competing product, and were guaranteed to repair nail holes and save tire, facts being said statements were false in aforesaid various respects and there was no bona fide insurance that any guaranteed mileage would be obtained by persons whose tires were repaired by its said product;

With tendency and capacity to mislead and deceive prospective salesmen or distributors and purchasing public into erroneous belief that said statements were true and to induce members of the public to enlist in its service and purchase its said products in such erroneous belief, and with effect of so inducing, to the consequent damage and injury to prospective salesmen or distributors and that of the general public and with effect of unfairly diverting trade to it from competitors, among whom there are those who do not misrepresent their products and falsely claim for them such merits and results, to the substantial injury and substantial competition:

*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. Joseph C. Fehr* for the Commission.

*Mr. Daniel L. Dwyer*, of Dayton, Ohio, for respondent.

## COMPLAINT

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, having reason to believe that Economy Rubber Products Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Economy Rubber Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located in the city of Dayton, in the State of Ohio. It is now and for more than one year last past has been engaged in the business of selling and transporting in commerce between and among various States of the United States and in the District of Columbia, a brand of tire patches, which it designates as "Tiger-Grip Tire Patches." It causes and has caused said products, when sold, to be shipped from its place of business in the State of Ohio, to purchasers thereof located in a State or States other than Ohio. In the course and conduct of its business, respondent has been at all times herein referred to in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in interstate commerce of similar articles and commodities, and of articles and commodities for the same and similar purposes.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling its said articles and commodities designated as "Tiger-Grip Tire Patches" in interstate commerce, caused the same to be advertised in various periodicals and other advertising literature, having interstate circulation, and by radio broadcasts and otherwise. These advertisements contained various statements among which are the following:

Big money in Tire Patches.

Tiger-Grip Patches guaranteed 10,000 miles.

\$75 weekly for salesmen or distributors.

Protected territory.

Renews old blown out tires instantly.

Saves Motorists 50%.

Easy to build regular route up—steady customers who repeat regularly.

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**TIGER-GRIP TIRE PATCHES** Insure Permanent Tire Repairs. They insure tire mileage.

**TIGER-GRIP TIRE PATCHES** Permanently Repair Blow Outs, Rim Cuts, etc., by Self Vulcanizing.

**HERE \* \* \*** is a chance to make up to \$15 a DAY.

Our men are earning from \$12 to \$20 daily—building a steady repeat business.

Territories are going fast, we urge you to MAIL your application today.

**Insures Permanent Tire Repairs.**

**GUARANTEED** Repair the Nail Hole and Save the Tire.

**SELF VULCANIZING.**

**100% profit-guaranteed sales for you.**

PAR. 3. The representations made by the respondent as set forth in paragraph 2 hereof, are false, misleading, and deceptive in that there is no "Big money in tire patches." Said tire patches have not been and are not good for "10,000 miles." It is not true that one of respondent's tire patches "saves motorists 50%." The sale and distribution of respondent's tire patches does not bring and did not bring "\$75 weekly for salesmen or distributors." Respondent is not and has not been in a position to provide salesmen or distributors with "Protected territory", and it cannot and could not truthfully represent that "territories are going fast." The sale and distribution of these tire patches does not and did not provide salesmen "a chance to make up to \$15 a day." Respondent's tire patches do not and did not furnish salesmen an opportunity to earn "from \$12 to \$20 daily" and provide for "100% profit-guaranteed sales." Respondent's tire patches are not and have not been "Self-Vulcanizing", and they do not and did not provide a market for "steady customers who repeat regularly." They cannot and could not renew "old blown out tires instantly", and they did not and do not "insure tire mileage" nor do they "permanently repair blow outs, rim cuts, etc."

PAR. 4. There are among the competitors of respondent, and have been for more than one year last past, manufacturers and distributors of tires, tire patches, and other products similar to those manufactured by respondent, who do not misrepresent said products and who do not falsely claim that said products have the merits and the capacity to achieve results such as respondent herein claims for its articles and commodities, as set forth in paragraphs 2 and 3 hereof.

PAR. 5. The use by respondent of the methods, acts, and practices as hereinabove set forth has had and now has the capacity and tendency unfairly to divert trade to respondent from its competitors to their substantial injury and has diverted and does divert trade to respondent from its competitors, and has the tendency and capacity to and does injure the purchasing public by inducing purchasers and

prospective purchasers to purchase respondent's said "Tiger-Grip Tire Patches" in the erroneous belief that the representations made by respondent concerning its products are true.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in or affecting 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, as amended.

#### 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 the 10th day of February 1936, issued and served its complaint in this proceeding upon the respondent, Economy Rubber Products Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located in the city of Dayton, in the State of Ohio, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer thereto the respondent, through its attorney, Daniel L. Dwyer, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent admitted all the material allegations of the complaint to be true and in which said substituted answer it was provided that the Commission might proceed upon the statement of facts as set forth in the complaint to make its report, its findings as to the facts (including inferences which it might draw from said facts as agreed upon) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Economy Rubber Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place

of business located in the city of Dayton, in the State of Ohio. It is now and for more than one year last past has been engaged in the business of selling and transporting in commerce between and among various States of the United States and in the District of Columbia, a brand of tire patches known to the trade as "Tiger-Grip Tire Patches." It has caused and still causes said products, when sold, to be shipped from its place of business in the State of Ohio, to purchasers thereof located in a State or States other than Ohio. The respondent, during the aforesaid times, was and still is in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in interstate commerce of similar articles and commodities, and of articles and commodities used for the same and similar purposes.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent, in soliciting prospective salesmen or distributors to sell and engage in the sale and distribution of its said tire patches, and for the purpose of creating a demand on the part of the consuming public for said products, now causes and for several years last past has caused advertisements, circulars, and labels to be issued, published, and circulated to and among the general public of the United States. In said ways and by said means the respondent makes and has made to the general public many unfair exaggerated and misleading statements with reference to the value and efficiency of its said tire patches and also concerning the daily and weekly earnings of its salesmen or distributors, among which are the following:

**Big money in Tire Patches.**

**\$75 weekly for salesmen or distributors.**

**Renews old blown out tires instantly.**

**Saves Motorists 50%.**

**TIGER-GRIP PATCHES insure Permanent Tire Repairs. They insure tire mileage.**

**TIGER-GRIP TIRE PATCHES Permanently Repair Blow Outs, Rim Cuts, etc., by Self Vulcanizing.**

**HERE \* \* \* is a chance to make up to \$15 a DAY.**

**Our men are earning from \$12 to \$20 daily—building a steady repeat business.**

**Insures Permanent Tire Repairs.**

**GUARANTEED Repair the Nail Hole and Save the Tire.**

**SELF VULCANIZING.**

**100% profit-guaranteed sales for you.**

PAR. 3. The representations made by respondent as set forth in paragraph 2 hereof with respect to the relative value and efficiency of its tire patches and with respect to the wages and commissions that its salesmen and distributors can earn or are earning,

are grossly exaggerated and misleading. There is no big money to be earned by salesmen or distributors in the sale of respondent's tire patches. The average wage or commission received by respondent's salesmen and distributors is not as much as from \$12 to \$20 per day or \$75 per week, and the average salesman and distributor of respondent does not earn or receive said amounts either daily or weekly for any substantial period of time. Few, if any, of respondent's salesmen or distributors ever earn that much in wages, salaries, or commissions over a period of several days or in any one week.

Respondent's tire patches do not insure permanent tire repairs nor do they permanently repair blow outs, rim cuts, etc., by self vulcanizing. Its tire patches do not save motorists 50 percent, either in the mileage obtained from the use of its patches over what would be obtained through the use of competitive products, nor can motorists obtain respondent's products at a saving of 50 percent over what they would pay for comparable tire patches sold and distributed by respondent's competitors.

The sales made by respondent's salesmen and distributors of its tire patches are not in fact 100 percent profit-guaranteed. There is no actual or bona fide insurance that any guaranteed mileage will be obtained by persons whose tires are repaired with respondent's tire patches.

PAR. 4. There are and have been among the competitors of the respondent, manufacturers and distributors of tires, tire patches, and other products similar to those manufactured by respondent, who do not misrepresent their products and who do not falsely claim that said products have the merits and the capacity to achieve results such as the respondent herein claims for its articles and commodities as above described.

PAR. 5. Each and all of the foregoing false and misleading statements and representations of respondent, as set out in paragraphs 2 and 3 hereof, have had and do have the tendency and capacity to mislead and deceive prospective salesmen or distributors and the purchasing public into the erroneous belief that said statements are true, and have induced and do induce members of the public to enlist themselves in the service of respondent and to purchase respondent's said tire patches in the erroneous belief that the representations made by respondent are true, to the consequent damage and injury to prospective salesmen or distributors and to the injury of the general public, and said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

## CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission a motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substitute answer the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion;

*It is hereby ordered,* That the said motion be, and the same is hereby granted; that the answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is filed in lieu of the said answer hereby withdrawn.

The said respondent in and by its said substituted answer, having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon it an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises;

*It is ordered,* That the respondent, Economy Rubber Products Co., a corporation, its officers, agents, servants, representatives, and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of tire patches and similar products do forthwith cease and desist from:

Representing through advertisements in newspapers and magazines and through circulars, catalogs, labels, or any other form of printed matter or by radio broadcasting, or in any other manner:

- (1) That there is big money in tire patches;
- (2) That its tire patches renew old, blown out tires instantly or that such tires are restored to their original quality;



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(3) That its tire patches save motorists 50 percent either in mileage or in cost in comparison with the mileage said motorists obtain from competing tire patches or in the price they pay for said competing tire patches;

(4) That its tire patches insure permanent tire repairs or permanently repair blow-outs, rim cuts, etc., by self vulcanizing;

(5) That its salesmen or distributors make up to \$15 a day or earn from \$12 to \$20 daily or \$75 weekly, or that they make any other fixed sum daily or weekly which is greater than the daily or weekly wage, salary, or commission actually made or received by the average salesman or distributor of respondent;

(6) That its tire patches are guaranteed to repair nail holes and save the tire until and unless respondent actually refunds money paid for such tire patches that do not wear as guaranteed;

(7) That respondent's salesmen or distributors are guaranteed to make 100 percent profit on all sales of respondent's tire patches; and from making any other representations of similar tenor or import.

*And it is hereby further ordered,* That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it has complied with this order.

## MICHAEL WHITEHOUSE, TRADING AS INTERNATIONAL TABLEWARE COMPANY

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

*Docket 2719. Complaint, Feb. 12, 1936—Decision, Apr. 17, 1936*

Where an individual engaged in the offer and sale of promotional sales plans, tableware, and dishes, and in sale and distribution, incident thereto, to small retail merchants chiefly, of certificates, coupons, and so-called trade cards purporting to be redeemable by said individual in tableware and dishes; in soliciting through agents, local merchants, and retailers to purchase said certificates, etc., at \$4.50 a thousand, to be distributed by them as a business stimulant, among their customers according to merchandise sold, for redemption by said individual without charge to customer, for tableware or chinaware—

- (a) Represented that he had adopted such plan to advertise his tableware and dishes and that it was his practice, according to the contracts entered into between him and such merchants and retailers, to redeem such trade cards when returned to him either directly by the merchants' customers, by mailing the same to his office, or when returned to him by the retailer or merchant who received same from his customers, facts being he followed practice of failing and neglecting to redeem such cards, however sent him;
- (b) Represented that in consideration of cooperation and advertising by merchant or retailer he would refund the \$4.50 per 1,000 cards paid, or any part thereof, when cards had been forwarded either by customer or retailer as hereinbefore set forth, and undertook in his said contracts to furnish a dining-ware display set or set of dishes to every dealer who contracted with him, for exhibition by merchant or retailer for their mutual benefit and to become sole property of such contracting merchant or retailer, facts being he made no such refunds and failed to supply such display sets of tableware and dishes to contracting merchants and dealers;
- (c) Offered to merchants and retailers his so-called Sample Unit Plan which he represented as adopted by it to increase his volume of business and under which he offered and sold to merchants or retailers premiums comprised of individual sets of tableware, i. e., knife, fork, and two spoons, to be distributed free among customers according to amount of merchandise sold, and under which, according to contract, dealer undertook to pay 20 cents for each individual set or so-called Gift Boxes, for such free distribution when dealer forwarded a list of names and addresses of customers who had obtained same, and represented that it would furnish a "beautiful 20-piece dining-ware display set" to such dealers as purchased a hundred units or more of such Gift Boxes, to be put on display and to be dealer's sole property, facts being that gift boxes delivered by it contained a spoon only and he followed practice of failing and neglecting to furnish or supply merchants or retailers who had purchased same with sample or display sets of tableware consisting of number of pieces promised as

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inducement to purchase, and failed to refund original price of tableware or gift boxes distributed by them among their customers, many of whom had ordered directly from respondent "Matched Design Tableware" consisting of table spoon, knife, and fork, but consistently ignored requests for refunds by merchants and retailers who reported such purchases to him and requested refund of amount paid for gift boxes according to provisions of contract entered into with them;

- (d) Undertook by his said contracts to circularize the public with advertising material, and, upon request, to furnish skilled salesmen to display silverware or chinaware in place of business of merchant or retailer, facts being he failed and neglected to circularize customers of such merchants and dealers and, although often requested to do so, followed practice of failing and neglecting to furnish skilled salesmen to display silverware, tableware, and chinaware in their places of business;

With result that merchants and retailers were deceived and misled into belief that each and all of foregoing statements and representations were true and induced to purchase said sales promotional plans and tableware from said individual in reliance upon such erroneous belief, and with capacity and tendency to divert trade to said individual from competitors offering and selling silverware, tableware, chinaware, and dishes directly, or offering or selling certificates, coupons, or trade cards redeemable or purporting to be redeemable in such products, truthfully described and represented, and to divert trade unfairly from competitors truthfully representing and selling their products and with effect of so doing, to the substantial injury of substantial competition:

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

*Mr. George Foulkes* for the Commission.

*Mr. Benjamin J. Safr*, of Detroit, Mich., for respondent.

## COMPLAINT

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, having reasons to believe that Michael Whitehouse, trading as International Tableware Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Michael Whitehouse, has been for several years last past an individual doing business under the trade name and style of International Tableware Co., with his principal office and place of business at 800 Washington Boulevard Building, in the city of Detroit, State of Michigan. Respondent has been for

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several years last past engaged in the business of offering for sale and selling promotional sales plans and tableware and dishes by the use of certificates, coupons, and trade cards, which are redeemable in tableware and dishes by respondent, and sold by respondent to merchants and retail dealers throughout the various States of the United States.

PAR. 2. Said respondent, being engaged in business as aforesaid, caused said certificates, coupons, and trade cards, and tableware and dishes, when sold, to be transported from his office and principal place of business in the State of Michigan to purchasers thereof located in various points in other States of the United States, and there has been for several years last past, and is now, a constant current of trade and commerce in said certificates, coupons, and trade cards and tableware and dishes so distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

Respondent has been in substantial competition with individuals, firms, partnerships, and corporations offering for sale and selling in interstate commerce, certificates, coupons, and trade cards, or other written or printed matter redeemable in tableware and dishes, or other merchandise; and with individuals, firms, partnerships, and corporations offering for sale and selling such tableware and dishes in such commerce.

PAR. 3. It has been the practice of respondent to offer for sale and sell certificates, coupons, and trade cards, as described in paragraph 1 hereof, through the personal solicitation of local merchants and retail dealers in and through the various States of the United States by agents thereunto duly authorized by respondent. Such certificates, coupons, or trade cards are offered for sale and sold by respondent to such local merchants and retail dealers to be distributed as a stimulation of their business among their customers, according to the amount of merchandise sold by such retail dealers. The agents of respondent are equipped with forms of contracts, circulars, advertising matter, and specimen coupon cards for use in the solicitation of such merchants and retail dealers. It has been the practice of respondent, by and through such agents, acting under respondent's supervision and direction, to induce retail dealers and merchants to sign contracts for the purchase of such certificates, coupons, or trade cards so redeemable by means of false and misleading statements and representations to the following effect:

That respondent has adopted and is using for the purpose of advertising his products, in order to increase his volume of business, the plan of selling certificates, coupons, or trade cards to merchants and retail dealers for \$4.50 for each 1,000 trade cards, for distribu-

tion among their customers, and of redeeming such trade cards by said respondent when returned to him by the customers of such merchants or retail dealers; that in consideration of the cooperation and advertising by such merchant or retail dealer the respondent would make a refund to such merchant or retail dealer of \$4.50 per 1,000 cards, or any part thereof, sent to the respondent for redemption by such customers; that respondent will furnish a dining-ware display set or a set of dishes to such merchants or retail dealers, said display set to be exhibited by said merchants or retail dealers for the mutual benefit of the respondent and the merchant or retail dealers, and to become the sole property of such merchants or retail dealers who enter into the contract and purchase the respondent's certificates, premiums, or trade cards; that the purchasing public would be circularized with advertising material by respondent; that respondent would furnish skilled salesmen who would display the silverware or chinaware in the place of business of such merchants or retail dealers.

PAR. 4. It has been the practice of respondent to offer for sale and sell to merchants and retail dealers a sales-promotional plan known in the trade as the Sample Unit Plan. Under the terms of this plan the respondent offered for sale and sold to such merchants and retail dealers premiums comprised of individual sets of tableware, each set consisting of four pieces, namely, one knife, one fork, and two spoons. Such 4-piece sets of tableware were offered for sale and sold by respondent to such local merchants and retail dealers to be distributed by them as a stimulation of business among their customers, according to the amount of merchandise sold to customers by such local merchants or retail dealers. The agents of respondent are equipped with forms of contracts, circulars, advertising matter, and sample sets of tableware for use in the solicitation of such merchants and retail dealers. It has been and is the practice of respondent, by and through such agents, acting under his supervision and direction, to induce merchants and retail dealers to sign contracts for the purchase of such 4-piece sets of tableware by means of false and misleading statements and misrepresentations to the following effect:

That respondent has adopted and is using, for the purpose of advertising its products in order to increase its volume of business, the plan of selling "Gift Boxes" containing tableware to merchants and retail dealers, for which the merchant or retail dealer agrees to pay 20 cents for each gift box of tableware and to distribute the same among his customers with a certificate enclosed therein entitling the customer to match said tableware by making additional purchases of tableware from respondent at specified special prices; that in

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consideration of the cooperation and advertising by such merchant or retail dealer the respondent would make a cash refund to each merchant or retail dealer on the 1st and 10th of each month of 20 cents per gift box for each such box distributed free to customers, if and when such merchant or retail dealer forwarded to respondent a list of names and addresses of customers having obtained gift boxes; that respondent would furnish a "beautiful 26-piece dining ware display set" to such merchants and retail dealers who would purchase 100 units or more of said gift boxes, to be put on display and to be the sole property of said merchant or retail dealer; that each such gift box upon delivery would contain four pieces of tableware.

PAR. 5. The statements and representations made by respondent with respect to the sale of certificates, coupons, and trade cards and tableware, as set forth in paragraphs 3 and 4 hereof, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent has followed the practice of failing and neglecting to redeem trade cards sent to him for redemption, and of failing to supply merchants and retail dealers with display sets of tableware and dishes, and of failing to refund to such merchants and retail dealers the sum of \$4.50 for each 1,000 trade cards upon redemption, or any part thereof, and of failing to refund the original purchase price of tableware to merchants and retail dealers who have distributed gift boxes to their customers and who have forwarded to respondent the names and addresses of such customers. Respondent has also failed and neglected to circularize customers of merchants and retail dealers. The gift box represented to merchants and retail dealers as containing four pieces of tableware contains upon delivery only one piece of tableware. Respondent has also followed the practice of failing and neglecting to furnish or supply merchants and retail dealers who have purchased gift boxes with sample or display sets of tableware consisting of or containing the number of pieces promised as inducement to such purchase.

PAR. 6. There has been for several years last past and now are, individuals, partnerships, and corporations offering for sale and selling in interstate commerce, tableware, silverware, chinaware, and dishes; and other individuals, partnerships, and corporations offering for sale and selling such products indirectly through the sale of certificates, coupons, or trade cards redeemable in silverware, tableware, chinaware, and dishes, who do not misrepresent their products.

PAR. 7. The acts and practices of respondent as described in paragraphs 3, 4, and 5 hereof have had and have a capacity and tendency to mislead and deceive and they have misled and deceived and

## Findings

do mislead and deceive merchants and retail dealers into the belief that each and all of the foregoing statements and representations made by the respondent have been and are true, and into the purchase of sales promotional plans and silverware and tableware from the respondent in reliance upon such erroneous belief, and have had the tendency to unfairly divert trade and do divert trade from competitors who truthfully represent and sell their products.

PAR. 8. The aforesaid acts and practices of respondent have had the capacity and tendency and have the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce, silverware, tableware, chinaware, and dishes directly, or offering for sale and selling in such commerce, certificates, coupons, or trade cards redeemable or purporting to be redeemable in silverware, tableware, chinaware, and dishes, truthfully described and represented. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition in interstate commerce.

PAR. 9. The above alleged acts and practices of respondent are each and all of them 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 12, 1936, issued and served its complaint in this proceeding upon the respondent, Michael Whitehouse, trading as International Tableware Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint the respondent filed a consent answer in and by which the respondent refrained from contesting the proceeding and admitted all the material allegations of the complaint to be true; and in which consent answer it was provided that the Commission may, without trial, without further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon him an order to cease and desist from the violations of law alleged in the complaint; and the Commission having duly considered same and being fully ad-

vised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Michael Whitehouse, the respondent, has for several years last past been doing business under the trade name and style of International Tableware Co., with his office at 800 Washington Boulevard Building, in the city of Detroit, State of Michigan. The business which respondent has been engaged in is that of offering for sale and selling promotional sales plans, tableware, and dishes. In the sale of the promotional sales plans, tableware, and dishes the respondent, trading as International Tableware Co., sells and distributes certificates, coupons, and so-called trade cards which purport to be redeemable in tableware and dishes by the respondent. The said certificates, coupons, and trade cards, redeemable in tableware and dishes, are sold by the respondent to merchants and retail dealers throughout the various States of the United States.

PAR. 2. The respondent, in the sale of the said sales-promotional plans and the said tableware and dishes, has caused said certificates, coupons, trade cards, and tableware and dishes, when sold, to be transported from his office and principal place of business in the State of Michigan to purchasers thereof, comprised for the most part of small retail merchants located in various points in other States of the United States. There has been for several years last past a constant current of trade and commerce of said certificates, coupons, trade cards, and tableware and dishes so distributed and sold by the respondent, between and among the various States of the United States.

The respondent has been in substantial competition with individuals, firms, partnerships, and corporations offering for sale and selling in interstate commerce certificates, coupons, and trade cards, or other written and printed matter, redeemable in tableware and dishes, or other merchandise, and with individuals, firms, partnerships, and corporations offering for sale and selling such tableware and dishes in such commerce.

PAR. 3. In the conduct of his business and in order to facilitate the sale of tableware and dishes, the respondent has adopted the practice of offering for sale and selling certificates, coupons, and trade cards through the personal solicitation of local merchants and retail dealers in and through the various States of the United States by agents thereunto duly authorized by respondent. The certificates, coupons, and trade cards were offered for sale and sold by respondent-



ent and his agents to the local merchants and retail dealers to be distributed among their customers according to the amount of merchandise sold by the merchants and retail dealers to their customers. The respondent sold these certificates, coupons, and trade cards to merchants and retail dealers at \$4.50 for each 1,000 certificates, coupons, or trade cards. Thus with each small purchase to an amount specified on the certificate or trade card the customer received from the merchant or retail dealer a certificate or trade card. When a specified number of trade tickets were collected by the customer he was entitled to redeem the same, allegedly free of charge, for a piece of tableware or chinaware from the respondent's concern. The respondent represented that the adoption of this plan by merchants or retail dealers would act as a stimulant to their business. The agents of respondent were equipped with contract forms, sales circulars, advertising matter, and specimen coupons which they used in connection with their solicitation of such merchants and retail dealers. The respondent and his agents, in making contracts for the purchase of such certificates, coupons, or trade cards, which purport to be redeemable in tableware and dishes, with merchants and retail dealers, have represented:

That respondent, Michael Whitehouse, trading as International Tableware Co., has adopted and is using for the purpose of advertising its principal product, which is ordinary tableware and dishes, the plan of selling certificates, coupons, or trade cards to merchants and retail dealers for \$4.50 for each 1,000 trade cards, these trade cards, to be distributed free by the merchants or retail dealers among their customers, according to the amount of the purchase made by each customer; and the respondent has adopted the practice, and will, according to the terms of the contract entered into between respondent and merchants and retail dealers, redeem such trade cards when returned to him either directly by the customers of such merchants by mailing the same to the office in the city of Detroit, or when returned to him by the retail dealer or merchant, who will, according to the provisions of the contract, receive them from the customers to whom they have been delivered by the merchant; and that in consideration of the cooperation and advertising by the merchant or retail dealer the respondent would refund to the merchant or retail dealer the \$4.50 paid by him for the 1,000 cards, or any part thereof, when the same have been forwarded by either the customer or the retail dealer, as above set forth. The respondent also contracts to furnish a dining-ware display set or set of dishes to every merchant or retail dealer who enters into the contract and purchases the said certificates, coupons, or trade cards and that the so-called display

set is to be exhibited by the merchant or retail dealer for the mutual benefit of the respondent and the merchant or retail dealer, and to become the sole property of the merchant or retail dealer who enters into the contract; respondent also agrees by contract with the merchant or retail dealer that the public would be circularized with advertising material by respondent, and upon request respondent would furnish skilled salesmen who would display the silverware or chinaware in the place of business of such merchants or retail dealers.

PAR. 4. The respondent has also adopted and has used to a considerable extent another plan of sales promotion which the respondent calls "The Sample Unit Plan." In this plan the respondent instead of selling certificates, coupons, or trade cards, offered for sale and sold to the merchants or retail dealers premiums comprised of individual sets of tableware, each set consisting of four pieces, namely: one knife, one fork, two spoons. These 4-piece sets of tableware, when sold by respondent to local merchants and retail dealers, were to be distributed by them free among their customers, according to the amount of merchandise sold to customers by these merchants or retail dealers. This plan was also offered to merchants and retail dealers by the respondent's agents, and in the sale of such plan by these agents small merchants and retail dealers were induced to sign contracts in which certain misleading statements and representations were made by respondent to the following effect:

That the plan called the "Sample Unit Plan", as aforesaid, had been adopted by respondent for the purpose of advertising its tableware in order to increase its volume of business; that it was the respondent's plan to sell individual sets of tableware which respondent called "Gift Boxes" to merchants or retail dealers for which the merchant or retail dealer agreed to pay 20 cents for each box to be distributed free to customers if and when such merchant or retail dealer forwarded to respondent a list of names and addresses of customers having obtained "Gift Boxes." Respondent also represented that respondent would furnish a "beautiful 26-piece diningware display set" to such merchants and retail dealers who would purchase 100 units or more of said "Gift Boxes", to be put on display and to be the sole property of said merchant or retail dealer; that each such "Gift Box" upon delivery would contain four pieces of tableware.

PAR. 5. The statements and representations made by respondent with respect to the sale of certificates, coupons, trade cards, "Gift Boxes", and tableware, as set forth in paragraphs 3 and 4 hereof, are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent has followed the practice of failing and neglecting to redeem trade cards sent to him for redemption by merchants

and retail dealers and by customers who have received trade cards upon the purchase of merchandise from such merchants and retail dealers. The respondent has also failed to supply display sets of tableware and dishes to merchants and retail dealers who have entered into contracts with respondent to adopt respondent's sales-promotional plan to distribute among their customers trade cards redeemable in tableware and dishes. Respondent has not refunded to such merchants and retail dealers the sum of \$4.50 for each 1,000 trade cards sent to respondent for redemption, or part of \$4.50 for any part of 1,000 trade cards redeemed by customers of such merchants and retail dealers. The respondent has also consistently failed to refund to merchants and retail dealers the original price of the tableware or of the "Gift Boxes" which merchants and retail dealers distributed among their customers with nominal purchases by such customers, and many of such customers, upon receipt of the "Gift Boxes", have ordered directly from respondent "Matched Design Tableware" consisting of a unit of three pieces of tableware, to wit, a tablespoon, knife, and fork. Merchants and retail dealers have reported such purchases to respondent and have requested a refund of the amount paid by such merchant or retail dealer to respondent for "Gift Boxes" according to the provisions of the contract entered into by respondent with such merchants and retail dealers. Respondent has consistently ignored such requests and has neglected to make such refunds. Respondent has also failed and neglected to circularize customers of merchants and retail dealers. The "Gift Box" which respondent's agents, when soliciting orders represent to merchants and retail dealers as consisting of four pieces of tableware, namely, one knife, one fork, and two spoons, consists upon delivery to such merchants or retail dealers of only one piece of tableware, namely a spoon. Respondent has also followed the practice of failing and neglecting to furnish or supply merchants and retail dealers who have purchased "Gift Boxes" with sample or display sets of tableware consisting of the number of pieces promised as an inducement to such purchase. Respondent has followed the practice of failing and neglecting to furnish skilled salesmen to display the silverware, tableware, and chinaware in the place of business of such merchants and retail dealers, although often requested to do so by such merchants or retail dealers.

PAR. 6. There have been for several years last past, and now are, individuals, partnerships, and corporations offering for sale and selling in interstate commerce tableware, silverware, chinaware, and dishes; and other individuals, partnerships, and corporations offering for sale and selling such products indirectly through the sale of

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certificates, coupons, or trade cards redeemable in silverware, tableware, chinaware, and dishes, who do not misrepresent their product.

PAR. 7. As a result of the practices of respondent, as described in paragraphs 3, 4, and 5 hereof, merchants and retail dealers have been deceived and misled into the belief that each and all of the foregoing statements and representations made by the respondent have been and are true and have been induced to purchase sales-promotional plans and tableware from the respondent in reliance upon such erroneous belief, and such statements and representations have had the tendency to unfairly divert trade and do divert trade from competitors who truthfully represent and sell their products.

PAR. 8. The aforesaid acts and practices of respondent have had the capacity and tendency, and have the capacity and tendency, to divert trade to respondent from competitors offering for sale and selling in interstate commerce silverware, tableware, chinaware, and dishes directly, or offering for sale and selling in such commerce, certificates, coupons, or trade cards redeemable or purporting to be redeemable in silverware, tableware, chinaware, and dishes, truthfully described and represented. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition in interstate commerce.

#### CONCLUSION

The acts and practices of the respondent under the conditions and circumstances set forth 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 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

Michael Whitehouse, trading as International Tableware Co., the respondent herein, having filed its answer to the complaint in this proceeding, in and by which answer respondent stated that it desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, and admitted all the material allegations of the complaint to be true, and consented that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon it an order to cease and desist from the

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violations of law charged in the complaint, and the Commission being now fully advised in the premises:

*It is ordered*, That the respondent, Michael Whitehouse, trading as International Tableware Co., his agents, servants, representatives, and employees in connection with the sale or offering for sale of sales-promotional plans, tableware, and dishes, and other goods and merchandise in interstate commerce, forthwith cease and desist from representing by provisions in contracts, circulars, advertisements, bulletins, or in any other way:

(1) That respondent will redeem, free of charge, certificates, coupons, or trade cards issued by respondent with tableware and dishes, or in any other manner;

(2) That respondent will refund the amount of money paid by merchants and retail dealers for premiums which have been delivered to customers upon receipt of notice of such delivery by such merchants or retail dealers and upon purchase by such customers of additional amounts of tableware;

(3) That respondent will furnish display sets of tableware, dishes, dining-ware, or any other merchandise, free of charge to merchants or retail dealers to be used for purposes of display and advertisement and to become the sole property of such merchants and retail dealers;

(4) That the "Gift Boxes" of tableware sold by respondent contain four pieces of tableware, consisting of one knife, one fork, two spoons, or that they contain any greater number of pieces of tableware than they actually do contain;

(5) That respondent will, upon request of merchants and retail dealers, furnish skilled salesmen to display tableware;

(6) That respondent will circularize with advertising material the purchasing public in the vicinity of the merchant or retail dealer who enters into contracts with respondent; or

(7) From making any similar representation or representations of like import or effect.

*It is hereby further ordered*, That the respondent shall within 30 days from the date of the service upon it of this order file with this Commission its report in writing stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF  
ATLAS CHINA COMPANY, INC.

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

*Docket 2738. Complaint, Mar. 5, 1936—Decision, Apr. 17, 1936*

Where a vitreous, translucent, and glazed ware designated as china or china-ware had long been made in and exported from Limoges, France, to European countries and to America and had come to acquire a favorable reputation in the United States as porcelain or china of superior quality, utility, and beauty and to enjoy a goodwill and increasing popular demand and said products thus made and imported had come to be widely and generally known, and word "Limoges" had come to signify and mean such products there made and imported therefrom; and thereafter a corporation engaged in processing and decorating foreign and domestic made, undecorated porcelain and chinaware "blanks", and in the sale, offer, and distribution thereof among the various States—

- (a) Branded, labeled, marked, and otherwise caused word "Limoges" to appear on certain of its decorated porcelain and chinaware products sold and distributed to retailers, customers, and purchasers in the various States, notwithstanding fact that said products did not originate in and were not made in Limoges, but were obtained from countries other than France;
- (b) Branded, labeled, marked, and otherwise caused to appear on certain of its said products as aforesaid, words and description "French Decoration", notwithstanding fact that said products were not decorated with French designs and decorations peculiar to the country of France and to French artistry;
- (c) Branded, labeled, marked, and otherwise caused to appear words and description "Hand Painted" upon certain of its aforesaid products, notwithstanding fact that said products were not painted by hand but were decorated and painted by mechanical and acid processes;

**With result of placing in hands of dealers selling its said products means of** misleading and deceiving consuming public into purchase thereof, and of misleading and deceiving members of public and retail trade into false and erroneous belief that aforesaid representations were true and that products thus variously represented, originated in and were made in Limoges and were decorated with French designs and decorations as above set forth, and were hand painted, and of inducing purchase thereof in place of products of competitors, and of thereby diverting to itself trade from its competitors who do not misbrand and falsely and misleadingly label, mark, and misrepresent their 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. Jay L. Jackson* for the Commission.

## Complaint

## COMPLAINT

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 having reason to believe that Atlas China Co., Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 710 Wythe Avenue, in the city of Brooklyn, in the State of New York. Said respondent is now, and for more than 6 months last past has been, engaged in the business of processing, decorating, and selling, offering for sale, and distributing decorated porcelain- and china-ware products in commerce among and between various States of the United States, and has caused and now causes said products, when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipment.

PAR. 2. In the course and conduct of the business of respondent, as aforesaid, respondent has been and is now in competition with other corporations, firms, partnerships, and individuals engaged in like commerce.

PAR. 3. In the course and conduct of the business of respondent, as aforesaid, respondent did and does purchase and obtain supplies of both foreign and domestic made undecorated porcelain- and china-ware products, otherwise known as "blanks", which respondent did and does cause to be processed, decorated, and branded, labeled or marked, offered for sale, and sold in commerce, as aforesaid.

PAR. 4. There is now, and for more than 150 years approximately there has been, manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which during said time has been and is now designated, described, and known as porcelain-ware, or as china or chinaware by reason of its original or initial manufacture in China, before its introduction into Europe. In the early part of the nineteenth century, porcelain-ware, or chinaware as it gradually came to be called, began to be exported from Limoges, in France, into the various countries of Europe and America, particularly into the United States of America and into and through the several

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States thereof. Such products immediately thereupon acquired a favorable reputation in the United States as porcelain or china of superior quality, utility, and beauty, resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the said products of Limoges, France. For many years prior to incorporation of respondent herein, and during all times material to this complaint, the said products manufactured at Limoges, in France, and imported therefrom into the United States, have been and are now widely and generally known, and the word "Limoges" has for many years heretofore come to signify and mean and now signifies and means porcelain or china, or porcelain- and china-ware, manufactured at Limoges, in France, and imported into the United States therefrom.

PAR. 5. In the course and conduct of the business aforesaid, respondent did and does misbrand and falsely and misleadingly label, mark, and represent certain of its said products by causing the words "Limoges", "French Decoration", and "Hand Painted" to appear on said products, whereas, in truth and in fact, the aforesaid words do not properly and truthfully describe and represent said products, and, whereas in truth and in fact, said products were not and are not "Limoges" and were not and are not made in Limoges, France; said products were not and are not decorated in France, or with French designs or decorations, but were and are decorated elsewhere than in the country of France and with designs or decorations other than those peculiar to France and French artistry; and said products were not and are not hand painted, but the designs or decorations appearing thereon were and are applied and made by mechanical operations and acid processes.

PAR. 6. The aforesaid misbranding, false and misleading labeling, marking, representations, acts, and conduct of respondent 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 said products as and for porcelain- and china-ware products manufactured at Limoges, France, or as porcelain- or china-ware of the type, character, and quality there manufactured.

PAR. 7. The aforesaid misbranding, false and misleading labeling, marking, representations, acts, and conduct of respondent, in the sale and distribution of its said products, have had and have the tendency and capacity to mislead and deceive, and do mislead and deceive, members of the public and of the retail trade into the false and erroneous belief that the aforesaid representations are true and that the aforesaid products are "Limoges", decorated in France and with French decorations and designs, and hand painted, thereby



causing said members of the public and retail trade to buy and deal in the said products of respondent in lieu and in place of competing products of respondent's competitors, in consequence of which trade has been and is diverted to respondent from its competitors who do not misbrand and falsely and misleadingly label, mark, and represent their products, all thereby substantially injuring said competitors of respondent.

PAR. 8. The above acts, conduct, and things done by respondent are to the injury and prejudice of the public and to competitors of respondent in interstate commerce within the meaning and intent 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."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of 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 March 5, 1936, issued and forthwith served its complaint in this proceeding upon respondent, Atlas China Co., Inc., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, on March 19, 1936, said respondent filed its answer to said complaint, in which said respondent admits all of the material allegations of the complaint to be true, states that it desires to waive hearings on the charges set forth in the complaint and not to contest the proceeding, and further states that without further evidence or intervening procedure, the Commission may make, issue, and serve upon respondent findings of facts and an order to cease and desist from the violations of law charged in the complaint, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Atlas China Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 710 Wythe Avenue, in the city of Brooklyn, State of New York.

PAR. 2. Respondent is now, and for more than 6 months immediately preceding March 5, 1936, has been, engaged in the business of processing and decorating foreign and domestic made undecorated porcelain- and china-ware products, otherwise known as "blanks",

and in selling, offering for sale, and distributing decorated porcelain- and china-ware products in commerce among and between the various States of the United States, and has caused, and now causes, said products, when sold or ordered, to be shipped and transported from the State of New York to various States of the United States other than the State of New York, in the course and conduct of which respondent has been, and is now, in competition with other corporations, firms, partnerships, and individuals engaged in the sale, offering for sale, and distribution of decorated porcelain- and china-ware products in commerce among and between the various States of the United States.

PAR. 3. There is now and for more than 150 years approximately there has been manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which during said time has been and is now designated, described, and known as porcelain-ware, or as china or chinaware by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the nineteenth century, porcelain-ware, or chinaware as it gradually came to be called, began to be exported from Limoges, in France, into the various countries of Europe and America, particularly into the United States of America and into and through the several States thereof. Such products immediately thereupon acquired a favorable reputation in the United States as porcelain or china of superior quality, utility, and beauty, resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the said products of Limoges, France. For many years prior to incorporation of respondent herein, and during all times material to this complaint, the said products manufactured at Limoges, in France, and imported therefrom into the United States, have been and are now widely and generally known, and the word "Limoges" has for many years heretofore come to signify and mean and now signifies and means porcelain or china, or porcelain- and china-ware, manufactured at Limoges, in France, and imported into the United States therefrom.

PAR. 4. In the course and conduct of respondent's business, as above described, and within the time above mentioned, respondent offered for sale, sold, and distributed certain of its decorated porcelain- and china-ware products to retail traders, customers, and purchasers thereof in various States of the United States, on which products respondent branded, labeled, marked, and otherwise caused to appear the words and descriptions "Limoges", "French Decoration", and "Hand Painted", thereby representing that the products bearing the word "Limoges" originated and were made in the city of Limoges, in the country of France; that the products bearing the words and

description "French Decoration" were decorated with French designs and decorations peculiar to the country of France and to French artistry; and that the products bearing the words and description "Hand Painted" were painted by hand and not otherwise by mechanical or acid processes; whereas, contrary to the representations so made, the respondent's products here described, referred to, and represented as "Limoges" did not originate in, and were not manufactured in Limoges, France, but were obtained by respondent from countries other than the country of France; the respondent's products here described, referred to, and represented as of "French Decoration" were not decorated with French designs and decorations peculiar to the country of France and to French artistry; and the respondent's products here described, referred to, and represented as being "Hand Painted" were not painted by hand but were decorated and painted by mechanical and acid processes.

PAR. 5. The branding, labeling, marking, representations, acts, and conduct of respondent, as described and referred to in the foregoing paragraphs, have placed and place, and each of them has placed and places, in the hands of dealers selling the porcelain- and china-ware products of respondent the means by which to mislead and deceive the consuming public into the purchase of respondent's porcelain- and china-ware products, and the same have had and have, and each of them has had and has, the tendency and capacity to mislead and deceive, and did and do mislead and deceive members of the public and of the retail trade into the false and erroneous belief that the aforesaid representations made by respondent are true; that the products so represented as "Limoges" originated in and were made in Limoges, France; that the products so represented by the words "French Decoration" were decorated with French designs and decorations peculiar to the country of France and to French artistry; and that the products so represented by the words "Hand Painted" were painted by hand and not otherwise by mechanical or acid processes, thereby causing members of the public and of the retail trade to buy and deal in the products of respondent in lieu and in place of competing products of competitors of respondent, in consequence of which trade has been and is diverted to respondent from its competitors who do not misbrand and falsely and misleadingly label, mark, and represent their products.

#### CONCLUSION

The acts and practices of respondent, as described in the foregoing findings of facts, 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 commerce within the intent and meaning

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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 before the Federal Trade Commission upon the complaint of the Commission, the answer of respondent admitting all of the material allegations of the complaint to be true, 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 ordered*, That respondent, Atlas China Co., Inc., a corporation, its subsidiaries, officers, agents, representatives, and employees, and each of them, in the sale and offering for sale of porcelain- and china-ware products in interstate commerce do cease and desist from:

(1) Branding, labeling, marking, or otherwise causing the word "Limoges" to appear on porcelain- and china-ware products of respondent and in any way representing said products, or causing said products, to be represented as Limoges porcelain- or china-ware when such products have not had their origin and have not been manufactured in the city of Limoges, in the country of France;

(2) Branding, labeling, marking, or otherwise causing the words "French Decoration" to appear on porcelain- and china-ware products of respondent and in any way representing said products, or causing said products, to be represented as products decorated with French designs and decorations peculiar to the country of France and to French artistry when such products and the designs and decorations thereon were not and are not decorated with French designs and decorations peculiar to the country of France and to French artistry;

(3) Branding, labeling, marking, or otherwise causing the words "Hand Painted" to appear on porcelain- and china-ware products of respondent and in any way representing said products, or causing said products, to be represented as having been painted by hand when such products have not been or are not painted by hand, or otherwise have been or are decorated and painted by mechanical or acid processes.

*It is further ordered*, That respondent, Atlas China Co., Inc., a corporation, within 60 days from and after the date of 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 said order to cease and desist hereinabove set forth is being complied with.

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## IN THE MATTER OF

## SAMUEL HOROWITZ, TRADING AS COMMERCIAL SILK MILLS

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

*Docket 2572. Complaint, Oct. 8, 1935—Decision, Apr. 24, 1936*

Where an individual engaged in the sale and distribution of silk greige goods or silks in the unfinished state, and of finished silk, continually included word "Mills" in his trade name in soliciting sale of his products, and displayed such name on his letterheads and billheads and since on or about 1913 included on his letterheads words "Broad Silk Manufacturers" and "Mill: Allentown, Pa." and words "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa." on billheads circulated to customers, notwithstanding fact that at no time since said year had he ever made the products dealt in by him or owned or absolutely controlled any mill or factory, but products sold by him were made by individuals or concerns over which he had no control; with result that customers were led to believe that he was a mill operator or manufacturer and with capacity and tendency to mislead and deceive purchasers of his products into belief that in buying from him they were dealing with a manufacturer or operator of established business standing and thereby gaining an advantage by saving the middleman's profit, in accordance with common belief among such class of purchasers, that through such direct purchases considerable savings, more favorable terms, and a more uniform line of goods may be had, and with tendency to or with effect of diverting trade to him from competitors, among whom there are manufacturers and distributors of similar products and similarly engaged jobbers who do not misrepresent their status as manufacturers or mill operators; to their substantial injury and prejudice:

*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. T. H. Kennedy* for the Commission.

*DuBroff & DuBroff*, of New York City, for respondent.

## COMPLAINT

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, having reason to believe that Samuel Horowitz, an individual trading as Commercial Silk Mills, hereinafter called the respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect

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thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is Samuel Horowitz, an individual trading under the name and style of Commercial Silk Mills, with his principal place of business located in the city of New York, State of New York. He is and for more than 1 year last past has been engaged in the sale and distribution of undyed woven silk material in commerce between and among the various States of the United States, causing the same when sold to be shipped from his place of business in the State of New York or other State of origin to purchasers thereof located in various States of the United States other than the State of New York or other States of origin. In the course and conduct of his business, said respondent was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, said respondent adopted as and for his trade name the words Commercial Silk Mills under which to carry on his business, and which trade name, containing the word "Mills", he has used continuously since in or about 1913 and is now using in soliciting the sale of and selling his said products in interstate commerce. He has caused said trade name "Commercial Silk Mills" to appear on his letterheads distributed in interstate commerce, together with the words "Broad Silk Manufacturers" and "Mill: Allentown, Pa." His billheads also featured said trade name, together with the words "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa.", when in truth and in fact the said respondent does not make or manufacture the products sold by him which he has sold and distributed in interstate commerce; he does not own or control mills at either Allentown, Pa., or Paterson, N. J., nor does he own or operate or directly and absolutely control any mill or mills at either of the places named or elsewhere and wherein the products sold by him are made or manufactured, but on the contrary respondent has filled orders with products made or manufactured in a mill or mills which he does not own, operate or control.

PAR. 3. There is a preference on the part of certain of the retail merchants in the different States of the United States for goods, wares, and merchandise to be resold by retail to the public, bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said retail merchants that by dealing directly with a mill owner or manufacturer they can buy goods at a cheaper price and on more favorable terms

than they can from jobbers or corporations, associations, individuals, firms, and partnerships not manufacturing goods, wares, and merchandise they sell to such retail dealers by eliminating the profit of the middleman, and that a more uniform line of goods can be purchased from a mill operator than from one who does not operate a mill. The use by the respondent of the word "Mills" in his trade name and the word "Mills" in connection or conjunction with the words "Allentown, Pa." or "Paterson, N. J.", or the word "manufacturers" in respondent's letterheads, stationery, or otherwise, has a tendency and capacity to mislead and deceive purchasers who are customers and prospective customers of respondent by causing them to believe that respondent actually owns and operates or directly and absolutely controls the mill or mills in which said products are made or manufactured, or that respondent himself makes or manufactures his products, and that thereby such customers or prospective customers save or will save the middleman's profit and the said respondent in the use of the word "mills", and "mills" in connection or conjunction with the words "Allentown, Pa." or "Paterson, N. J.", or "manufacturers" has a tendency and capacity unfairly to divert trade to respondent from other corporations, associations, individuals, firms, and partnerships who are actually manufacturing products similar to the products of respondent for sale and distribution in interstate commerce, and those competitors of respondent who do not manufacture similar or like products to those of respondent for sale and distribution in interstate commerce, but who truthfully advertise and label same and who do not claim and represent themselves to be manufacturers.

PAR. 4. The practices of respondent described in paragraph 2 hereof 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 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."

#### 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 8, 1935, issued and served its complaint in this proceeding upon the respondent, Samuel Horowitz, an individual trading as Commercial Silk Mills, charging him

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with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a statement of facts was agreed upon by the chief counsel for the Commission, subject to the approval of the Commission, and by the respondent, to be taken in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and said statement provided that the Commission might proceed upon said statement of facts and make its report stating its findings as to the facts including inferences which it might draw from said stipulated facts and its conclusion based thereon, and it was further provided in said statement of facts that the Commission might enter its order disposing of the proceeding without presentation of argument or the filing of briefs.

Thereafter the proceeding came on regularly for final hearing before the Commission on the said complaint, the answer and the statement of facts above referred to, and the Commission having approved the aforesaid stipulation as to the facts and having duly considered the same and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

Since in or about 1913 the respondent, Samuel Horowitz, has been and is engaged as an individual trading as "Commercial Silk Mills." Since said time the respondent has maintained his principal place of business in the city of New York, State of New York. He is now located at that place and during all of said time has been engaged in the sale and distribution of silk greige goods and finished silk. Silk greige goods are silks in the unfinished state. During all of this time the respondent has sold his products to various firms, persons, association, or corporations located not only in the State of New York but in other States of the United States and in the District of Columbia, and after sales have been consummated the respondent has shipped the purchased goods or caused the goods to be shipped from his place of business in the State of New York or from other places in the United States to purchasers thereof located in States other than the State of New York or State of origin of the shipment.

During all of the time that respondent has been engaged in the foregoing business there have been other firms, associations, partnerships, or corporations engaged in similar business to that of respondent to wit: The sale and distribution of silk greige goods and finished silk in interstate commerce. The respondent during all of the aforesaid time was and still is in competition in commerce in the sale of



said products with other individuals, firms, and corporations likewise engaged in the sale and distribution of said or similar products in interstate commerce.

In soliciting the sale of his products respondent has continuously included the word "Mills" in his trade name. This trade name "Commercial Silk Mills" has appeared on respondent's letterheads and billheads in all of his dealings wherein such printed matter was used by the respondent.

Since in or about 1913 the respondent has also carried on his letterheads, which have been distributed in interstate commerce, the words "Broad Silk Manufacturers" and "Mill: Allentown, Pa." Respondent has also circulated billheads to his customers containing, in addition to the trade name of respondent hereinabove referred to, the words "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa."

As a matter of fact at no time since 1913 has the respondent ever made or manufactured the products which he has sold, nor has he ever owned or absolutely controlled any mill or factory during such period of time. He has not owned or controlled mills or factories at either Allentown, Pa., or Paterson, N. J., nor does he now own or control any mill or factory where the products sold by him and shipped by him in interstate commerce have been made or manufactured. However, respondent has at all times since 1913 sold products which have been made or manufactured by persons, firms, or corporations over which he has no control.

The representations above referred to which have been made by respondent by the use of the words "Mills" and "Broad Silk Manufacturers" and "Mill: Allentown, Pa." and "Silk Manufacturers" and "Mills: Paterson, N. J., Allentown, Pa." have been made in such a way that his customers or prospective customers are led to believe that the respondent is a mill operator or manufacturer.

It is the common belief among purchasers of respondent's products located in various States of the United States and District of Columbia that products above referred to can be purchased directly from a manufacturer or mill operator at a considerable saving in price. Said purchasers or prospective purchasers also believe that more favorable terms can be secured from mill owners or manufacturers than can be secured from jobbers or persons who do not manufacture the goods that they sell. Said purchasers and prospective purchasers also believe that a more uniform line of goods can be purchased from a mill operator than from one who does not operate a mill. The representations made by respondent above referred to have the capacity and tendency to mislead and deceive the

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purchasers of respondent's products into the belief that when purchasing said products from respondent they are dealing with a manufacturer or mill operator of established business standing and thereby are gaining an advantage by saving the middleman's profit.

The representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive a substantial number of the purchasers of respondent's products into the belief that respondent is a manufacturer or mill operator and to purchase respondent's products in such erroneous belief.

There are among the competitors of respondent, manufacturers and distributors of products similar to those sold by respondent in interstate commerce, who do not misrepresent their status as manufacturers or mill operators, who likewise sell and distribute products similar to those sold and distributed by respondent in various States of the United States, and there are jobbers engaged in business similar to that conducted by respondent who do not represent themselves to be mill owners or operators. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

#### 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 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 matter coming on to be heard by the Commission upon the complaint filed herein on October 8, 1935, and upon the answer to said complaint filed October 29, 1935, by Samuel Horowitz, an individual, trading as Commercial Silk Mills, and upon a stipulation of facts entered into by and between W. T. Kelley, Chief Counsel of the Commission, and Samuel Horowitz, respondent herein, said stipulation of facts having been approved by the Commission; 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."

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## Order

*It is ordered*, That the respondent, Samuel Horowitz, individually and trading as Commercial Silk Mills, and his agents, representatives, servants, and employees, in connection with the offering for sale and sale of silk greige goods and finished silk in interstate commerce, cease and desist:

From representing, directly or indirectly, through and by the use of his trade name, through letter heads, circulars, advertising literature, or in any other manner, that he is a manufacturer, mill operator, or mill owner.

*It is further ordered*, That the respondent above named, within 30 days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with.

IN THE MATTER OF  
W. A. SHEAFFER PEN COMPANY

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

*Docket 2158. Complaint, Jan. 25, 1934—Decision, Apr. 27, 1936*

Where a corporation engaged in the manufacture of fountain pens, automatic pencils, ink or writing fluid, and desk sets and adhesives and in the sale and distribution thereof through some 18,000 retailers including stationers, druggists, jewelers, opticians, and gift shops and in some cases department stores, and also, in case of a small number of consumptive items, through a limited number of wholesale outlets, but not to or through chain stores, cigar stores or other cut-price stores;

In pursuance of a policy directed to maintenance of the resale prices fixed by it for sale of products sold by it under its name, including its leading line of "Lifetime" pens, under which, aggressively and successfully pursued and enforced by it and its agents and employees, it attached such prices to its various products and made same known to customers or prospective customers, advised same and trade locally that it would discontinue dealing with price cutters, and did so discontinue and made known to trade its action in so doing, and under which policy it did not sell its said products to any dealer without explaining and emphasizing its aforesaid policy and practice thereunder and satisfying itself as to said dealers favorable reaction thereto, though professing not to desire any undertaking, and rejecting, in form, any agreement to maintain its said prices and cautioning its salesmen or employees not to solicit or accept such undertaking—

- (a) Made use of a so-called "Non-jobbing agreement" with thousands of its retail dealer customers under which they were bound to resell its said products to consumers only and not for resale, under penalty of repossession of the products by it, and payment of liquidation damages by the dealer, and which agreement was understood by some as directed to or requiring observance of its said prices, and made it known to its said wholesalers that they would be cut off for sales to price cutters, and entered into advertising agreements with its said retailers under which latter bound themselves not to advertise its said products at cut prices and placed upon its "do not ship" list and discontinued shipments to and systematically and continually cut off supplies of, dealers ascertained by it, as a result of dealer reports investigated, and use of serial numbers placed by it on its said pens, or otherwise, to be price cutters;
- (b) Solicited and secured assurances, and agreements or promises from customers and prospective customers through its salesmen, instructed to avoid the same, while charged with the responsibility of seeing that dealers in their respective territories observed its said resale prices, and with duty to "sell" the dealer its resale price policy, and accepted accounts and filled orders following satisfactory assurances, and, frequently, promises, which dealer was informed could not be accepted, and, in price cutting cases, similarly treated old customers following assurances of cooperation;

With effect that tacit understandings inevitably resulted, and, under the continuing threat involved in the constant publicizing by it through literature,

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correspondence and salesmen of its action in cutting off and of its intent to cut off price cutters, cooperative action and meeting of the minds in the maintenance of such prices resulted, and object evident to all was obtained, notwithstanding its said disclaimers which merely accentuated the fact that its protestations were to apply only to certain words while accomplishment of same result at same time was contemplated through use of other words or means of expression;

- (c) Supplied to its dealers over a period of years show cases costing it from \$18 to \$120 and in the aggregate over three-fourths of a million dollars, but at no cost to the dealer except for the freight and lighting thereof, under provisions in accordance with which said products could be repossessed in the event of price cutting by the dealer or payment therefor demanded;

With result that said system went far beyond a simple refusal to sell goods to price cutters and hampered and obstructed the free and natural flow of commerce and the freedom of competition in the channels of interstate trade, competition among dealers in its products was practically suppressed and all desiring to deal therein were constrained to sell at its suggested resale prices, wholesalers desiring to supply the trade with such products were unable to secure the same if they sold them to price cutters, freedom of competition was suppressed by said methods and dealer cooperation secured thereby, and it was enabled as effectively as by express agreements to prevent competition in disposition of its said products by wholesalers and retailers by preventing all who did not sell at the resale prices fixed by it from obtaining the same:

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

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

*Mr. Harry D. Michael* for the Commission.

*Mr. E. H. Pollard*, of Fort Madison, Iowa, for respondent.

## COMPLAINT

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, having reason to believe that W. A. Sheaffer Pen Company has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, W. A. Sheaffer Pen Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Fort Madison, State of Iowa. It is now, and has

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been for more than five years last past, engaged in the business of manufacturing fountain pens, automatic pencils, ink, and desk sets, and the sale and distribution thereof to retail dealers throughout the United States. It causes the said products when so sold to be transported from its principal place of business in the city of Fort Madison, State of Iowa, into and through other States of the United States to the purchasers thereof at their respective points of location. In the course and conduct of its said business respondent is in competition with other corporations, partnerships and individuals engaged in the manufacture, sale, and transportation of fountain pens, automatic pencils, ink, and desk sets, in commerce between and among the various States of the United States, and the District of Columbia.

PAR. 2. For more than five years last past respondent, in the course and conduct of its said business, has enforced and now enforces a merchandising system whereby it fixes and maintains certain specified uniform prices at which its products shall be resold to the public by retail dealers handling the same. Respondent sells its products only to retail dealers, of whom there are about 20,000 throughout the United States. It enlists and secures the support and cooperation of said dealers, and of its officers, agents, and employees in enforcing and maintaining said system of resale price maintenance. In order to carry out said system, respondent has employed and still employs, among others, the following means whereby it and those cooperating with it undertake to prevent and do prevent retail dealers from selling its products to the public at prices less than the aforesaid retail prices established by respondent:

(a) Respondent fixes uniform resale prices at which its products shall be resold to the public by its retail dealers, and issues to said dealers price lists in which said uniform prices are set forth.

(b) Respondent makes it generally known to the trade by its salesmen and representatives, and by letters, telegrams, advertisements, and other means, that it expects and requires dealers handling its products to maintain and enforce its said resale prices, and that it will refuse to further sell and supply said products to dealers failing to maintain and enforce said prices.

(c) Respondent requires as a condition precedent to opening an account with a retail dealer that such dealer agree to maintain the uniform resale prices fixed by it for resale of its products to the public.

(d) Respondent procures and receives from dealers handling its products reports of the failure of other dealers handling said products to observe and maintain its resale prices.

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(e) Respondent employs its salesmen and other agents and employees to ascertain, investigate and secure information concerning the failure of dealers to observe and maintain said resale prices, and as to the sale of said products by dealers to other dealers who fail to maintain said prices.

(f) Respondent uses the information received through the means set out in subparagraphs (d) and (e), or through any other means, to induce and coerce dealers who fail to observe said prices, or who sell to others who fail to observe said prices, to maintain said prices in the future, or to refrain in the future from selling said products to dealers who do not maintain said prices, by dropping said dealers from its approved list of dealers to whom it sells its products and by continuing to refuse to sell such products to said dealers until such time as said offending dealers give assurance that in the future they will maintain said resale prices.

(g) Respondent refuses to further supply its products to dealers who offend in either of the particulars set out in the preceding subparagraph, unless and until such offending dealers have given satisfactory assurances or promises that they will in the future observe and maintain said uniform resale prices, or will refrain from selling said products to dealers who do not observe and maintain said uniform resale prices.

(h) Respondent compiles and maintains in its office records, a "Do Not Ship" list, on which is entered the names of dealers who have sold its products at less than the uniform resale prices fixed by it, or have resold said products to other retail and wholesale dealers, or jobbers, and respondent refuses to further supply such dealers with its products until it receives assurances or promises that they will in the future observe and maintain said uniform resale prices, or will refrain from selling to others than consumers.

(i) In order to prevent its products from falling into the hands of retail dealers, wholesale dealers, or jobbers who will not maintain its uniform resale price policy, and as a part of its merchandising system of maintaining uniform resale prices, respondent requires each retail dealer with whom it opens an account to sign a so-called Non-Jobbing Agreement, in which the dealer agrees that he will not resell respondent's products to any other retail dealer, jobber, or wholesaler of writing materials for the purpose of resale, or to any person when he believes or has reason to believe that such person will resell said products, but will confine his sales solely and exclusively to consumers.

(j) In order to enable it to trace any fountain pens which have been sold to the public at less than the uniform resale prices fixed

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by it, or which have been sold by any of its retail dealers to anyone other than a consumer, respondent marks every fountain pen manufactured by it with a serial number stamped on the outside and inside nib of the pen point. Such serial numbers are so placed on the pen point that if an attempt is made to remove said numbers by buffing or otherwise the pen point is destroyed.

(k) Respondent uses other equivalent cooperative means and methods for the enforcement of its said system of resale price maintenance.

PAR. 3. The direct effect and result of the above alleged acts and practices of the said respondent has been and now is to suppress competition in the distribution and sale of respondent's said products; to constrain dealers to sell said products at the prices fixed by respondent, and to prevent them from selling the products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of such advantages in price which otherwise they would obtain from the natural and unobstructed flow of commerce in said products under conditions of free and untrammelled competition.

PAR. 4. In the course and conduct of its business respondent, for more than two years last past, has required its retail dealers to enter into certain agreements with it regarding the merchandising and display of its products. One such agreement is known as the Non-Jobbing Agreement, and respondent requires that all dealers shall sign said agreement as a condition precedent to being allowed to sell its products. Said Non-Jobbing Agreement provides that the retail dealer will sell respondent's products only to consumers, and will not resell the same to any retailer, wholesaler, or jobber of writing materials for purpose of resale, or to any person when said dealer believes or has reason to believe that such person will resell said merchandise. Said agreement provides that if respondent believes or has reason to believe that the retail dealer has violated said agreement, or if it so elects, respondent shall have the right at any time to take possession of all of its products in the dealer's stock, and all future orders from respondent, on payment in cash of the price paid for said stock by said dealer. A monetary penalty for each violation of the agreement is provided for, as agreed and liquidated damages.

It is further provided in said non-jobbing agreement that legal title to all merchandise purchased by the dealer from respondent, either on hand or on future orders, shall remain in respondent as security for the purchase price, and as security for the performance by the dealer of the conditions of said agreement. It is then further provided that nothing contained in said agreement shall change or affect



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the dealer's obligation to pay for all merchandise purchased from respondent in accordance with the terms on the invoices for such merchandise.

The aforesaid non-jobbing agreement by respondent is unfair to the retail dealers who sell respondent's products because (1) it results in a control by respondent of its products after said products have passed out of its possession and have been paid for and are owned by its several dealers; (2) it subjects said dealers to payment of a monetary penalty for selling merchandise which is owned by said dealers and to which respondent no longer possesses any title; and (3) it attempts to restrain said dealers from freely selling or otherwise disposing of merchandise which is owned solely by them. Said agreements have a capacity and tendency to hinder competition and to place a restraint upon trade in products manufactured and sold by respondent.

PAR. 5. In the course and conduct of its business respondent provides attractive showcases in which said dealers may display its products, and undertakes to induce its dealers to use said showcases. In order to procure one of the showcases, said dealers are required by respondent to sign an agreement known as the showcase agreement. There are two forms of said agreement provided by respondent, called showcase agreement No. 1 and showcase agreement No. 2, which differ only in their first paragraphs. Said agreement provides that the dealer shall display in said showcase only products manufactured by respondent, shall keep the case lighted at all times while the dealer's store is open for business, and shall place the showcase in a prominent position in said store. The said agreement also requires the dealer to display and handle the complete line of products manufactured and sold by respondent. By paragraph 4 of showcase agreement No. 1, and paragraph 5 of showcase agreement No. 2, said dealers agree:

"To feature products manufactured by and sold under the name of W. A. Sheaffer Pen Company so that a majority of the combined sales by the dealer of the following articles; Fountain Pens, Desk Sets, Automatic Pencils, Pen Skrip and Pencil Skrip shall be products manufactured by the W. A. Sheaffer Pen Company."

It is further provided in said agreements that the showcases are supplied to the dealers without cost so long as none of its terms are violated by the dealer, but that the dealer may purchase said showcase at any time by paying the amount set forth in the agreement, upon which payment all control over the showcase by respondent shall cease. Since 1929, when the showcase agreement was first put into use, respondent has distributed more than 7,900 showcases among its 20,000 dealers.

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Said Showcase Agreement, as used by respondent, is unfair to its competitors and its dealers because it requires that a majority of the combined sales of fountain pens, desk sets, automatic pencils, ink and pencil leads made by said dealers shall be products manufactured by respondent; it tends to prevent dealers from buying and distributing products of competitors of respondent; and tends to force dealers to buy a full line of products manufactured by respondent when the said dealer's normal and actual needs are for but part of said products. By the use of said showcase agreements trade is diverted to respondent from its said competitors, and trade in products manufactured and sold by said competitors is hindered and restrained.

Wherefore, Said acts and practices of respondent as above set out are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning 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.

## 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 25, 1934, issued and served its complaint in this proceeding upon respondent, W. A. Sheaffer Pen Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by Harry D. Michael, attorney for the Commission, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by E. H. Pollard, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, W. A. Sheaffer Pen Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Fort Madison, State of Iowa. It is now and has been since the year 1914 engaged in the business of manufacturing fountain pens, automatic pencils, ink or writing fluid (called by respondent "Scrip"), desk sets, and adhesives, and the sale and distribution thereof to retail dealers throughout the United States. Its highest priced fountain pens are known as "Lifetime" pens. This is the leading line made and sold by respondent. There are at present about 18,000 retail dealers to whom respondent sells its said products. Previously there were more. These retailers include stationers, druggists, jewelers, opticians, and gift shops. In some cases department stores are sold also. Chain stores, cigar stores, and stores that pursue a general policy of selling at cut prices are not sold. A small number of minor products which might be called consumptive items are sold through a limited number of wholesale outlets in addition to their direct sale to retailers. Respondent causes its said products, when so sold, to be transported from its principal place of business in the city of Fort Madison, State of Iowa, into and through other States of the United States to the purchasers thereof at their respective points of location. Branch offices are maintained by respondent at New York, N. Y., Chicago, Ill., and San Francisco, Calif. A supply of goods is kept at the New York office for filling orders in several Eastern States.

In the course and conduct of its said business respondent is and has been in competition with other corporations, partnerships, and individuals engaged in the manufacture, sale, and transportation of fountain pens, automatic pencils, ink, writing fluid, desk sets, and adhesives, in commerce between and among the various States of the United States, and the District of Columbia.

PAR. 2. Since the organization of respondent company in 1914, respondent, in the course and conduct of its said business, has enforced and now enforces a merchandising system whereby it fixes and maintains certain specified uniform prices at which its products bearing the Sheaffer name shall be resold to the public by retail dealers handling the same. The same policy was followed for the two years or more the business was conducted prior to the incorporation of respondent company. A similar policy is pursued and the same results achieved in the sale of certain minor products through wholesale houses. Through its officers, agents and employees, re-

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spondent enlists and secures the support and cooperation of its dealers in enforcing and maintaining its said system of resale price maintenance. Respondent's efforts to maintain its announced resale prices are almost one hundred percent successful in that less than one percent of its dealers fail to adhere to the resale prices fixed by it. The policy has been a very strict and stringent one and has been vigorously and aggressively pursued and enforced by respondent, its officers, agents, and employees.

The means and instrumentalities employed to effect this result have been many and varied. In the first place, respondent fixes uniform resale prices at which its products shall be resold to the public by its retail dealers and issues to said dealers price lists in which said uniform prices are set forth. It also affixes to each fountain pen and other articles sold by it a price tab on which the retail price is plainly imprinted. Respondent also makes it generally known to the trade by its salesmen and representatives, and by letters, telegrams, advertisements, publications, and circular matter of various sorts, and by other means, that it expects and requires dealers handling its products to maintain and enforce its said resale prices, and that it will refuse to further sell and supply said products to dealers failing to maintain and enforce said prices. In regard to those items sold to wholesalers for resale to retail dealers, the resale prices are announced and such wholesalers are informed that such products are not to be sold to price cutters but only to dealers who maintain the resale prices fixed by respondent. No new account is opened until said policies and practices as heretofore stated are fully set forth and explained to the prospective customer by a representative of respondent and until the respondent and its representative are convinced and assured that such prospective customer is willing to cooperate in and conform to such policies.

Such conviction and assurance is the result of the prospective customer's expressed or implied reaction to respondent's policy and his attitude thereto although he is usually cautioned not to express a promise or to give assurance in so many words. Respondent continually receives from many of its dealers reports of price cutting by other Sheaffer dealers. These are not solicited by respondent directly but are encouraged by respondent's efforts to maintain its resale prices and the information furnished dealers that respondent will and does cut off dealers who cut prices. Such reports are acted upon by respondent, after verification in some cases, by cutting off the price cutter from receiving further orders.

Respondent uses its salesmen as well as its officers and other representatives to ascertain, investigate, and secure information concern-

ing the failure of its dealers to observe and maintain its resale prices, and also as to the sale of respondent's products by its dealers to unauthorized dealers. Respondent uses the information thus received and obtained through its dealers or as a result of the activities of its representatives, or through other means, to induce and coerce its dealers to observe its fixed resale prices, by dropping said dealers, who sell at cut prices or who sell to unauthorized dealers, from its approved list of dealers to whom it sells its products, and by continuing to refuse to sell its products to such dealers until such times as respondent, or its representative, has received from such dealers such assurances or such indication of intention to cooperate as to cause respondent to believe that its resale price policy will be adhered to in the future by such dealers and that they will refrain from reselling to unauthorized dealers or to others for resale.

As a part of such system of procedure, respondent compiles and maintains in its office records a "Do Not Ship" list, consisting of a system of cards on which are entered the names of dealers who have sold its products at less than the uniform resale prices fixed by it or who have resold said products to other dealers or to others for resale. As a means of distinguishing such dealers from others cut off for different reasons, their cards are marked "Unethical Practices." In cases where such dealers are reinstated, such reinstatements are not made until respondent is convinced that they will conform to its price policy in the future. Such reinstatements are usually made only after personal interviews by representatives of respondent and some indication of the dealers' attitude toward respondent's resale price policy.

PAR. 3. Coincident with the use and operation of respondent's resale price maintenance policy, respondent has made use of a form of agreement known and designated as a "Non-jobbing agreement." This form of agreement reads as follows:

#### NON-JOBGING AGREEMENT

As part consideration for the acceptance by the W. A. Sheaffer Pen Company of the order to which this agreement is attached, the dealer agrees that, except in the event he goes out of business, he will sell the merchandise described in said order, and in all future orders from said Pen Company, only to consumers and will not sell to any wholesaler, jobber or retailer of writing materials for purpose of resale or to any person when he believes or has reason to believe that such person will resell said merchandise. In the event said Pen Company believes or has reason to believe that the dealer has violated this agreement, or if said Pen Company so elects, said Pen Company shall have the right at any time to take possession of any part or all of the Sheaffer merchandise on this order, or on the dealer's future orders from said Pen Company, provided said merchandise is still in the dealer's hands, by paying

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the dealer in cash the price at which said dealer purchased from said Pen Company the merchandise thus repossessed, or by crediting the dealer's account, if same shows a balance in favor of said Pen Company, with such purchase price, or by thus crediting the dealer's account to the extent of the balance due thereon to said Pen Company and by paying the dealer cash for the amount by which such purchase price exceeds the balance due from the dealer to said Pen Company on said dealer's account. If the dealer violates this agreement, he shall pay said Pen Company the sum of \$— for each and every violation, as agreed and liquidated damages. The legal title to all merchandise in this order, and in the dealer's future orders from said Pen Company shall remain in said Pen Company until sold by the dealer in the ordinary course of trade as security for the payment of the purchase price thereof by the dealer and as security for the performance by the dealer of the foregoing conditions.

Nothing contained in this agreement shall change or effect the dealer's obligation to pay for all merchandise which has been purchased from and has not been repossessed by said Pen Company in accordance with the terms for payment shown on the invoices for such merchandise.

Dated this-----day of-----19----

By-----

The use of the above form of agreement began about 1927 and continued until May 13, 1935. More than 7,000 of these agreements were executed by respondent's customers. Salesmen were instructed to have these agreements executed by all new customers. Such instructions were carried out. In many cases old customers were required to and did execute those agreements. In some cases dealers who had not sold to others for resale but who were suspected of price cutting or who were found to have cut prices were required to and did execute such agreements although some refused and were thereupon placed on the "Do Not Ship" list. Old dealers who were suspected of selling Sheaffer merchandise for resale or who were found to have done so were likewise required to execute these agreements in order to receive further shipments. Respondent has claimed that this part of its merchandising policy was separate and distinct from its resale price maintenance policy and has so instructed its salesmen and in many instances so stated to its customers. All outstanding agreements of this type were cancelled by respondent on May 13, 1935, by circular letters addressed to its customers after most of the evidence in support of the complaint had been introduced in this case.

By this agreement the dealer is purportedly bound (except when going out of business) to sell products bought from respondent to consumers only and not even to them if the dealer believed or had reason to believe the goods were being bought for resale. Violation of the agreement entails liability to pay a stated sum of money as "agreed and liquidated damages", and the company retains title

to all goods sold the dealer and remaining in his possession unsold as security for the purchase price and for said damages. In practice the amount inserted in the contract to be paid on breach was fixed to approximate the size of the order given by the dealer. It was \$100 in the majority of cases, but was as high as \$1,000 in some cases. The contract purports to give the company the right at any time to take possession of any or all goods in the dealer's possession bought from it at the prices paid by the dealer if the company believes or has reason to believe the dealer has violated the agreement or "if said Pen Company so elects."

Respondent has pursued a policy of selecting its dealer outlets for announced and apparent purposes other than resale price maintenance. It has contended that the said non-jobbing agreement was used for the purpose of effecting these ends. There was, however, a tendency on the part of some of respondent's dealer customers to regard this contract as a weapon for enforcing maintenance of resale prices. Some dealers have in fact so regarded it and considered it and interpreted it as such or as binding them to maintain the resale prices as fixed by respondent. At least one of respondent's salesmen, who was discharged for this and other causes, tried to leave dealers under the impression that said agreement was intended for the purpose of enforcing the maintenance of resale prices.

Respondent company made no practice of demanding payment of the "liquidated damages" from dealers found to be selling its products for resale and did not make demands under it to repossess its products from customers who cut prices to consumers. It ceased, in many cases, to sell dealers from whose stocks Sheaffer pens were traced to the possession of other dealers regardless of whether or not they were cutting prices and regardless of whether or not they knew how the goods came into the possession of the price cutters.

Respondent cancelled the non-jobbing agreements in effect, as heretofore stated, after it had appeared in the hearings in this case that some of its customers had believed that such agreements bound them not to sell Sheaffer products to consumers, except at full list price.

Said non-jobbing agreement, by its provisions, attempts to control the use and disposition of property after the title thereto would ordinarily have passed but for the provisions of the contract and even after full payment for the goods bought. It further specifically reserves title in the goods until sold, even though paid for. It applies not only to the order for goods given at the time of execution thereof but to "all future orders."

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PAR. 4. Respondent during the years 1929-33 spent over three-fourths of a million dollars in equipping customers with attractive showcases costing it from \$18 to \$120 each with no cost to the dealer except freight and keeping the case lighted. The majority of these cases were supplied under an agreement requiring the dealer to surrender the case on retiring from business or using it other than for the sole purpose of displaying respondent's products. Many of them were supplied under forms of agreement giving the dealer the choice of buying the case at the price named in the contract and using it as he saw fit or of holding it for the sole purpose of prominently displaying respondent's products and so featuring the full line of these products that a majority of his combined sales of fountain pens, desk sets, automatic pencils, pen Skrip and pencil Skrip should be products made by respondent. Less than 1 percent of the cases have been bought by dealers. Most of the contracts are still in force for the life of the cases or until the dealer fails to observe their terms. The life of a case is estimated at from ten to twelve years. More than 7,810 showcases were supplied to dealers by respondent under one or the other of the various contract forms used from time to time. Under said contract, the showcases could be repossessed by respondent when dealers having them were cut off for cutting prices or for violating the non-jobbing agreement for such dealers would then not be handling the Sheaffer line. The usual course pursued when showcase agreements were terminated was for the showcase to be transferred to some other Sheaffer dealer.

One form of such contract used provides that the dealer shall handle the complete line of respondent's products. Other forms used from time to time contained provisions by which the dealer is bound "to specialize in the Sheaffer line of products to the exclusion of all competing lines", and also providing for making payments on the price of the showcase proportioned upon the percentage of competing lines carried. Some of the showcase agreements used were combined in one contract with non-jobbing agreements as heretofore discussed.

PAR. 5. Respondent, in the conduct of its business, has also used to a limited extent a form of agreement known and designated as an anti-advertising agreement. By this contract the dealer is not to advertise Sheaffer merchandise at less than the retail prices fixed by the company "in the dealer's show windows or in any manner outside of the dealer's store." Violation of the agreement calls for the payment of a stated sum "as agreed and liquidated damages" as well as the right to repossess the merchandise. Title is reserved in



the company to assure performance. Such an agreement serves to prevent all but a possible insignificant amount of business at cut prices. For practical purposes, as regards any appreciable volume of business, it is an agreement to maintain resale prices as fixed by respondent. In some instances dealers who have been cut off for price cutting or who have been suspected of price cutting have been requested to execute the anti-advertising agreement before receiving further orders from respondent. A dealer signing such an agreement and abiding by the same loses all sales that cut-price advertising might bring him.

PAR. 6. Respondent marks its Lifetime fountain pens, guaranteed for the life of the buyer, now constituting 16 percent of its sales and at one time reaching a high of over 40 percent, with a serial number stamped on the outside and inside nib of the pen point. The numbers are so placed that removal of them by buffing or otherwise is made difficult. Respondent contends, and the contention is reasonable, that such numbering is for the purpose of providing the company with some check on the expiration of the guarantee. It also enables respondent to trace pens that have been stolen and serves to discourage such thefts. Respondent has used its numbering system in tracing violations of its non-jobbing agreements and non-jobbing policy and has pursued a policy of cutting off its dealers to whom such pens were so traced. In this way, it has reduced to a minimum sales of its Lifetime pens at cut prices by so-called unauthorized dealers who were willing to accept a smaller margin of profit than permitted by respondent's fixed resale prices and who had secured their supplies of such merchandise from regular Sheaffer dealers. Such use of serial numbers by respondent has resulted in largely cutting off the sources of supply of such so-called unauthorized dealers and to practically eliminate any appreciable price competition in Lifetime fountain pens. Said numbering system is also susceptible of being used for the purpose of tracing such pens sold at cut prices by regular authorized dealers although respondent claims that such use thereof is not necessary because cut-price sales are always made public in one way or another. Lifetime pens are widely advertised and a desirable item of merchandise. Unauthorized dealers would like to have them for sale and, if they could be secured by them, some price competition in the line would naturally result.

PAR. 7. In the conduct and operation of its resale price maintenance policy, respondent has pursued a continued and consistent practice of cutting off dealers who violate such policy. Such practice as well as the fact that dealers are actually cut off for such violation are

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consistently and persistently announced to and impressed upon its dealers and the trade generally. Respondent informs its wholesale dealers that it will refuse to further sell and supply them with its products if they continue to sell to dealers known to be cutting prices on these products. Wholesalers are, however, informed that they cannot legally require the dealer to promise or agree to maintain the resale prices fixed by respondent.

Respondent formerly bought back the stocks of its goods in the hands of dealers cut off for price cutting and estimates that it has spent \$100,000 in so buying back its goods from price cutters, but this practice was discontinued during the depression. Since this discontinuance, respondent has not regarded the sale of noncurrent or obsolete Sheaffer products at any price necessary to move them as a violation of its policy so long as the goods were not advertised at cut prices, and even where they were so advertised, respondent has been more lenient in reinstating dealers who restricted their cut-price advertising to such noncurrent merchandise. During the six years 1929-34, respondent has cut off 1,318 dealers for failure to observe its prices. Of these, 119 were later reinstated when the company believed that they would maintain prices in the future.

Respondent instructs its salesmen that in opening an account with a retail dealer they are to "sell" the dealer its resale price policy but are also to avoid the words assurance, cooperation, and understanding. Salesmen are also instructed not to solicit any promises or assurances that resale prices will be maintained and that if promises or assurances are given or volunteered they cannot be accepted. In many cases dealers do give such promises or assurances in response to the salesmen's statements in regard to resale price maintenance. As a general rule such accounts are accepted and orders filled after the customer is informed that his promise or assurance cannot be accepted. The same is generally true as regards old customers where questions of price cutting have arisen. If assurances of cooperation are given, the customers are notified that such assurances cannot be accepted but nevertheless they are frequently continued as dealers unless there have been unexplained instances of price cutting. Respondent continually cautions its dealers in correspondence with them not to give promises.

In spite of respondent's instructions, its salesmen have in various instances solicited and secured agreements, assurances, and promises from customers or prospective customers. In some cases where the instructions were strictly followed, dealers have understood from the statements made that promises and assurances were thus solicited and that they were under agreement to observe respondent's resale

prices. In general, statements of resale policy by respondent's representatives to dealers, and conversation and correspondence in regard thereto, have resulted in cooperation of the dealer in that regard and the observance of resale prices. Both salesmen, in some instances, and dealers, in considerable number, have been unable to distinguish a line of demarcation between solicitation of promises and assent thereto and a statement of policy where a specific result is plainly desired and where enough is said, or implied from what is said, to convince the salesman that the dealer intends to follow the policy. In instances where non-jobbing agreements have been executed in connection with negotiations with dealers, some have believed erroneously that they contained specific provisions against price cutting. In some cases dealers have thought such contracts were intended to effectuate resale price maintenance.

PAR. 8. Respondent's salesmen were, in effect, charged with the responsibility of seeing that dealers in their respective territories observed resale prices as fixed by respondent. Such result to be achieved was plain to them and was well known to respondent's dealers. The fact that the words "promise", "agreement", "understanding", "assurance" or "cooperation" might have been avoided, generally speaking, in accordance with instructions, would not, as a consequence of such avoidance alone, negative the fact that implied agreements, understandings and cooperative efforts resulted regardless of the particular words used. The results to be obtained were clear to all and they were in fact obtained. No distinction can be made between customers' approval or acceptance of a resale price policy expressed in any manner sufficiently to satisfy the salesman that such policy will be followed and any other method of securing implied agreements, assurances and cooperative efforts. Respondent's constant reiteration and insistence that no promises were solicited or would be accepted and its repeated instructions directly to the trade and through its salesmen necessarily carried the implication that assurances were desired in some manner or form but merely with the avoidance of the particular form of expression specified. The practical object to be attained was evident to all concerned in all cases. The result was the same and as effective as if the forbidden words were used. Tacit understandings, under such circumstances, resulted and were inevitable. Moreover, respondent has not been content to merely cut off price-cutting dealers but constantly through its literature, correspondence and salesmen publicised the fact that it did and would cut off dealers who cut the Sheaffer fixed resale prices. This became a continuing threat and had the effect of putting dealers under coercion and

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resulted in cooperative action in maintaining prices. Respondent's continued protestations against promises, agreements, and understandings merely accentuate the fact that such protestations apply only to the use of certain words and at the same time contemplate the accomplishment of the same result by the use of other words or other means of expression with no difference in meaning and no difference in the resulting effect. Disclaimers constitute, under such circumstances, mere lip service or, in other words, a mere formality. The facts themselves show cooperation and meeting of the minds.

PAR. 9. Respondent's resale price maintenance policy, in operation and effect, is inseparably connected with and is affected by all other factors entering into its merchandising policy. There is no practical way of separating one from the other. This is true in regard to those factors heretofore mentioned herein, to wit: resale price maintenance, non-jobbing agreements, showcase agreements, and anti-advertising agreements. All combined determine the relationship between the respondent and its customers. The mental attitude of the customer and his conception of his obligations thereunder are determined by all such factors as may have been in existence in his particular case. Moreover, their general effect is not the effect of one but of all. This combined general effect and the effect upon the individual customer is little diminished, or not at all, by ostensible efforts or statements, even though with the best intentions, to keep them separate. Said non-jobbing agreements, showcase agreements, and anti-advertising agreements, tended to and had the effect of putting signers thereof under constraint and obligation to follow respondent's general policies including its resale price maintenance policy. These agreements had a tendency to maintain respondent's resale prices and did in fact assist in producing such result. The result of all these factors is and has been to produce agreements, express or implied, understandings and cooperative efforts between respondent and its customers whereby the resale prices of its products are and have been maintained.

PAR. 10. The system used by respondent goes far beyond the simple refusal to sell goods to dealers who will not sell at the prices fixed by respondent. It results in hindering and obstructing the free and natural flow of commerce and the freedom of competition in the channels of interstate trade. Competition among dealers in respondent's products is practically suppressed. All who would deal in respondent's products are constrained to sell at respondent's suggested resale prices. Wholesale dealers who would supply the trade with respondent's products handled by them may not get respondent's goods if they sell to those who do not observe the retail prices fixed

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by respondent. Freedom of competition is suppressed by methods as herein set out by which respondent secures the cooperation of its dealers. These methods are as effectual as express agreements to accomplish the same purpose. By such methods respondent is enabled to prevent competition in the disposition of its line of goods by wholesale and retail dealers by preventing all who do not sell at the resale prices fixed by respondent from obtaining them.

## 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."

## 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, testimony and evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Harry D. Michael, counsel for the Commission, and by E. H. Pollard, counsel 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 ordered*, That respondent, W. A. Sheaffer Pen Company, its agents, representatives, servants and employees, in connection with the sale, offering for sale or distribution in interstate commerce and in the District of Columbia of fountain pens, automatic pencils, ink or writing fluid, desk sets, adhesives, and kindred products, do cease and desist from:

(1) Entering into, either directly or indirectly, contracts, agreements, or understandings, with its dealer purchasers, that respondent's products, or any of them, are not to be advertised, offered for sale, or sold by such purchasers at prices less than those specified or fixed by respondent, or procuring such result, either directly or indi-

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rectly, by promises or assurances on the part of such purchasers or by cooperative methods between respondent and its dealers.

(2) Maintaining or seeking to maintain uniform resale prices on respondent's products, or any of them, by procuring, either directly or indirectly, from dealer purchasers, contracts, agreements, understandings, promises or assurances that respondent's products, or any of them, are not to be sold by such dealers to other dealers or to others for resale;

(3) Maintaining or seeking to maintain uniform resale prices on respondent's products, or any of them, by furnishing show cases or other articles of value to its dealers without cost to them or definite obligation to pay for the same, but with agreements or understandings under which respondent may reclaim such show cases or other articles of value, or demand payment for the same, in the event such dealers, so furnished such show cases or articles of value, fail to maintain the prices fixed by respondent at which its products are to be sold.

(4) Utilizing any other equivalent means of enforcing or maintaining uniform resale prices specified or fixed by respondent.

*It is further ordered,* That 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 with the order to cease and desist hereinabove set forth.

## Syllabus

IN THE MATTER OF  
CHICAGO SILK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2551. Complaint, Sept. 13, 1935—Decision, Apr. 27, 1936*

Where a corporation, engaged in the sale of hosiery and lingerie throughout the various States—

Employed in the sale thereof a scheme or plan by which it secured the names and services of persons to act for it in selling its said hosiery through sale of push card chances so arranged that amount of money paid, if any, for chance depended upon particular number selected, and acquisition of two pairs or of one pair of hosiery depended upon correct chance selection from list displayed on each card of various feminine names;

With result that its said hosiery and amount paid therefor, if any, by particular consumer or participant was determined by lot or chance, many purchasers of hosiery and lingerie were attracted by element of chance involved and induced to purchase its merchandise in preference to that of competitors who do not use such methods involving sale of a chance rather than merchandise, and violation of established public policy and unanimous condemnation of competitors who refuse to and refrain from use of such a plan of disposing of their merchandise as not in the public interest, contrary to public policy and good morals, and not in harmony with business ethics or trade morality, and recognized by trade and public as constituting, in effect, a lottery or gambling scheme, and one under which every customer is not treated alike, and under which more people lose than win, and as a detriment to legitimate business; or who so refrain and decline to uphold their reputations and avoid criticism, or because unwilling to lower themselves on moral ground thus to compete; and

With effect of diverting trade and custom to it from competitors who do not use such methods, and with tendency and capacity unfairly to divert and to lessen competition in trade involved and to create a monopoly thereof in it by excluding therefrom actual and potential competitors who do not use said method for some or all of the aforesaid reasons, and to deprive the public of the benefit of free competition in said trade:

*Held*, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

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

*Mr. R. L. Kennedy* for the Commission.

*Nash & Donnelly*, of Chicago, Ill., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

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mission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that the Chicago Silk Company, a corporation, hereinafter referred to as the respondent, has been using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in the city of Chicago, Ill. It is now and for more than one year last past has been engaged in the sale of hosiery and lingerie and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said products when sold to be shipped from its place of business in the State of Illinois to purchasers thereof, some located in the State of Illinois, and others located in various other States of the United States, and the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent is now and has been for more than one year last past, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture, sale, and distribution of hosiery and lingerie in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent, in soliciting the sale of and selling its said products in interstate commerce, has adopted and pursued and still adopts and pursues the following methods and practices:

Respondent distributes to the public, through the United States mails, in interstate commerce, certain literature, instructions and sales outfits, including paper punch cards, order blanks and advertisements containing illustrations of hosiery and lingerie, together with samples of fabrics, and other premiums or prizes, and circulars explaining respondent's plan of selling said merchandise and of allotting it and other articles as premiums or prizes to the operators of the punch card.

In order to obtain addresses of "prospects", said respondent addresses a letter to a woman employee of some concern, offering her a pair of ladies' silk hosiery free on condition that she send to respondent the addresses of ten other women, in different offices. If the



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person addressed complies, the pair of hosiery promised of the size and color designated is sent to her by respondent, and to each of the ten other "prospects" respondent sends said sales literature, including a paper punch card with printed instructions for its operation.

The respondent's punch cards bear feminine names, with a blank space opposite each for writing in the name of the customer; they have 60 small round disks marked "PUSH", below each of which is printed one of the names printed alphabetically elsewhere on the card. Concealed within each disk is a number, which is disclosed when the disk is punched out. The printed instructions on the punch cards read as follows:

10 (or on some cards 14) Numbers  
(Red Seal) are FREE (Blue Seal)

(5)-15-20-25

30-35-38-40

45-48-50

(55)-(58)-(60)

Lucky Name under Red Seal receives

TWO Pairs

Ladies' Silk Hosiery

Lucky Name under Blue Seal receives

ONE Pair

Ladies' Silk Hosiery

Notice: If Men's

Hosiery are wanted we

will send 3 pair in

place of each pair of

Ladies'.

PAY ONLY WHAT YOU DRAW—1¢ to 15¢

NO HIGHER

Any number over 15 pays only 15¢

All numbers have Equal Chance

No Credit

First write your name opposite name you

select, then push out with Pencil Point.

Respondent with the punch card, transmits instructions for its operation reading as follows:

## SUGGESTIONS FOR USING SALES CARD

Over each girl's name there is a concealed number. This number represents the amount each person pushing out the number is to pay.

The concealed numbers under the small seals range from Numbers 1 to 60 inclusive, but the customer pays only 1¢ to 15¢ per drawing, according to the number drawn, no higher. Any number over 15 pays only 15¢.

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Be sure and write name of persons pushing out numbers on the line opposite the number they have selected.

Persons pushing out numbers 5-15-20-25-30-35-38-40-45-48-50-55-58-60 are not to pay anything, as these numbers are FREE, but they have equal chance with the other numbers for winning the name shown under the large RED and BLUE SEALS.

After all the numbers have been pushed and collections made, the large RED and BLUE SEALS are pushed out, and the person holding the name corresponding to the one shown on the large RED SEAL is awarded FREE, TWO pairs of Ladies Silk Hose. Also ONE pair of Ladies Silk Hose is awarded to the person pushing out the name corresponding to the one shown under the BLUE SEAL.

The person selling the card receives ABSOLUTELY FREE, their choice of TWO pairs of Ladies Silk Hose for their efforts put forth in selling the card.

When payment is received for all the numbers sold on the card, the amount collected will be \$5.95 for which Cashiers Check or Money Order may be purchased and remitted with the order, or we will ship C. O. D.

We will then ship any FIVE pairs of Ladies Hose of which TWO may be given to the holder of the lucky name shown under the large RED SEAL, and one pair of Ladies Silk Hose to the holder of the lucky name shown under the BLUE SEAL, and the other TWO given to the party that disposes of the card for their efforts.

NOTE: If Men's hose are ordered, we will send 3 pair of Men's Silk Hose instead of Each Pair of Ladies.

Each of said prizes or premiums is allotted to respondent's customers by lot or chance; either ten or fourteen obtain their chances free, and the sums paid by the other customers vary from one cent to fifteen cents, the amount thereof being determined wholly by lot or chance.

PAR. 4. Respondent, in selling its said merchandise, in connection with the aforesaid punch cards, conducts lotteries in the sale of its merchandise, in accordance with the sales plan hereinabove set forth, as a means of inducing the purchase of respondent's merchandise in preference to merchandise offered for sale, and sold, by its competitors.

The sale of respondent's said merchandise to the purchasing public as hereinabove alleged involves a game of chance, or the sale of a chance to procure respondent's merchandise, contrary to the established public policy of the several States of the United States, and the District of Columbia, and of the Government of the United States, and, in many of the States of the United States, is contrary to local criminal statutes. By reason of said fact many competi-

tors of respondent are unwilling to offer for sale or sell their merchandise, so as to involve a game of chance, and such competitors refrain therefrom.

Many purchasers of hosiery and lingerie are attracted by the element of chance involved in respondent's sale method, above described, and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who do not use the same or equivalent methods.

PAR. 5. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods; to exclude from said hosiery and lingerie trade all competitors who are unwilling to and do not use the same or equivalent methods; to lessen competition in said hosiery and lingerie trade and to tend to create a monopoly of said hosiery and lingerie trade in respondent and such other distributors of hosiery and lingerie as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said hosiery and lingerie trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said hosiery and lingerie trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such method is detrimental to public morals and to the morals of the purchasers of said hosiery and lingerie, or because of any or all of such reasons.

PAR. 6. The aforesaid acts and practices of the respondent are all to the injury and 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 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

#### 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

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Federal Trade Commission on September 15, 1935, issued and served its complaint in this proceeding upon respondent, Chicago Silk Company, a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of the complaint were introduced by Richard L. Kennedy, attorney for the Commission, before John W. Norwood, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by John A. Nash, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint, and in defense thereto and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, since 1932, has been selling hosiery and lingerie, and was organized, in 1932 or 1933 as an Illinois corporation. Its principal office and place of business is Chicago. It sells its merchandise throughout Illinois and various other States, including the States of Michigan, Pennsylvania, and Massachusetts, but it does not solicit any Chicago business. When sold, the respondent mails or ships its hosiery and lingerie to purchasers wherever located, from its place of business in Chicago.

PAR. 2. Since 1932, the respondent has been selling its merchandise in competition with other business concerns selling similar merchandise, at wholesale and retail, in interstate commerce, in stores; by catalogs circulated throughout the United States; by house to house canvassing; and by various other forms of advertising.

PAR. 3. In the course and conduct of its business, respondent, in soliciting the sale of and selling its said products in interstate commerce, has adopted and pursued and still adopts and pursues the following methods and practices:

Respondent distributes to the public, through the United States mails, in interstate commerce, certain literature, instructions and sales outfits, including paper punch or push cards, order blanks and advertisements containing illustrations of hosiery and lingerie, together

## Findings

with samples of fabrics, and other premiums or prizes, and circulars explaining respondent's plan of selling said merchandise, and of allotting it and other articles as premiums or prizes to the operators of the punch or push cards.

In order to obtain addresses of "prospects", the respondent addresses a letter to a woman employee of some concern, offering her a pair of ladies' silk hosiery free on condition that she send to respondent the addresses of ten other women, in different offices. If the person addressed complies, the pair of hosiery promised, of the size and color designated, is sent to her by respondent, and to each of the ten other "prospects" respondent sends said sales literature, including a paper punch or push card with printed instructions for its operation.

The respondent's push or punch cards bear feminine names, with a blank space opposite each for writing in the name of the customer; they have 60 small round disks marked "PUSH", below each of which is printed one of the names printed alphabetically elsewhere on the card. Concealed within each disk is a number, which is disclosed when the disk is punched out. The punch or push cards bear various legends or instructions, among which are the following:

	14 Numbers	
RED	are FREE	BLUE
SEAL	5-15-20-25	SEAL
	30-35-38-40	
	45-48-50	
	55-58-60	
Lucky Name under Red Seal receives		
TWO Pairs		
Ladies' Silk Hosiery		
Lucky Name under Blue Seal receives		
ONE Pair		
Ladies' Silk Hosiery		
Notice: If Men's		
Hosiery are wanted we		
will send 3 pair in place of		
each pair of Ladies'.		
PAY ONLY WHAT YOU DRAW—1¢ to 15¢		
NO HIGHER		
Any number over 15 pays only 15¢		
All numbers have Equal Chance		
No Credit		
First write your name opposite name		
you select, then push out with		
Pencil Point.		

Respondent also uses another sales card, the same in principle, but differing somewhat in detail from the card hereinabove described,

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which offers but ten (10) free numbers, instead of fourteen (14), and provides that the amount to be remitted to respondent, when all the disks on the punch or push cards have been sold and pushed out, is \$6.45 instead of \$5.95. Consequently, one or the other, but not both, is included in each of the respondent's "sales outfits."

Respondent with the punch or push card, transmits a printed slip, labelled "Suggestions for using sales card", but which in effect constitutes directions or instructions for its operation reading as follows:

## SUGGESTIONS FOR USING SALES CARD

Over each girl's name there is a concealed number. This number represents the amount each person pushing out the number is to pay.

The concealed numbers under the small seal range from Numbers 1 to 60 inclusive, but the customer pays only 1¢ to 15¢ per drawing, according to the number drawn, no higher. Any number over 15 pays only 15¢.

Be sure and write name of persons pushing out numbers on the line opposite the number they have selected.

Persons pushing out numbers 5-15-20-25-30-35-40-45-48-50-55-58-60 are not to pay anything, as these numbers are FREE, but they have equal chance with the other numbers for winning the name shown under the larger RED and BLUE SEALS.

After all the numbers have been pushed and collections made, the large RED and BLUE SEALS are pushed out, and the person holding the name corresponding to the one shown on the large RED SEAL is awarded FREE, TWO pairs of Ladies Silk Hose. Also ONE pair of Ladies Silk Hose is awarded to the person pushing out the name corresponding to the one shown under the BLUE SEAL.

The person selling the card receives ABSOLUTELY FREE, their choice of TWO pairs of Ladies' Silk Hose for their efforts put forth in selling the card.

When payment is received for all the numbers sold on the card, the amount collected will be \$5.95 for which Cashier's Check or Money Order may be purchased and remitted with the order, or we will ship C. O. D.

We will then ship any FIVE pairs of Ladies' Hose of which TWO may be given to the holder of the lucky name shown under the large RED SEAL, and one pair of Ladies' Silk Hose to the holder of the lucky name shown under the BLUE SEAL, and the other TWO given to the party that disposes of the card for their efforts. NOTE: If Men's hose are ordered, we will send 3 pair of Men's Silk Hose instead of Each Pair of Ladies'.

Each of said prices or premiums is allotted to respondent's customers by lot or chance; either ten or fourteen obtain their chances free and the sums paid by the other customers vary from one cent to fifteen cents, the amount thereof being determined wholly by lot or chance.

## Findings

The respondent's business, while amounting in 1932, to but \$20,000 to \$25,000, increased in 1933, to \$50,000 to \$60,000; in 1934, to about \$150,000, and in October, 1935, it appeared that while the year was not then completed, the respondent's business was better than in 1934. This increasing business resulted from many transactions, involving the use of respondents' push or punch cards, each returning to respondents either \$5.95 or \$6.45, and, in each of these transactions, only two participants obtained respondents' merchandise, as a result of the chances taken by them, although sixty chances to obtain such merchandise were offered by the terms of each card. In each transaction the "operator" of the card received two pairs of hosiery for disposing of it.

PAR. 4. Respondent, in disposing of its hosiery and lingerie, in accordance with the sales plan hereinabove described, which involves the use of the aforesaid push or punch cards, conducts lotteries or games of chance in the disposition of its merchandise. Many purchasers of hosiery and lingerie are attracted by the element of chance involved in respondent's sale method, above described, and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who do not use the same or equivalent methods.

PAR. 5. The respondent, by its attorney, during the hearings before the trial examiner, admitted that in substantially all the States there are statutes prohibiting lotteries and games of chance. By the statutes of the United States, lotteries, gift enterprises, and similar schemes are also prohibited. Whether or not the varying language of these statutes specifically cover the respondent's "Sales method", nevertheless the nation wide public interest, as expressed in the statutes condemns the respondent's sales method. The respondent's "sales method" consists of the sale of a chance, rather than the sale of merchandise, and the Commission finds that the sale and distribution of merchandise by lot or chance, is contrary to established public policy.

PAR. 6. Many of respondent's competitors testified that they were unwilling to, and did not, offer for sale, sell, or otherwise dispose of their hosiery and lingerie, or other merchandise, by the use of the punch card or push card method, or any similar method, involving the disposition thereof, free of charge, or at varying prices, depending upon lot or chance. Although the president of the respondent company testified that other dealers, selling hosiery and lingerie, use the push card method of sale, the testimony of no other wit-

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ness, either using, or approving, said method was produced, whereas the record discloses that the respondent's sales method is unanimously condemned by the respondent's competitors, who refuse to adopt and refrain from the use of the push or punch card plan of disposing of their merchandise or other plans, involving the disposition of their merchandise free of charge, or at varying prices depending upon lot or chance.

PAR. 7. Respondent's competitors refuse to adopt the respondent's "sale method" for various reasons, among other reasons, because;

(a) It is not in the public interest, and is contrary to public policy and good morals.

(b) It does not comply with business ethics or morality, recognized by the trade.

(c) It is in effect a lottery.

(d) It does not treat every customer alike.

(e) More people lose than win.

(f) It is a detriment to legitimate business.

(g) It constitutes gambling.

Others of respondent's competitors refrain from the respondent's push or punch card method of sale, to uphold their reputations, to avoid criticism of their business methods and will not lower themselves, on moral grounds, to compete therewith, notwithstanding resulting loss of business.

PAR. 8. Respondent's "sale method" has the tendency and capacity unfairly,

To divert, and does divert to respondent, trade and custom from its competitors who do not use the same or equivalent methods;

To lessen competition in said hosiery and lingerie trade;

To create a monopoly thereof in respondent by excluding therefrom actual and potential competitors who do not use said method for some or all of the reasons hereinabove stated; and to

Deprive the public of the benefit of free competition in said trade.

## CONCLUSION

The aforesaid acts and practices of the respondent, Chicago Silk Company, a corporation, are 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".



## Order

## 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, testimony and evidence taken before John W. Norwood, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint, and in opposition thereto, briefs filed herein, and oral argument by Richard L. Kennedy, counsel for the Commission, and by John W. Nash, counsel 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 ordered*, That the respondent, Chicago Silk Company, a corporation, its officers, representatives, agents, and employees, in connection with the advertising, offering for sale and sale in interstate commerce, or in the District of Columbia, of hosiery or lingerie, cease and desist,

(1) From supplying to, or placing in the hands of others punch cards or push cards, for the purpose of enabling such persons to dispose of, or sell, by the use thereof, hosiery or lingerie;

(2) From mailing, shipping or transporting to members of the public punch cards or push cards, so prepared or printed, as to enable said persons, by the use thereof, to sell or distribute hosiery or lingerie;

(3) From selling or otherwise disposing of hosiery or lingerie by the use of punch cards or push cards; or

(4) In any manner selling, or otherwise disposing of hosiery or lingerie, free of charge, or at varying prices, depending upon lot or chance.

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

IN THE MATTER OF  
NEWARK FELT NOVELTY COMPANY, INC.

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

*Docket 2651. Complaint, Dec. 10, 1935—Decision, May 12, 1936*

Where a corporation engaged in the manufacture and sale of baseball caps made from felts obtained from old, used, discarded and second-hand hats under a process by which such hats, cleaned and disinfected and dyed to the desired color, and shaped, blocked, refinished and otherwise so treated that there was imparted to the reconditioned felt body the appearance of a new fabric, and equipped with new sweat band and peak or visor, took on the appearance of the necessarily more costly baseball caps made from never worn felts—

Sold said caps without label, marking or designation on or about the same to indicate that they were in fact made from second-hand and used hats which had been renovated, etc., as aforesaid, to jobbers and wholesalers and to retailers by whom said products were respectively resold to retailers and to public without disclosing fact that they had been made from previously worn and thereafter renovated felts, as hereinabove indicated, and under such circumstances as to indicate falsely that they were new;

With result that it was thereby able to sell said caps to retailers, jobbers and wholesalers, and through them to the using public, at substantially lower prices than manufacturers of new products can thus sell caps of the same or similar goods and with capacity and tendency to induce many wholesale and retail dealers and many of the purchasing public to buy its said caps, made as aforesaid, as and for new and unused articles made from new and unused materials, and with effect of unfairly diverting trade to it from competitors, among whom there are those similarly engaged who label, tag or otherwise indicate nature of their said goods as made from felt obtained from used, discarded and second-hand hats, and those engaged in manufacture and sale of baseball caps made from new and unused materials, and with tendency so to divert; to the substantial injury of substantial competition:

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

*Mr. George Foulkes* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define the powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Newark Felt

## Complaint

Novelty Company, Inc., a corporation, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Newark Felt Novelty Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark in said State. It is now and for more than one year last past has been engaged in the business of manufacturing baseball caps from felts obtained from old, used, discarded, and second-hand hats, and of selling the same to retailers, jobbers, and wholesale dealers thereof, located in the various States of the United States. Respondent causes, and for more than one year last past has caused such caps to be transported from its place of business in Newark to the aforesaid purchasers thereof, located in the State of New Jersey, and to other of the aforesaid purchasers located in various other States of the United States. In the course of the conduct of its business respondent is now and for more than one year last past has been engaged in substantial competition in commerce between and among the various States of the United States, with other corporations, individuals, firms, and partnerships, engaged in the sale of baseball caps manufactured from new felt bodies, and in the transportation of said bodies from their respective places of business to the purchasers thereof located in various other States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent, for more than one year last past, has bought and still buys second-hand, old, used, and discarded, men's and women's felt hats which are and have been renovated by respondent and made into baseball caps, and which are sold by respondent to retailers, jobbers, and wholesalers as set forth in paragraph 1 hereof. The said second-hand, old, used, and discarded, men's and women's felt hats are cleaned, steamed, ironed, and shaped by respondent, and then fitted with new trimmings, sweat bands, size labels, and with a peak or visor, by the respondent, and are then sold by the respondent to retailers, who resell same to the purchasing public, and to jobbers and wholesale dealers who resell them to retail dealers, who in turn resell said products to the purchasing public.

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PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondent into baseball caps and fitted with new trimmings, as described in paragraph 2 herein, have the appearance of new baseball caps manufactured from felts which have never been worn, and said caps are sold by respondent to retailers and to jobbers and wholesale dealers without any label, marking or designation on or about said caps to indicate that said caps are in fact manufactured from second-hand hats which have been renovated and made over into baseball caps by respondent. Said caps sold to jobbers and wholesale dealers are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said caps are manufactured from felts previously worn, and then renovated and made over, and under such circumstances as to indicate falsely that they are new baseball caps. Said caps, sold by respondent to retailers, are resold by such retailers to the public without disclosing the fact that such caps have been manufactured from hats previously worn and then renovated and made over, and under such circumstances as to indicate that they are new baseball caps.

The cost to respondent of obtaining, renovating, and making over said old hats into baseball caps, as aforesaid, is much less than the cost to manufacturers of manufacturing new baseball caps of similar quality, and respondent is thereby able to sell said baseball caps to retailers, jobbers and wholesalers, and through them to the using public at substantially lower prices than manufacturers of new baseball caps can sell caps of same or similar goods to retailers, jobbers, and wholesale dealers, and through said dealers to the using public.

PAR. 4. The acts and practices of respondent as hereinbefore set forth, are calculated to and do have the capacity and tendency to induce many wholesale and retail dealers, and many of the purchasing public, to purchase the said baseball caps manufactured from old, used, and discarded hats which have been renovated and made over by respondent into baseball caps, in the mistaken belief that they are purchasing new and unused baseball caps manufactured from new and unused materials, and tend to and do unfairly divert trade to respondent from concerns engaged in the manufacture and sale of new baseball caps in interstate commerce throughout the various States of the United States and the District of Columbia.

There are also, among the competitors of respondent, corporations, individuals, firms, and partnerships engaged in the manufacture of baseball caps from felt material obtained from used, old, discarded,

and second-hand hats, which said corporations, individuals, firms, and partnerships, label, tag, and otherwise indicate on the said baseball caps sold by them, that such caps are not manufactured from new and unused material, but are manufactured from felt material obtained from used, old, discarded, and second-hand hats. There are also, among the competitors of respondent, corporations, individuals, firms, and partnerships who are engaged in the manufacture and sale of baseball caps manufactured from new and unused felt material. The acts and practices of respondent as hereinbefore set forth are calculated to and tend to and do unfairly divert trade to respondent from said competitors, and by the acts and practices of the respondent hereinbefore described, substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondent are each and all of them to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce within the 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 powers 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, 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 10th day of December 1935, issued and served its complaint in this proceeding upon the respondent, Newark Felt Novelty Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, the respondent filed a consent answer, in and by which the respondent refrained from contesting the proceeding, and admitted all the material allegations of the complaint to be true; and in which consent answer it was provided that the Commission may, without trial, without further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon it an order to cease and desist from the violations of law alleged in the complaint; and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## Findings

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## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Newark Felt Novelty Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 416 Morris Avenue, in the city of Newark, in said State.

Respondent is now and for more than one year last past has been engaged in the business of manufacturing baseball caps from felts obtained from old, used, discarded, and second-hand hats.

Respondent purchases said second-hand and discarded felt hats and bodies from dealers in second-hand clothing, junkmen, and from concerns making it a business to collect this type of merchandise.

Respondent sells said baseball caps, made from old, used, discarded and second-hand hats, to retailers, jobbers, and wholesale dealers thereof, located in various States of the United States. Respondent causes and for more than one year last past has caused such caps to be transported from its place of business in the city of Newark, to the aforesaid purchasers thereof, some located in the State of New Jersey, and others located in various other States of the United States.

In the course and conduct of its business respondent is now and for more than one year last past has been, engaged in substantial competition in commerce, between and among the various States of the United States, with other corporations, individuals, firms, and partnerships, engaged in the sale of caps manufactured from felt bodies, and in the transportation of said bodies from its place of business to the purchasers thereof, located in various other States of the United States, and in the District of Columbia.

PAR. 2. Respondent for more than one year last past has bought and still buys second-hand, old, used, and discarded men's and women's felt hats. After said hats are purchased by respondent, they are assorted for various colors and grades, and are then sent to a cleaning establishment, where they are put through a cleaning and disinfecting process. After the hats have been cleaned and disinfected, they are returned to the respondent, who then removes, or causes to be removed, the sweatbands, trimmings, ribbons, and linings. Respondent then causes the brim of said hat to be cut or sheared off. The part of the hat remaining, called by the trade the body, is then dyed by respondent to the desired color, after which it is shaped, blocked, refinished, and otherwise processed. This refinishing, dyeing, and reblocking, imparts to the reconditioned felt body the appearance of a new fabric.

The bodies are then trimmed by sewing across the crown of the body, narrow ribbons or threads, dividing the crown of the cap into six sections. A sweatband is then sewed into the interior of the body, and respondent completes the process of manufacture by attaching a peak or visor of the same or contrasting color to that of the body to the reconditioned and trimmed felt. Respondent makes these baseball caps of all sizes and colors.

Respondent sells said caps to retailers, who resell them to the purchasing public, and to jobbers and wholesale dealers, who resell them to retail dealers, who in turn resell said products to the purchasing public.

PAR. 3. The aforesaid old, used, discarded, and second-hand hats, after being made over by respondent into baseball caps and fitted with new trimmings, as described in paragraph 2 herein, have the appearance of new baseball caps, manufactured from felts which have never been worn.

Said caps are sold by respondent to retailers, and to jobbers and wholesale dealers, without any label, marking, or designation on or about said caps, to indicate that said caps are in fact manufactured from second-hand and used hats which have been renovated and made over into baseball caps by respondent.

Said caps, when sold to jobbers and wholesale dealers, are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public, without disclosing the fact that said caps are manufactured from felts previously worn and then renovated and made over, and under such circumstances as to indicate falsely that they are new baseball caps.

The caps which respondent sells to retailers are resold by such retailers to the public without disclosing the fact that such caps have been manufactured from hats previously worn and then renovated and made over, and under such circumstances as to indicate falsely that they are new baseball caps.

The cost to respondent of obtaining, renovating and making over said old hats into baseball caps, as aforesaid, is much less than the cost to manufacturers of manufacturing new baseball caps of similar quality, and respondent is thereby able to sell said baseball caps to retailers, jobbers and wholesalers, and through them to the using public, at substantially lower prices than manufacturers of new baseball caps can sell caps of same or similar goods to retailers, jobbers and wholesale dealers, and through said dealers to the purchasing public.

PAR. 4. The acts and practices of respondent, as set forth in paragraphs one, two and three, are calculated to and do have the capacity and tendency to induce many wholesale and retail dealers, and many

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of the purchasing public, to purchase the said baseball caps manufactured from old, used, and discarded hats, which have been renovated and made by respondent into baseball caps, in the mistaken belief that they are purchasing new and unused baseball caps, manufactured from new and unused materials.

The acts and practices of respondent as hereinbefore set forth, tend to and do unfairly divert trade to respondent, from concerns engaged in the manufacture and sale of new baseball caps in interstate commerce, throughout the various States of the United States, and in the District of Columbia.

There are also among the competitors of respondent, corporations, individuals, firms and partnerships, engaged in the manufacture of baseball caps, from felt material obtained from used, old, discarded, and second-hand hats, which said corporations, individuals, firms, and partnerships, label, tag, and otherwise indicate on said baseball caps sold by them, that such caps are not manufactured from new and unused material but are manufactured from felt material obtained from used, old, discarded, and second-hand hats.

There are also among the competitors of respondent, individuals, firms and partnerships who are engaged in the manufacture and sale of baseball caps, manufactured from new and unused materials.

The acts and practices of respondent as hereinbefore set forth are calculated to and tend to, and do unfairly divert trade to respondent from said competitors, and by the acts and practices of the respondent hereinbefore described, substantial injury is done by respondent to substantial competition in interstate commerce.

## CONCLUSION

The acts and practices of the respondent under the conditions and circumstances set forth 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 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

Newark Felt Novelty Company, Inc., a corporation, the respondent herein, having filed its answer to the complaint in this proceeding, in and by which answer respondent stated that it desires to waive hearing on the charges set forth in the complaint, and not to contest the proceeding, admitted all the material allegations of the complaint to be true, and consented that the Commission may without



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further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon it an order to cease and desist from the violations of law charged in the complaint, and the Commission being now fully advised in the premises.

*It is ordered*, That the respondent, Newark Felt Novelty Company, Inc., a corporation, its agents, representatives, servants, and employees, in connection with the sale or offering for sale of baseball caps in interstate commerce, cease and desist from:

Selling or offering for sale, baseball caps, manufactured from felts obtained from second-hand, old, used, and discarded men's and women's felt hats, unless and until there is stamped upon, affixed, or attached to said baseball caps, in a conspicuous place so as to be easily and readily seen, word or words clearly indicating that said baseball caps are not manufactured from new and unused felts, but are manufactured from felts obtained from second-hand, old, used and discarded men's and women's felt hats.

*It is further ordered*, That respondent shall within 60 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 this order has been complied with and conformed to.

IN THE MATTER OF  
MID WEST MILLS, INC.

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

*Docket 2526. Complaint, Aug. 21, 1935—Decision, May 18, 1936*

Where a corporation, engaged in the business of a jobber of upholstering fabrics, wooden frames, padding, felt, springs, and other materials having to do with construction of furniture, and in soliciting orders from customers comprised mostly of retailers, dealers, furniture manufacturers, and furniture repair men, by mailing out samples of its upholstering material,—

Adopted and used as a corporate and trade name with which to carry on its said business, a name which included word "Mills" and displayed same on tabs attached to samples sent out by it as aforesaid, and upon circular letters enclosing such samples, and upon envelopes and business cards, shipping tags, invoice blanks, billheads, and price lists, together with words in smaller print, upon such various stationery (excepting its envelopes, upon which they did not appear), "Jobbers and Converters", and supplied its said salesmen with aforesaid samples and tabs displaying its said corporate name, for display by them in soliciting orders;

The facts being it was not engaged in the manufacture of merchandise sold by it, but purchased same in job lots at sales or from the manufacturers thereof, and it did not own, operate or control any plant, mill, or factory making such merchandise or own any interest therein, but filled orders with products purchased by it and made in mills or plants which it neither owned, operated, nor controlled;

With effect of deceiving customers and prospective customers into the belief that its said products were made by it and that, in buying from it as a manufacturer of the merchandise sold by it, they were eliminating and saving the middleman's profit and obtaining better terms and prices and merchandise of better quality and later style, and that as both manufacturer and jobber of its said products, it was engaged in selling output of its own mills, and with result that trade was diverted to it from competitors similarly engaged in sale of such products and those engaged in manufacture thereof and who, respectively, do not in any way misrepresent their status as manufacturers of the products which they sell; to the substantial injury of substantial competition in commerce:

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

Before *Mr. William C. Reeves*, trial examiner.

*Mr. George Foulkes* for the Commission.

*Kamfner, Halligan & Marks*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

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mission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Mid West Mills, Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is and has been since the year 1923, or thereabouts, 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 and office in the city of Chicago, in said State. It is now and has been since the year 1923, or thereabouts, engaged as a jobber and wholesaler of upholstering fabrics, wooden frames, padding, felt, springs, and all such material relative to the construction of furniture. In the course and conduct of its business the respondent sells through salesmen or representatives appointed by it as agents in its behalf to customers, some located in the State of Illinois and others in other States of the United States, and pursuant to such sales shipments are made from respondent's place of business in Illinois to such customers. In the course and conduct of its business, respondent is in substantial competition with other corporations, partnerships, firms, and persons engaged in the sale of like articles of merchandise between and among the various States in the United States.

PAR. 2. The respondent in the course and conduct of its business as aforesaid, in soliciting the sale of and selling of upholstering fabrics, wooden frames, padding, felts, springs, and all such material relative to the construction of furniture, as described in paragraph 1 hereof, adopted about the year 1923 as and for its corporate and trade name the words "Mid West Mills, Inc.", under which to carry on its business, which name it now uses and has used continuously since the aforesaid date. Salesmen in the employ of the said respondent are equipped with and use samples of products in soliciting orders from customers. Tabs affixed to said samples bear the words "Mid West Mills, Inc." together with the address of the said concern. Envelopes distributed in interstate commerce also contain the said corporate name and address. Letterheads, invoices, and other printed material used by the said corporation feature the corporate name containing the word "Mills."

PAR. 3. In truth and in fact, the respondent is not and has not been engaged in the manufacture of the upholstering fabrics, wooden

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frames, padding, felt, springs, and other similar products, described in paragraph 1 hereof, nor does it own, nor has it owned and operated or controlled any mill, plant, or factory wherein such merchandise is being or has been manufactured, but, on the contrary, orders are filled and have been filled with merchandise manufactured in a mill, plant, or factory which it neither owns, operates nor controls.

PAR. 4. There are among the competitors of the respondent, described in paragraph 1 hereof, corporations, partnerships, firms and persons who are engaged in the business of selling, as wholesalers and jobbers, products similar to the products of the respondent, who truthfully represent and denominate themselves as being jobbers and wholesalers and do not claim to be manufacturers; and there are also among such competitors of the respondent, corporations, partnerships, firms, and persons who are engaged in the manufacture of products similar to the products sold by the respondent, who truthfully represent and denominate themselves as being manufacturers.

PAR. 5. There is a preference on the part of certain customers in different States of the United States for goods, wares and merchandise bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said customers that by dealing directly with a mill owner or manufacturer, they can eliminate the profit of the middleman and that they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or corporations, partnerships, firms and persons not manufacturing goods, wares, merchandise, that sell to such customers.

PAR. 6. The use by the respondent of the words "Mid West Mills", as aforesaid, has had and still has the tendency and capacity to deceive, has deceived and still deceives customers and prospective customers into the belief that said products of respondent are manufactured by it and that by buying from the respondent, such customers and prospective customers will eliminate and save the middleman's profit, and to purchase said products from respondent in such erroneous belief. By the use of such corporate title and trade name by respondent, as set forth in paragraph 2 hereof, trade is diverted by respondent from its competitors, and thereby substantial injury has been done and is being done to substantial competition in interstate commerce.

PAR. 7. The practices of respondent, described in paragraph 2 hereof, 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 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."

#### 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 August 21, 1935, issued and served its complaint in this proceeding on respondent, Mid West Mills, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by George Foulkes, attorney for the Commission, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by Edwin A. Halligan, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mid West Mills, Inc., is a corporation organized under the laws of the State of Illinois. Respondent's principal office and place of business is at 1726-28 Arcade Place, in Chicago, in said State.

In or about the year 1922, Harry P. Strasberg, president of the respondent corporation, purchased the assets and good will of a defunct corporation, organized under the laws of the State of Illinois, bearing the corporate name Mid West Mills, Inc. This purchase was made from Edwin C. Buhl, trustee appointed by the court in a proceeding then pending in the Eastern Division of the United States District Court of the Northern District of the State of Illinois.

Mr. Strasberg then caused to be organized under the laws of the State of Illinois another corporation with the corporate name of Mid West Mills Supply, Inc., which corporation took over the assets

and good will of said defunct corporation, as stated. In May 1927, the name of said corporation was changed from Mid West Mills Supply, Inc., to Mid West Mills, Inc., which name has been used, and is now used, as and for respondent's corporate name.

Mr. Strasberg became the president of the corporation so organized, which since its organization has been engaged in the business of a jobber of upholstering fabrics, wooden frames, padding, felt, springs, and other materials relative to the construction of furniture.

Respondent has eight salesmen who have their headquarters at respondent's place of business in Chicago and who solicit orders for and sell respondent's merchandise throughout the United States. When orders are received by such salesmen, they are filled by respondent from its place of business in Chicago and shipped by respondent to customers some of whom reside in the State of Illinois and others in other States of the United States.

In the year 1934 the respondent did a gross business of approximately \$525,000, and for the year 1935 a gross business of approximately \$550,000.

In the course and conduct of its business respondent is in substantial competition with other corporations, partnerships, firms and persons engaged in the sale of like articles of merchandise between and among the various States of the United States.

PAR. 2. The respondent, in the course and conduct of its business, has adopted and now uses, and has used as described in paragraph 1 hereof, as and for its corporate and trade name the words "Mid West Mills, Inc." with which to carry on its business.

Respondent has solicited, and now solicits, orders from customers comprised for the most part of retailers, dealers, furniture manufacturers, and furniture repairmen by mailing out samples of its upholstery material in order that prospective customers may ascertain the quality of the product offered for sale. To such samples are attached small tabs on which are printed the words "Mid West Mills, Inc., 1726 Arcade Pl., Chicago, Illinois." With such samples to which tabs, marked as aforesaid, are attached, respondent encloses a circular letter written on stationery used by respondent concern in the conduct of its business, the letterhead on said letter being as follows:

UPHOLSTERY   DRAPERY   AUTOMOBILE FABRICS   COTTON GOODS

Telephone Seeley 6340

MID WEST MILLS, INC.

—Jobbers and Converters—

1722-1728 Arcade Place

CHICAGO

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## Findings

Respondent has been using the words "Jobbers and Converters" along with its corporate title and name, as aforesaid, since the year 1932 and is now using the same in the conduct of its said business.

Salesmen in the employ of respondent are equipped with and use said samples of products of upholstery material in soliciting orders from customers. When soliciting such orders respondent's salesmen display said samples to customers, and in many instances no other disclosures are made by said salesmen to customers as to the nature of respondent's business other than the corporate and trade name of respondent printed on the tab attached to said sample.

In the year 1930 and for about two years thereafter the respondent used the following letterhead in the conduct of its business:

MID WEST MILLS, INC.

Jobbers and Liquidators

1726-28 Arcade Place

CHICAGO.

CASH BUYERS OF

Automobile and Upholstering Fabrics, Cotton Goods, Woolens, Silks, Corduroys, Threads, Leather and Imitation Leather, Etc.

The use of the foregoing letterhead was discontinued by respondent in the year 1932.

Envelopes used by respondent in conducting its correspondence, in the sale and offering for sale by respondent of its merchandise, have printed thereon the words—

Mid West Mills, Inc.,

1722-28 Arcade Pl.,

Chicago, Illinois.

On these envelopes respondent does not print the words "Jobbers and Converters".

Since the year 1930 respondent has used letterheads, business cards, shipping tags, invoice blanks, billheads, price lists, and circular letters on which there have been printed, and are now printed, following respondent's corporate name, and in print smaller than the print used for its said corporate name, the words "Jobbers and Converters".

PAR. 3. Respondent is not, and has not been, engaged in the manufacture of merchandise which it sells. All of the upholstery material, drapery, automobile fabrics, wooden frames, padding, felt, springs, and other similar products sold by respondent to its customers, among whom are wholesale and retail dealers as well as the furniture trade and furniture manufacturers, are purchased by respondent in job lots at sales or from the manufacturers thereof.

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Respondent does not own, nor has it owned and operated or controlled any plant, mill, or factory wherein such merchandise is being, or has been manufactured, nor has respondent owned any interest in any such plant, mill, or factory; but on the contrary all of respondent's orders are filled, and have been filled, with merchandise purchased by respondent and manufactured in mills, plants, or factories which respondent neither owns, operates, nor controls.

PAR. 4. There are among the competitors of respondent, described in paragraph 1 hereof, companies, partnerships, firms, and persons who are engaged in the business of selling as wholesalers and jobbers products similar to the products of respondent, who truthfully represent and denominate themselves as being jobbers and wholesalers, and who do not claim to operate mills or to be manufacturers; and there are also among such competitors of respondent corporations, partnerships, firms, and persons who are engaged in the manufacture of products similar to the products sold by the respondent, who truthfully represent and denominate themselves as being manufacturers.

PAR. 5. There is a well developed belief in the business world generally that by buying direct from manufacturers rather than from jobbers a saving in price can thereby be effected, and because of this a preference exists on the part of certain customers in different States of the United States for upholstery material bought directly from the mill or from the manufacturer thereof. Such customers believe that by eliminating the profit of middlemen or jobbers they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or from corporations, partnerships, firms, and persons not manufacturing upholstery materials, wooden frames, padding, felt, springs, and other similar products, who sell to such customers.

There also appears to be a well developed belief in the business world, especially among furniture manufacturers, that preference to buy upholstery material directly from upholstery manufacturers exists because by so doing they can get new materials and new styles of such materials, as well as effect a saving in price.

PAR. 6. The use by the respondent of the words "Mid West Mills, Inc.," as aforesaid, has had, and still has, the tendency and capacity to deceive, has deceived, and still deceives customers and prospective customers into the belief that said products of respondent are manufactured by it and that by buying from the respondent such customers and prospective customers will eliminate and save the middleman's profit, as well as obtain merchandise of better quality and later style, and such customers do purchase said products from respondent in such erroneous belief. The use by respondent of the



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words "Mid West Mills" in its corporate name and title, has had, and still has, the tendency and capacity to mislead customers and prospective customers into the belief that the respondent manufactures the merchandise which it sells. By the use of the word "Mills" in the corporate and firm name of the respondent along with the words "Jobbers and Converters" said purchasers and prospective purchasers have been led to believe that the respondent is a manufacturer of its own merchandise as well as a jobber of the same and is engaged in selling the output of its own mills. By the use of such corporate title and trade name, trade is diverted to respondent from its competitors who do not, in any way, misrepresent their status with respect to being a manufacturer of the products sold by them, and thereby substantial injury has been done, and is being done, to substantial competition in interstate commerce.

## CONCLUSION

The aforesaid acts and practices of the respondent under the conditions and circumstances described in the foregoing findings as to the facts are to the prejudice of the public and of the competitors of respondent, and are unfair methods of competition in 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 powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST<sup>1</sup>

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before William C. Reeves,

<sup>1</sup> Modified order to cease and desist issued by the Commission on July 2, 1937, after reciting in the preamble thereof the fact of the complaint, answer, etc. and the making of the original hereinabove order, and Commission's application to the Court of Appeals for the Seventh Circuit to enforce the same, and opinion of said court on June 15, 1937 in *Federal Trade Commission v. Mid West Mills, Inc.*, 90 F. (2d) 723 that if respondent did not voluntarily strike the word "Mills" from its name it should clearly inform its prospective customers of the true fact, and said court's denial of the Commission's application, without prejudice to Commission order directing the addition of appropriate words which will clearly convey to the public the fact that respondent neither owns nor operates a mill, directs respondent, its officers, etc. as set forth in the original order (and with report of compliance within 30 days as also therein set forth) to—

(1) Cease and desist from the use of the corporate name Mid West Mills, Inc., or any other name of the same or similar import, unless and until there be used, in type of the same size and equally conspicuous, in immediate connection and conjunction with said name, wherever used, whether on stationery, garment labels, tickets, invoices, or other written or printed matter, the words "Jobbers and Converters, Not Mill Owners or Mill Operators"—or

(2) If respondent desires not to use the qualifying and modifying terms set forth in Paragraph (1) hereinabove, that it cease and desist altogether from the use of the word "Mills" either standing alone, or in connection or conjunction with any other word or words, in its corporate name, and on stationery, garment labels, tickets, invoices, or other written or printed matter.

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an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein, 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 ordered,* That the respondent, Mid West Mills, Inc., a corporation, its officers, agents, representatives, servants, and employees, in connection with the offering for sale and sale of upholstering fabrics, wooden frames, padding, felt, springs, and all other such material, relative to the construction of furniture, in interstate commerce, cease and desist from:

Representing, directly or indirectly, through and by use of its corporate or trade name, through letterheads, circulars, advertising literature, or in any other manner, that it is a manufacturer, mill operator, or mill owner.

*It is further ordered,* That the respondent above named within 30 days after the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with.

## Complaint

## IN THE MATTER OF

## GENERAL HANDKERCHIEF MFG. COMPANY, INC.

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

*Docket 2772. Complaint, Apr. 17, 1936—Decision, May 20, 1936*

Where a corporation, engaged in the sale and distribution of handkerchiefs—  
Included in its corporate name the letters "Mfg." and displayed said name on  
circulars, advertising matter and otherwise in all of its dealings with  
customers or prospective customers, and set forth on circulars distributed  
to such customers the words "Manufactured exclusively by General Hand-  
kerchief Manufacturing Co., Inc. \* \* \* Chicago, Illinois; Factory  
\* \* \* Newark, New Jersey. We manufacture \* \* \* and welcome  
an opportunity of quoting you \* \* \*", and also distributed, as afore-  
said, a circular containing words "We manufacture a complete line  
\* \* \*" etc., and printed on its billheads, circulated by it, following its  
corporate name, word "Manufacturers", facts being it did not make the  
products dealt in by it, nor own or control any factory at Newark, Chi-  
cago, or any other place making the same, but sold products made by  
persons or concerns other than itself;

With tendency and capacity to confuse, mislead, and deceive a substantial  
number of the purchasers of its products into the belief that it was a  
manufacturer and to purchase its said products in such erroneous belief,  
and in belief that in buying from it they were dealing with a manufacturer  
of established business standing and thereby gaining the advantages nor-  
mally had by dealing with a manufacturer rather than one not a manu-  
facturer, and benefitting, according to common belief among such pur-  
chasers, by assurance of more uniform line of goods and greater contract  
reliability and greater desirability and advantage of such dealing, and  
with effect of diverting trade to it from competitors, among whom there  
are those who make and distribute such products dealt in by them, and  
similarly engaged jobbers, who respectively do not misrepresent their  
status as manufacturers; to the substantial injury and prejudice of  
substantial competition:

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

*Mr. T. H. Kennedy* for the Commission.

*Meyers & Lesser*, of Newark, N. J., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress approved Sep-  
tember 26, 1914, entitled "An Act to create a Federal Trade Com-  
mission, to define its powers and duties, and for other purposes",

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the Federal Trade Commission, having reason to believe that the General Handkerchief Mfg. Company, Inc., a corporation hereinafter called the respondent, has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is General Handkerchief Mfg. Company, Inc., a corporation organized in or about 1933 and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 919 West Roosevelt Road, Chicago, Ill. It is and for more than one year last past has been engaged in the sale and distribution of handkerchiefs in commerce between and among the various States of the United States, causing the same when sold to be shipped from its place of business in the State of Illinois or other State of origin to purchasers thereof located in various States of the United States other than the State of Illinois or other State of origin. In the course and conduct of its business said respondent was at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, said respondent included within its corporate name, under which to carry on its business, the letters "mfg." an abbreviation of the word "manufacturing". It has used continuously since in or about 1933, and is now using said corporate name, containing the said letters "mfg." in soliciting the sale of and selling its products in interstate commerce. Respondent has caused its corporate name "General Handkerchief Mfg. Company, Inc." to appear on its letterheads, bill heads, business cards, circulars, advertising matter, and otherwise, and has caused its said name to appear in trade directories. All of said printed matter has been and is distributed in interstate commerce to customers and prospective customers of respondent. Respondent has also solicited sales of its product by means of circulars distributed in interstate commerce to customers and prospective customers, said circulars containing the following representation:

Manufactured exclusively by General Handkerchief Mfg. Company, Inc., 919 West Roosevelt Road, Chicago, Illinois. Factory—22-24 Prospect St., Newark, N. J.

We manufacture a full line of sanitary packed handkerchiefs and welcome an opportunity of quoting you on your special requirements.

## Complaint

Respondent has caused the following representation to be published in the annual directory of the handkerchief industry, 1935-1936:

General Handkerchief Manufacturing Company,  
Factory—919 West Roosevelt Road,  
Chicago, Illinois.

Said directory of the handkerchief industry was published by the Handkerchief Industry Association, Inc., and was and is circulated in interstate commerce to customers and prospective customers of respondent. Respondent has circulated in interstate commerce to its customers and prospective customers, a circular containing the following representation:

We manufacture a complete line of sanitary boxed men's handkerchiefs.

On respondent's bill heads, following the aforesaid corporate name of respondent, respondent has caused to be printed the word "manufacturers". In truth and in fact the said respondent does not make or manufacture the products sold by it, nor has it ever made or manufactured said products, nor does the respondent own or control a factory at Chicago, Ill., or Newark, N. J., nor does it own or operate or directly and absolutely control any factory at either of said places or elsewhere wherein the products sold by it are made or manufactured, but on the contrary respondent has filled and now fills orders with products made or manufactured in a factory which it does not own, operate, or control.

PAR. 3. There is a preference on the part of certain purchasers or prospective purchasers located in different States of the United States, for products similar to those sold by respondent to be resold by retail to the public for buying directly from the manufacturer thereof. There is an impression and belief existing among certain of said purchasers or prospective purchasers of handkerchiefs, that a more uniform line of goods may be purchased from a manufacturer than from one not a manufacturer; that more reliance can be placed on a manufacturer with regard to the carrying out of contracts than can be placed on one not a manufacturer, and that dealing with a manufacturer is preferable and more advantageous to the purchaser than is dealing with one not a manufacturer. The use by the respondent of "mfg." in respondent's corporate name, and the use by the respondent of the words "manufactured", "manufacture" and "factory", as described in paragraph 2 hereof, has a tendency and capacity to mislead and deceive purchasers who are customers and

## Findings

prospective customers of respondent by causing them to believe that respondent actually owns and operates, or directly and absolutely controls the factory in which products sold by respondent are made or manufactured, or that respondent itself makes or manufactures its products and that as a result thereof they will secure an advantage in dealing with respondent. The aforesaid representations by respondent have a tendency and capacity unfairly to divert trade to respondent from other corporations, associations, individuals, firms, and partnerships who are actually manufacturing products similar to the products of respondent, and those competitors of respondent who do not manufacture similar or like products to those of respondent for sale and distribution in interstate commerce, but who truthfully advertise and label their products and who do not claim and represent themselves to be manufacturers.

PAR. 4. The practices of respondent described hereinabove 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 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."

## 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 17, 1936, issued and served its complaint in this proceeding upon the respondent, General Handkerchief Mfg. Co. Inc., a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent answered said complaint and in said answer admitted the allegations of the complaint and the facts therein set forth to be true, and stated that it waived hearings on the charges set forth in the complaint; that it refrained from contesting the proceeding and that it consented that the Commission make, enter, issue and serve upon it without hearing or other intervening procedure findings as to the facts and an order to cease and desist from the methods of competition alleged in the complaint.

Thereafter the proceeding came on regularly for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same and being

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fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

Since in or about 1933 the respondent, General Handkerchief Mfg. Co. Inc., has been organized and exists as a corporation under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 919 West Roosevelt Road, Chicago, Ill. Since said 1933 respondent has been engaged in the sale and distribution of handkerchiefs and has sold its products to various firms, persons, associations or corporations located not only in the State of Illinois, but other States of the United States, and after sales have been consummated the respondent has shipped the purchased goods or caused them to be shipped from its place of business in the State of Illinois, or from other States of the United States, to purchasers thereof located in States other than the State of Illinois, or than the State of origin of the shipment.

During all the time that respondent has been engaged in the foregoing business there have been other firms, associations, partnerships, or corporations engaged in similar business to that of respondent, to wit, the sale and distribution of handkerchiefs in interstate commerce. The respondent during all of the aforesaid time was and still is in competition in commerce in the sale of said products with other individuals, firms, and corporations likewise engaged in the sale and distribution of said or similar products in interstate commerce.

In soliciting the sale of its products, respondent has continuously included within its corporate name the letters "Mfg.", which is an abbreviation of the word "Manufacturing." This corporate name "General Handkerchief Mfg. Co. Inc." has appeared on respondent's letterheads, billheads, business cards, circulars, advertising matter, and otherwise in all of its dealings with respondent's customers or prospective customers.

Since in or about 1933 the respondent has also carried the following representations on the circulars distributed in interstate commerce to customers or prospective customers "Manufactured exclusively by General Handkerchief Manufacturing Co. Inc., 919 West Roosevelt Road, Chicago, Illinois; Factory—22-24 Prospect Street, Newark, New Jersey. We manufacture a full line of sanitary packed handkerchiefs and welcome an opportunity of quoting you on your special requirements." There has also appeared in the Annual Directory of the Handkerchief Industry for 1935-1936 the following: "General Handkerchief Manufacturing Company—Factory 919 West

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Roosevelt Road, Chicago, Illinois." Said directory of the handkerchief industry was and is circulated in interstate commerce to customers and prospective customers of respondent.

Respondent has also circulated in interstate commerce to its customers and prospective customers a circular containing the following representation: "We manufacture a complete line of sanitary boxed men's handkerchiefs."

Respondent has also caused to be printed on respondent's billheads following its corporate name the word "Manufacturers." These billheads have likewise been circulated in interstate commerce in ordinary business transactions of the respondent.

As a matter of fact at no time since 1933 has the respondent ever made or manufactured the products which it has sold, nor has it ever owned or absolutely controlled any factory during said time. Respondent has not owned or controlled factories at either Newark, N. J., Chicago, Ill., or any other place, nor does it now own or control any factory where the products sold and shipped by it in interstate commerce have been made or manufactured. However, respondent has at all times since 1933 sold products which have been made or manufactured by persons, firms or corporations other than itself.

The representations above referred to which have been made by respondent by the use of the letters "Mfg." the words "Manufacturers", "Manufactured", "Manufacture", "Factory—22-24 Prospect Street, Newark, New Jersey" and "Factory—919 West Roosevelt Road, Chicago, Illinois" have been made in such a way that respondent's customers or prospective customers were and are led to believe that respondent operates a factory or is a manufacturer.

It is the common belief among purchasers or prospective purchasers of respondent's products located in various States of the United States that handkerchiefs can be purchased directly from a manufacturer with assurance of a more uniform line of goods than can be obtained from one not a manufacturer; that more reliance can be placed upon a manufacturer with regard to the carrying out of contracts than can be placed upon one not a manufacturer; and that dealing with a manufacturer is preferable and more advantageous to the purchaser than is dealing with one not a manufacturer. The representations made by respondent above referred to have the capacity and tendency to mislead and deceive the purchaser of respondent's products into believing that when purchasing said products from respondent they are dealing with a manufacturer of established business standing and that such purchasers are thereby gaining all of the advantages that they normally gain by dealing with a manufacturer rather than one not a manufacturer.



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The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive a substantial number of the purchasers of respondent's products into the belief that respondent is a manufacturer, and to purchase respondent's products in such erroneous belief.

There are many competitors of respondent who manufacture and distribute products similar to those sold by respondent in interstate commerce who do not misrepresent their status as a manufacturer, who likewise sell and distribute products similar to those sold and distributed by respondent in various States of the United States, and there are jobbers engaged in business similar to that conducted by respondent who do not represent themselves to be manufacturers.

Respondent's acts and practices as hereinabove set forth tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

## 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 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 matter coming on to be heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, said answer admitting all the allegations of the complaint and the facts therein set forth to be true and stating that the said respondent desires to waive hearing on the charges set forth in the complaint, that it refrains from contesting the proceedings and that it consents that the Commission may make, enter, issue, and serve upon it, without hearing or other intervening procedure, findings as to the facts and an order to cease and desist from the methods of competition alleged in the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated 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" and being fully advised in the premises;

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*It is now ordered,* That the respondent, General Handkerchief Manufacturing Company, Inc., and its agents, representatives, servants and employees in connection with the offering for sale and sale of handkerchiefs in interstate commerce, cease and desist from:

Representing directly or indirectly through and by use of its corporate name, letterheads, circulars, advertising literature or in any other manner that it is a manufacturer.

*It is further ordered,* That the respondent above named within 30 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with.

## Syllabus

## IN THE MATTER OF

F. A. MARTOCCIO COMPANY, IN ITS OWN NAME AND  
RIGHT AND TRADING AS HOLLYWOOD CANDY  
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND IN VIOLA-  
TION OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

*Docket 2283. Complaint, Jan. 23, 1935—Decision, May 26, 1936*

Where a corporation engaged in the manufacture and sale of candy, including "straight" merchandise and "draw" or "deal" assortments composed of small bars, middle sized bars, and larger bars, and punch boards or push cards so arranged that number punched by chance from 100-disc board or card determined which size bar purchaser was to receive by lot or chance in return for five cents paid, and in accordance with legend set forth on the explanatory display card supplied with assortment—

Sold said assortments, along with said boards and display cards, to wholesale dealers or jobbers, so assembled and packed that they could be displayed by retailer vendees without alteration or rearrangement, and be by them offered and sold to consuming and purchasing public by means of said push cards, and with knowledge and intent that they would and should thus be resold to such public by said retailers, including small dealers whose stores, frequently located near schools, attract trade of school children, principal consumers or purchasers of lottery or prize-package candy, and purchasers thereof in preference to "straight goods" product, by reason of lottery or gambling feature connected with former and possibility of becoming a winner, and who constitute source of a substantial demand therefor;

With result that competitors, including those who, along with many retail and wholesale dealers and jobbers, regard such method of sale and distribution as morally bad and as encouraging gambling, especially among children, and as injurious to the industry in merchandising a chance or lottery instead of candy and as providing retail merchants with means of violating the laws of the several States, and who refuse, in common with various dealers, to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage in competing, and retailers who found that they could dispose of more candy by the draw or deal method, bought its products and those of others employing such methods and trade was diverted to it and such others, from said competitors, whose sales of "straight goods" candy showed continued decrease and who can compete on even terms only by giving same or similar devices to retailers, which they are unwilling to do, and some competitors began sale and distribution of candy packed and assembled for resale to public by lot or chance in order to meet competition of candy sold and distributed by such methods and in constant demand; to the prejudice and injury of the public and competitors and in restraint upon and to the detriment of freedom of fair and legitimate competition in said industry, and in violation of the public policy of the United States Government:

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

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. Henry C. Lank* for the Commission.

*Guesmer, Carson & MacGregor*, of Minneapolis, Minn., for respondent.

## COMPLAINT

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, having reason to believe that F. A. Martoccio Company, a corporation, in its own name and right and also trading as Hollywood Candy Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act", and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

*Count 1*

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business in the city of Minneapolis, State of Minnesota. Respondent, for more than one year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States, and causes said products when so sold to be transported from its principal place of business in the city of Minneapolis, Minn., to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than one year last past a course of trade and commerce by the said respondent in such candy between and among the States of the United States and in the District of Columbia. In the course and conduct of the said business, respondent is in competition with other corporations, individuals, and partnerships engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of this business as described in paragraph 1 herein, respondent sells and has sold to wholesale dealers and jobbers, certain packages of assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of the said assortments are composed of a number of bars of candy of uniform size, shape and quality together with a number of larger pieces of candy, together with a device commonly known as a punch board. The larger pieces of candy contained in said assortment are to be given as prizes to purchasers of punches from said board in the following manner:

(a) Punches from said board are five cents each and when a punch is made a number is disclosed. The board bears a statement or statements informing the prospective customer as to which numbers receive the additional pieces of candy and the size thereof. All purchasers of punches from said board receive a bar of candy but certain punches, depending upon the number printed thereon, entitle the purchaser to one of the additional pieces of candy. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The additional pieces of candy contained in said assortments are thus distributed to purchasers of punches from said boards wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resell said assortments of candy to retail dealers and said retail dealers expose said assortments for sale in connection with the aforesaid punch boards and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said product in preference to candies offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure such larger pieces of candy in the manner alleged. Such game of chance and the sale along with the sale of such candy of such chance to procure such larger pieces of candy in the manner alleged are contrary to the established public policy of the several States of the United States and the District of Columbia and of the Government of the United States, and in many of the States of the United States are contrary to local criminal statutes.

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By reason of the said facts, many persons, firms, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or sell candies so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or the sale with such candy of a chance to procure larger pieces of candy by chance; and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candies are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candies offered for sale and sold by competitors of the respondent who do not use the same or equivalent methods. Many dealers in candies are induced to purchase said candies so offered for sale and sold by respondent in preference to all others because said ultimate purchasers thereof give preference to respondent's said candies on account of said game of chance so involved in the sale thereof.

PAR. 6. The use of said method by respondent has the tendency and capacity unfairly, and because of said game of chance alone, to divert to respondent trade and custom from its competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and do not use the same or equivalent methods; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondent are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such method is detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of such reasons.

PAR. 7. The aforementioned method, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said method, acts, and practices 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.

*Count 2*

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business in the city of Minneapolis, State of Minnesota. Respondent for more than one year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the State of Minnesota and at points in various other States of the United States, and causes said products when so sold to be transported from its principal place of business in the city of Minneapolis, Minn., to the purchasers thereof in the State of Minnesota and to other purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for more than two years last past a course of trade and commerce by the said respondent in such candy in the State of Minnesota and between and among the States of the United States and in the District of Columbia. In the course and conduct of said business respondent is in competition with other corporations, individuals, and partnerships engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 2 of said count one were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and

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said paragraph 3 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 3 of said count one were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count one were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count one were repeated verbatim.

PAR. 6. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 6 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 6 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 6 of said count one were repeated verbatim.

PAR. 7. Under and pursuant to the provisions of Section 2 of said National Industrial Recovery Act, the President of the United States on the 16th day of June, 1933, by his executive order in writing appointed Hugh S. Johnson to be the Administrator for Industrial Recovery under Title I of said act.

Under and pursuant to the provisions of said National Industrial Recovery Act, National Confectioners' Association of the United States, Inc., a corporation, as a representative of the Candy Manufacturing Industry, submitted to the President of the United States an application for the approval of a Code of Fair Competition for the Candy Manufacturing Industry.



Said application was duly referred to said Hugh S. Johnson, as such administrator, by and before whom such further action was taken and proceedings were had that on the 9th day of June, 1934, said Johnson, as such administrator, submitted a certain Code of Fair Competition for the Candy Manufacturing Industry to the President of the United States, together with his written report containing an analysis of said code of fair competition, and with his recommendations and findings with respect thereto, wherein said administrator found that the said code of fair competition complies in all respects with the pertinent provisions of Title I of the National Industrial Recovery Act, and that the requirements of classes (1) and (2) of subsection (a) of Section 3 of said Act had been met. The concluding paragraphs of said report are in the following words, to wit:

I find that:

(a) Said Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is a trade association truly representative of the aforesaid Industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(c) The Code is not designed to and will not permit monopolies or monopolistic practices.

(d) The Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(e) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

It is recommended, therefore, that this Code be approved.

Respectfully,

HUGH S. JOHNSON,  
*Administrator.*

JUNE 9, 1934.

Thereafter, and on the 11th day of June, 1934, the President of the United States made and issued his certain written executive order wherein and whereby he adopted and approved the report,

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recommendations and findings of said administrator, and ordered that the said code of fair competition be, and the same thereby was, approved, and by virtue of said National Industrial Recovery Act the provisions of said code became, and still are, the standard of fair competition for the Candy Manufacturing Industry, and became and still are binding upon every member thereof, except that said code of fair competition when so approved was approved with a proviso that Rule 19, Article VIII thereof was stayed for a period of 10 days. Successive subsequent administrative orders were severally duly made and entered by which the provisions of said Rule 19, Article VIII, were stayed for fixed periods designated in said several orders, the latest date to which said Rule 19 was stayed being July 30, 1934. On July 30, 1934, said Rule 19, Article VIII, became in full force and effect. On and since said July 30, 1934, the said code of fair competition, including said Rule 19, Article VIII, has been and is in full force and effect and became, and still is, binding upon every member of said Industry.

Rule 19, Article VIII, of said Code provides as follows:

No member of the industry shall sell or distribute the type of merchandise commonly referred to as "break and take", "picks", or "draws", or merchandise of a like character, serving the same purpose.

Among persons engaged in said trade and among the purchasing public the language of said Rule 19 is understood to refer to and include candies offered for sale and sold by the method used by respondent as above alleged. The language of said Rule 19 does refer to and include candies so offered for sale and sold. Candies offered for sale and sold by the method so used by the respondent are of the type of merchandise commonly referred to as "break and take", "picks", or "draws", and are merchandise of a like character, serving the same purpose, within the intent and meaning of said Rule 19, Article VIII.

Notwithstanding said provisions of said Rule 19, Article VIII, of said code of fair competition, respondent has continued to, and does, use said method of competition hereinabove alleged and described, and has been and is offering for sale and selling to wholesale dealers, and jobbers, certain packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, as hereinabove alleged and set forth.

PAR. 8. The above alleged method, acts and practices of the respondent are and have been in violation of the standard of fair competition for the Candy Manufacturing Industry of the United States. Such violation of such standard in the aforesaid transactions

in interstate commerce and in other transactions which affect interstate commerce in the manner set forth in paragraph 6 of count one hereof, are in violation of Section 3 of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

#### 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 23, 1935, issued and served a complaint in two counts upon the respondent, F. A. Martoccio Company, a corporation in its own name and right and trading as Hollywood Candy Company, charging in count one of the aforesaid complaint that the respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and charging in count two of the aforesaid complaint that the said respondent had been and was using unfair methods of competition in commerce in violation of the act of Congress approved June 16, 1933, known as the National Industrial Recovery Act.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of count one of the complaint were introduced by Henry C. Lank attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in defense of the allegations of count one of the complaint by Arnold L. Guesmer, attorney for the respondent, and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on count one of said complaint, the answer thereto, testimony and evidence, briefs in support of said count one of the complaint and in defense thereto, and the oral arguments of counsel aforesaid, and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts as to count one of the aforesaid complaint and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. A. Martoccio Company, is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business in the city of Minneapolis,

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State of Minnesota. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in Minneapolis and in the sale and distribution of said candy under trade name, Hollywood Candy Company, to wholesale dealers and jobbers located in the State of Minnesota and other States of the United States. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Minnesota to purchasers thereof in Minnesota and in the States of the United States other than the State of Minnesota. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. Among the candy manufactured and sold by respondent, are several assortments composed of a number of bars of candy of uniform size, shape and quality, together with a number of larger bars of candy of the same quality and a device commonly called a "punch board" or "push card." The respondent manufactured and distributed all such assortments, with which a "push card" or "punch board" was included, involving the same lot or chance feature in the distribution to the ultimate consumer and varied in detail.

Illustrative of the sales method involved was an assortment which the respondent designated "Big Chief Deal." This assortment contained seventy bars of candy of one size, twenty larger bars of candy and ten still larger bars of candy, all of the said bars being of the same quality candy. The "punch board" or "push card" included with this assortment bore legends at the top thereof stating the manner in which the several bars in said assortment were to be distributed to the ultimate purchasers. These legends were as follows:

	5¢ per sale
<b>"BIG CHIEF DEAL</b>	
* * * NO BLANKS * * *	
Numbers 5-10-15-20-25-30-35-40-45-50-55-60-65-70-75-80-85-90-95-100	
Each Receive One $\frac{1}{4}$ POUND NOUGAT LOAF	
Numbers 3-13-23-33-43-53-63-73-83 Each Receive One	
$\frac{1}{2}$ POUND NOUGAT LOAF	
All Other Numbers With the Exception of Last Push Each Receive Choice	
of Either PUZZLE OR BIG TIME BAR	
Last Purchase Receives One $\frac{1}{2}$ POUND NOUGAT LOAF"	

The "punch board" or "push card" also had, immediately below the legends quoted, 100 partially perforated discs and under each disc was a number, which number was effectively concealed from the purchasers and prospective purchasers until a punch or selection had been made and the particular disc separated from the board. The candy contained in said assortment was distributed to the consuming public in accordance with the legends at the top of said "punch board" or "push card." Sales were 5 cents each and the fact as to whether a purchaser received one of the small bars, one of the middle sized bars, or one of the largest bars for the price of 5 cents was thus determined wholly by lot or chance, by the use of said "punch board" or "push card."

With this Big Chief assortment, the respondent furnished a display card or advertisement of the deal. The display card was of white cardboard 10 inches by 18 inches, having printed thereon in bold red letters the following:

"5¢

**BIG CHIEF DEAL**

**NO BLANKS—YOU CAN'T LOSE**

**20 ¼ LB. NOUGAT LOAVES**

**20 ½ LB. NOUGAT LOAVES**

**Let's Go . . . 'WHOOPEE' "**

This card was adopted during the summer of 1934 and was in use at the time of the hearing. Previous to the summer of 1934, a similar card was used which had the word "FREE" in front of the numbers 20 and 10.

PAR. 3. The candy assortments involving the lot or chance feature, as described above, are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without the lot or chance feature, in connection with their resale to the public, are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to distinguish these separate types of assortments.

The respondent began the manufacture and distribution of candy in 1929 and at that time its entire output was assembled and packed as "straight" goods. In 1933, the respondent began the manufacture and distribution of the various "draw" or "deal" assortments and has continuously, since said time, manufactured one or more such assortments. It has, from time to time, discontinued, either permanently or seasonally, certain of these assortments, but has continued the manufacture and distribution of other of said assortments.

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PAR. 4. Numerous retail dealers purchase the assortments described in paragraph 2 above from wholesale dealers or jobbers, who, in turn, have purchased said packages or assortments from the respondent. Such retail dealers display said packages for sale to the public, as packed by the respondent, and the candy, contained in said packages or assortments, is sold and distributed to the consuming public by means of the "push cards" furnished by respondent, and in accordance with the legends printed thereon.

PAR. 5. The respondent sells its merchandise to wholesale dealers and jobbers throughout the United States, with the exception of the extreme western coast States, and respondent's merchandise, both "straight" and "draw" or "deal" assortments, is resold in practically all stores where candy is sold. This includes grocery stores, drug stores, restaurants, hotels, cigar stands, and school stores.

All sales made by the respondent are absolute sales and the respondent retains no control over the goods after they are delivered to the wholesale dealer, jobber or retail dealer. The packages are assembled and packed in such manner that they can be displayed by the retail dealer, without alteration or rearrangement, and offered for sale to the consuming or purchasing public by means of said push card.

In the sale and distribution to jobbers and wholesale dealers, for resale to retail dealers of packages and assortments of candy assembled and packed, as described in paragraph 2 herein, respondent has knowledge that said candy will be resold to the purchasing public, by retail dealers, by lot or chance, and it packs and assembles such candy in the way and manner described, and furnishes the said "push card" so that the said candy may, and shall, be resold to the public by lot or chance, by said retail dealers.

PAR. 6. A substantial demand in the trade for "draw" or "deal" candy comes from the small retailers. The stores of these small retailers are, in many instances, located near schools and attract the trade of school children. The consumers, or purchasers of lottery or prize package candy, are principally children, and because of the lottery or gambling feature connected with the "draw" or "deal" assortments, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the "straight goods" candy, when the two packages of candy are displayed side by side.

Witnesses, from several branches of the candy industry, testified in this proceeding to the effect that children preferred to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of "draw" or "deal"

packages or assortments of candy, or of candy which has connected with its sale to the public, the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of this type of candy.

PAR. 7. There are, in the United States, many manufacturers of candy who do not manufacture and sell lottery or prize packages or assortments of candy and who sell their "straight goods" candy in interstate commerce, in competition with the "draw" or "deal" candy, and manufacturers of "straight goods" type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sale of "straight goods" candy is principally due to the gambling or lottery features indicated with the "draw" or "deal" candy.

PAR. 8. The sale and distribution of candy, by retailers, by the methods described in paragraph 2 hereof, is the sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device. Retail candy dealers, wholesale dealers and jobbers, and manufacturers in competition with respondent, appeared as witnesses in this proceeding and testified, and the Commission finds as a fact that many retail dealers, wholesale dealers and jobbers and competitors of respondent regard such method of sale and distribution as morally bad and as encouraging gambling, especially among children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing retail merchants with a means of violating the laws of several States. Because of these reasons, various dealers and competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. Such competitors of respondent are thereby put to a disadvantage in competition. Certain retail dealers who find that they can dispose of more candy by the "draw" or "deal" method buy respondent's products, and the products of others employing the same method of sale, and thereby trade is diverted, to respondent and others using similar methods, from such competitors. Such competitors can compete on even terms only by giving the same or similar devices to retailers. This, they are unwilling to do and their sales of "straight goods" candy show a continued decrease.

There is a constant demand for candy which is sold by lot or chance and in order to meet the competition of manufacturers, who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of

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candy packed and assembled for resale to the public by lot or chance. The use of such methods, by the respondent, in the sale and distribution of its candy, is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent, from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 9. Respondent has approximately 4,000 wholesale dealers or jobbers on its mailing list and sells its candy generally throughout the United States. Respondent's gross sales for all of its candy products, both "straight" merchandise and "draw" or "deal" assortments for 1929 were 502,248, 1930—525,993, 1931—915,856, 1932—632,605, 1933—674,471 and 1934—731,602.

The sale and distribution of candy by lot or chance is against the public policy of the Government of the United States.

## CONCLUSION

The aforesaid acts and practices of respondent, F. A. Martoccio Company, a corporation in its own name and right and trading as Hollywood Candy Company, under the conditions and circumstances set forth in the foregoing findings of fact, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce, and constitute 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 AS TO COUNT ONE OF THE COMPLAINT AND  
ORDER OF DISMISSAL AS TO COUNT TWO OF THE COMPLAINT

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the charges of said count one of said complaint and the opposition thereto, briefs filed herein and oral argument of Henry C. Lank, counsel for the Commission and Arnold L. Guesmer, counsel 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."



## Order

*It is hereby ordered*, As to count one of the aforesaid complaint, that the respondent, F. A. Martoccio Company, a corporation, in its own name and right and trading as Hollywood Candy Company, its officers, directors, agents, representatives, and employees, in the manufacture, sale and distribution in interstate commerce of candy and candy products, cease and desist from:

(1) Selling and distributing to wholesale dealers and jobbers, for resale to retail dealers, candy so packed and assembled that sales of said candy to the general public are to be made, or may be made, by means of a lottery, gaming device or gift enterprise;

(2) Supplying to, or placing in the hands of wholesale dealers and jobbers, packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the contents of said packages or assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy or candy products, contained in said assortment, to the public;

(3) Supplying to, or placing in the hands of, wholesale dealers and jobbers assortments of candy together with a device, commonly called a "punch board" or "push card", for use, or which may be used, in distributing or selling said candy to the public at retail;

(4) Furnishing to wholesale dealers and jobbers a device, commonly called a "punch board" or "push card", either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchasing public that the candy, or candy products, are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device or gift enterprise.

*It is further ordered*, That the respondent, F. A. Martoccio Company, a corporation, in its own name and right and trading as Hollywood Candy Company, within 30 days after 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 has complied with the order to cease and desist hereinabove set forth.

*And it is hereby further ordered*, That, by reason of the decision of the Supreme Court of the United States in *A. L. A. Schechter Poultry Corporation v. United States of America*, decided May 27, 1935, [295 U. S. 495] count two of the complaint in this proceeding be and the same is hereby dismissed.

IN THE MATTER OF  
CANTON SILK MILLS, INC.

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

*Docket 2618. Complaint, Nov. 8, 1935—Decision, May 26, 1936*

Where a corporation engaged in the purchase of raw griego or unfinished silk and rayon cloths and fabrics from weavers and manufacturers and in causing said cloths and fabrics to be dyed, printed, or processed into finished dry goods and materials by others and in selling such finished goods and materials to various retailers, members of the cutting-up trade, and others—

Represented and implied, through display and use of its trade name containing the words "Silk Mills", and the language "Mills: Riverside, Rhode Island, Phenix, Rhode Island", on advertising cards, letterheads, bills, invoices, and other printed matter, that it owned, operated, and maintained or controlled one or more mills for the manufacture of silks or silk goods;

Facts being it was not engaged in the manufacture, printing, processing or dyeing of silk or silk material or rayon or rayon materials and did not own, operate, maintain or control any such mill or plant in which such fabrics were made, dyed, printed, or processed, or own, control, operate, or maintain any mill or plant for manufacturing, dyeing, printing, or processing such fabrics at the aforesaid places or at any other place whatsoever;

With effect of deceiving and misleading customers and prospective customers of such finished silk and rayon goods and materials into the belief that the products thus offered and sold by it were made by it in mills which it owned and operated or maintained and controlled, and of inducing such customers to purchase such products from it because of such erroneous belief, and in response to the preference of certain customers for dealing directly with the manufacturer as eliminating the profit of the middleman, or as giving customer more uniformity in quality and design, and of diverting trade thereby to it from competitors, among whom there are those who truthfully represent and denominate themselves as engaged in the manufacture of such products and those engaged in the purchase and resale thereof, and who do not respectively misrepresent themselves as owners and operators of mills and factories in which their products are made, dyed, or printed and processed:

*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.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. John Darsey* for the Commission.

*Mr. Morris A. Schoenfeld*, of New York City, for respondent.

## Complaint

## COMPLAINT

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, having reason to believe that Canton Silk Mills, Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 469 Seventh Avenue, New York, N. Y.; that William H. Cohen is president and treasurer of said corporation, and Martha Cohen is the secretary and vice president thereof; that the board of directors of said corporation consists of William H. Cohen, Martha Cohen, and Martin Goldberg.

PAR. 2. Respondent is now and has been since about 1933 engaged in the business of buying silk and rayon cloths and fabrics in the raw, grieger, or unfinished state, of procuring or causing said cloths and fabrics to be dyed, printed, or processed by others into finished goods or materials suitable for sale to dry goods retailers and the cutting-up trade, and of offering for sale and selling said finished goods and materials to prospective and actual purchasers. In the course and conduct of its said business, respondent buys raw grieger or unfinished silk and rayon cloths and fabrics from weavers and manufacturers located in various States of the United States, and causes the raw grieger or unfinished cloths and fabrics to be dyed, printed, or processed into finished dry goods and materials by others in the State of New York and other States, and offers for sale and sells such finished goods and materials to various retailers, members of the cutting-up trade and others in States of the United States other than the State of New York, including the District of Columbia and the State of New York. Pursuant to such converting and selling operations, respondent ships and transports or causes to be shipped and transported from its place of business in the State of New York to, into, and through various States of the United States, finished silk and rayon fabrics and materials to the purchasers thereof located in States other than the State of New York. Respondent, in the course and conduct of its said business, is in sub-

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stantial competition with other corporations, firms, associations, partnerships, and individuals likewise engaged in procuring the dyeing, printing, converting, and processing of raw silk and rayon cloths and fabrics into finished materials and in offering for sale and selling such finished materials and transporting the same from the States in which such competitors have their respective places of business, including the State of New York, to, into, and through other States of the United States. Respondent is also in substantial competition with weavers and manufacturers of silk and rayon cloths and material who themselves dye, print, convert, and process such fabrics so manufactured by them and offer the finished goods or materials for sale and sell and transport the same from the States in which such weavers and manufacturers have their respective places of business, including the State of New York, to, into, and through other States of the United States.

PAR. 3. Respondent in purchasing said raw silk and rayon cloths and fabrics and in causing the same to be dyed, printed, processed, or converted into finished materials, and in offering for sale and selling said finished goods, employs salesmen, agents, and representatives to approach and contact prospective purchasers for said finished products, said prospective purchasers usually being dry goods retailers or members of the cutting-up trade; respondent also corresponds with various weavers, manufacturers of raw goods, dyers, printers, processors, retailers, and members of the cutting-up trade, and distributes among them and to prospective purchasers advertising cards and other printed matter. Respondent, since about the year 1933, has represented and does represent by the use of its corporate name and by other means, as hereafter set forth, to such prospective and actual purchasers of finished silk and rayon goods and materials and to the general public, that it owns, operates, maintains, or controls mills, plants, and factories for the manufacture of silk or silk goods and rayon or rayon goods, and particularly that it owns, maintains, and operates two such mills at Riverside, R. I., and Phenix, R. I. Respondent has adopted and used and is using the name "Canton Silk Mills, Inc." as a trade name and the use of said name in the course and conduct of its said business, both by itself and in conjunction with the word "Silks", with which it is also used imports and implies that respondent owns, operates, maintains, or controls one or more mills or manufacturing establishments for the manufacture of silks or silk goods. Envelopes and letterheads distributed in interstate commerce did and do contain the said corporate name and the word "Silks", together with the words "Mills: Riverside, R. I., Phenix, R. I.", and advertising cards and other printed matter printed and dis-

tributed by respondent in interstate commerce also contain similar or identical language, which imports or implies that respondent owns, operates, maintains, or controls mills at such places.

PAR. 4. In truth and in fact the respondent is not and has not been engaged in the manufacture, printing, processing, or dyeing of silk or silk materials, or rayon, or rayon materials, or mixtures of the two; nor does it own or operate, maintain, or control, nor has it owned, operated, maintained, or controlled any mill, plant, or factory wherein such silk or rayon fabrics are being or have been manufactured, dyed, printed, or processed; that respondent does not nor has it since 1933, owned, controlled, operated, or maintained any mill, plant, or factory for the manufacture, dyeing, printing, or processing of silk or rayon fabrics at Riverside, R. I., or at Phenix, R. I., or at any other place whatsoever; on the contrary, respondent buys raw silk and rayon cloths or fabrics from the weaver or manufacturer thereof and by contract or on a commission basis employs commission weavers, who are separate and distinct entities from the respondent, to dye, print, convert, and process such raw materials into finished goods.

PAR. 5. Among the competitors of the respondent there are corporations, partnerships, firms, and persons who are engaged in the same business as respondent, as hereinabove described, who truthfully represent and denominate themselves as being engaged in such business and who do not falsely claim to be manufacturers, who do not represent that they own, control, operate, or maintain mills for the manufacture of silk or rayon materials, when such is not the fact, and who do not represent that they own, control, operate, or maintain mills at Riverside, R. I., or at Phenix, R. I., or any other place, when such is not the fact.

PAR. 6. That there is a preference on the part of certain customers for such finished silk and rayon materials, in different States of the United States, for finished silk and rayon goods and materials bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said customers that by dealing directly with a mill owner or manufacturer they can eliminate the profit of the middleman and that they can buy such goods at a cheaper price and on more favorable terms from such mill owner or manufacturer than they can from converters and middlemen, such as respondent, not manufacturing such goods and materials.

PAR. 7. The adoption and use by respondent of the name "Canton Silk Mills, Inc.", as aforesaid, both independently and in conjunction with the words with which it has been used and is being used,

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and the statement contained in its printed matter so circulated, comprising the words "Mills: Riverside, R. I., Phenix, R. I.", as aforesaid, have had and still do have the tendency and capacity to mislead and deceive and the same have deceived and misled and do deceive and mislead customers and prospective purchasers of such finished silk and rayon goods and materials into the belief that said products so offered for sale and sold by respondent are manufactured by it in mills owned and operated or maintained and controlled by respondent, and that by buying from the respondent such customers and prospective purchasers will eliminate and save the middleman's profit. That the use of said corporate name and the words above quoted in the manner stated have induced and do induce such customers and prospective purchasers to purchase said products from respondent on account of such erroneous belief thereby engendered, and by such means trade has been and is diverted to respondent from its competitors, to the substantial injury of the latter.

PAR. 8. The practices of respondent hereinabove described are all to the prejudice and injury of the public and of respondent's competitors, and have been and are unfair methods of competition in interstate 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."

## 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 the 8th day of November, 1935, issued and served its complaint in this proceeding upon respondent, Canton Silk Mills, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint, testimony and evidence, in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Morris A. Schoenfeld, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint; and the Commission

having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Canton Silk Mills, Inc., is a corporation existing by virtue of the laws of the State of New York, with its principal office and place of business at 469 Seventh Avenue, New York, N. Y. It is now, and for several years last past, has been engaged in the business of buying silk and rayon cloths and fabrics in the raw, griegie or unfinished state, of procuring or causing said cloths and fabrics to be dyed, printed, or processed by others, into finished goods or materials suitable for sale to dry goods retailers, and the cutting-up trade, and of offering for sale and selling said finished goods and materials to prospective and actual purchasers. The respondent in the course and conduct of its said business, buys raw, griegie, or unfinished silk and rayon cloths and fabrics from weavers and manufacturers, and causes the raw, griegie, or unfinished cloths and fabrics to be dyed, printed or processed into finished dry goods and materials by others, and offers for sale and sells such finished goods and materials to various retailers, members of the cutting-up trade, and others in the States of the United States other than the State of New York. Pursuant to such converting and selling operations, respondent ships and transports, or causes to be shipped and transported from its place of business in the State of New York to, into and through various States of the United States, finished silk and rayon fabrics and materials to the purchasers thereof located in States other than the State of New York.

PAR. 2. In the course and conduct of its said business, respondent is in substantial competition with other corporations, firms, associations, partnerships and individuals likewise engaged in procuring the dying, printing, converting and processing of raw silk and rayon cloths and fabrics into finished material, and in offering for sale and selling such finished materials and transporting the same from the States in which such competitors have their respective places of business, to, into, and through other States of the United States. Respondent is also in substantial competition with weavers and manufacturers of silk and rayon cloths and materials, who, themselves, dye, print, convert, and process such fabrics so manufactured by them, and offer the finished goods or materials for sale, and sell and transport the same from the States in which such weavers and

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manufacturers have their respective places of business, to, into, and through other States of the United States. The respondent, in the course of the sale of the aforesaid products, in the manner set forth in paragraph 1, *supra*, corresponds with various weavers, manufacturers of raw goods, dyers, printers, processors, retailers and members of the cutting-up trade, located in the various States of the United States, and distributes among them and its prospective purchasers, advertising cards, letterheads, bills, invoices, and other printed matter, which said printed matter contains the trade name "Canton Silk Mills, Inc.", and the language—"Mills: Riverside, R. I.—Phenix, R. I.", with which said trade name and language respondent represents, imports, and implies that it owns, operates, maintains, or controls, one or more mills or manufacturing establishments for the manufacture of silks or silk goods.

PAR. 3. In truth and in fact the respondent is not and has not been engaged in the manufacture, printing, processing or dyeing of silk or silk materials, or rayon, or rayon materials; nor does it own or operate, maintain or control, any mill, plant, or factory, wherein such silk or rayon fabrics are manufactured, dyed, printed, or processed; the respondent does not own, control, operate, or maintain any mill, plant, or factory for the manufacturing, dyeing, printing, or processing of silk or rayon fabrics at Riverside R. I., or at Phenix, R. I., or at any other place whatsoever.

PAR. 4. There are, among the competitors of respondent, corporations, partnerships, firms, and persons who are engaged in the same business as respondent, as hereinabove described, who truthfully represent and denominate themselves as being engaged in the manufacture and sale of silk and rayon products, and who do not falsely claim to be manufacturers and owners of mills when such is not the fact. There are also among the competitors of respondent, corporations, firms, and individuals who are engaged in the purchase and resale of silk and rayon products, who do not represent themselves to be owners and operators of mills and factories in which their products are manufactured, dyed and printed or processed.

PAR. 5. There is a preference on the part of certain customers for such finished silk and rayon materials to deal directly with the manufacturer thereof and thus eliminate the profit of the middleman. There is also a belief and impression existing among certain customers of silk and rayon materials that more uniformity of quality and design may be obtained by dealing directly with the manufacturer thereof. The use by respondent of the name "Canton Silk Mills, Inc." and the language "Mills: Riverside, R. I., Phenix, R. I." is calculated to create such a belief and impression.



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nix, R. I.", on its printed matter as aforesaid, has had and has the tendency and capacity to mislead and deceive, and the same has deceived and misled, and does deceive and mislead customers and prospective purchasers of such finished silk and rayon goods and materials into the belief that said products so offered for sale and sold by respondent, are manufactured by it in mills owned and operated or maintained and controlled by respondent. The use of said corporate name and the words above quoted in the manner set forth, supra, have induced and do induce customers and prospective purchasers to purchase said products from respondent because of the erroneous belief thereby engendered, and by such means trade has been and is diverted to respondent from its competitors to the substantial injury of the latter.

## CONCLUSION

The practices of 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 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, testimony and evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief filed herein by counsel for the Commission, 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, Canton Silk Mills, Inc., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, and sale of their silk and rayon products in interstate commerce, forthwith cease and desist from:

Representing through their trade name and through their invoices, letterheads, statements, labels, and other printed matter, or in any

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other manner, by the use of the words "Mill" or "Mills" or "Manufacturers", and through the use of any other word or words of similar import and meaning, that respondent owns, operates, or controls a mill or mills in which its said products are manufactured, dyed, printed, or processed.

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

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## IN THE MATTER OF

NEW YORK STATE WHOLESALE CONFECTIONERY  
ASSOCIATIONS, INC., 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 2613. Complaint, Nov. 6, 1935—Decision, June 1, 1936*

Where the members of eight State associations, engaged in the sale of candy and allied products at wholesale between and among the various States and in the District of Columbia, and in purchasing the products thus dealt in by them from manufacturers located, for the most part, in States other than New York and Pennsylvania, and naturally and normally in competition with one another and with others similarly engaged in the purchase and resale of candy, and constituting a large and important part of all the distributors and wholesalers in candy, confectionery, and allied products in their respective territories and areas, and so large and influential a group, in the case of each of their said associations, as to be able to control and influence the flow of trade and commerce in said products within, to, and from the areas in which their respective associations trade; and said associations, and their State associations into which they were allied and banded together and thus enabled more effectively to exercise control of and influence trade and commerce involved for the promotion and enhancement of their own respective volume of trade and commerce, and representing all together a volume of consumption and trade in commerce constituting an important part of that of the United States in the industry concerned, and, in respect of the trade areas served by the respective associations, a large important outlet for the sale of candy and allied products by manufacturers and distributors within such area and by those in other States and particularly east of the Mississippi River, and a volume of business, taken together, constituting a substantial part of all the business done by wholesalers of candy and allied products in the States of New York and Pennsylvania—

- (a) Agreed among themselves to prevent nonmember competitors from obtaining such products directly from the manufacturers thereof, to establish themselves as a class of recognized wholesalers, distributors, and brokers of said products in their respective areas, to fix and establish uniform prices at which the various members should sell such products, and to prevent others from selling at lower prices, and thereby to suppress, hinder, and lessen competition in interstate commerce in the sale and distribution of said products in their aforesaid territories, and in pursuance of such purposes—
- (1) Fixed and maintained uniform prices for candy and allied products sold by them and induced manufacturers not to sell to anyone who sold or would resell at a lower price;
- (2) Exacted and procured pledges and promises from each recognized dealer and member of the respective associations and from manufacturers and producers of such products, to the effect that such dealers, members, manufacturers, and producers would support and enforce their aforesaid program;

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- (3) Printed and published white lists containing names of recognized dealer-members of the associations so as to include therein only so-called legitimate or regular or recognized dealers, distributors and wholesalers of products in question, and supplied such lists to manufacturers and sent them also letters calling their attention to certain nonmember wholesalers, etc., for the purpose of inducing such manufacturers to cease dealing with and refuse to open accounts with such nonmember dealers, etc.;
- (4) Used, in concert and agreement among themselves and with others, coercive and concerted action, boycott and threats thereof and other united action against manufacturers, dealers, and others to induce and require them to agree and conform to and support their said program and refrain from selling their products to nonmember dealers, etc.;
- (5) Held meetings of their various associations to devise means and methods of exerting influence, pressure, coercion, and other means, and to require manufacturers, brokers and dealers, and others to abide by their said program;
- (6) Advised manufacturers of the names of the recognized dealers in their trade area and of their purpose and determination to insist that they distribute their products through such dealers exclusively, and in conformity with their program, and that sale and distribution by them of their products direct to non-recognized dealers and purchasers or their failure to conform to said program and distribution of their products, would be considered as unfriendly acts against their associations and such recognized dealers; and
- (7) Denied membership in their associations to dealers who failed to support and carry out said program, and expelled therefrom those dealers who failed so to do; and

Where an organization composed of brokers in candy and allied products, and of salesmen of various manufacturers of such products, and which was organized to assist the aforesaid associations in carrying out their said agreement, and conspiracy—

- (b) Assisted such associations in carrying out such agreement and conspiracy, and, incident to such assistance—
- (1) Refused to sell and induced manufacturers not to sell to anyone who had resold or would resell their products at less than the prices fixed as aforesaid;
- (2) Refused to sell and induced manufacturers not to sell to nonrecognized dealers; and
- (3) Refused to call for orders upon dealers or distributors who were not members of the aforesaid associations;

With the result that in the New York and related or connected territories, sundry outlets in said State for the direct sale by manufacturers in other States of their goods into New York were closed and curtailed, business of dealing in and distributing candy and allied products was monopolized by such associations and recognized dealers, competition in said industry in New York was unreasonably lessened, eliminated or restrained, and hampered, and the purchasing and consuming public was deprived of advantages in prices, services, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair trade and competition in said industry, and freedom of fair and legitimate competition therein was otherwise restrained and deterred and the natural flow of commerce in the channels of interstate trade obstructed, and small business enterprises engaged in industry in question were suppressed or eliminated and dis-

criminated against, and public and manufacturers, dealers, and others who did not conform to their said program or were compelled so to do do contrary to their wishes, were prejudiced and injured, and there was a capacity and tendency for such methods of boycotting and white listing thus employed to spread into States other than New York:

*Held*, That such acts and practices were monopolistic and constituted unfair methods of competition within the intent and meaning of section 5.

Before *Mr. John J. Keenan*, trial examiner.

*Mr. Edward L. Smith* and *Mr. James I. Rooney* for the Commission.

*Mr. J. Francis Harter* and *Mr. John G. Lesswing*, of Buffalo, N. Y., for New York State Wholesale Confectionery Associations, Inc., Rochester Area Wholesale Confectioners Association, Capital District Wholesale Confectioners Association, Inc., Central New York Wholesale Confectionery Distributors, Inc., Greater Buffalo Wholesale Confectioners Association, Inc., and various officers and members thereof.

*Mr. William E. Shoudy*, of Syracuse, N. Y., for Mohawk Valley Wholesale Confectioners Association, and its officers; Northern New York Wholesale Confectioners Association, Inc., and its officers, and, along with *Schrivver & Eager*, of Middletown, N. Y., and *Mr. Louis G. Kustas*, of Poughkeepsie, N. Y., for Hudson Valley Candy Distributors Association and Eugene Brock, president thereof.

*Mr. William A. Shoemaker*, of Hamburg, N. Y., for Southern Tier Candy Distributors Association, and Chauncey M. Wirth, president, and Owen S. Smith, secretary and treasurer thereof.

*McCurn, Farnham & Martineau*, of Syracuse, N. Y., for Empire State Candy Club, Inc., its officers and members.

*Mr. W. Joseph Shanley*, of Troy, N. Y., for Max Brownstein.

*Fitzsimmons & Keefe*, of Albany, N. Y., for Dearstyne Bros., and its officers.

*Mr. James M. O'Hara*, of Utica, N. Y., for Rome Tobacco Co., Inc., and its officers.

*Mr. A. Raymond Cornwall*, of Watertown, N. Y., for Clark-Flynn Candy Co., Inc.

*Schrivver & Eager*, of Middletown, N. Y., also for John W. Cutter, Frank Martin, Chris Vasiliow, Ernest L. Haynes, J. W. Horton, G. W. Mosher, Eugene Block and William B. Adelman, trading as Middletown Candy Co.; H. B. & F. W. Weist; J. M. Kelly Co.; Kustus & Chambers; John H. Haas and Henrietta S. Ketterer, trading as Kerrenbacker Candy Co.; S. Roy & Co., Inc., and its officers; Shapiro Bros., Inc., and its officers; and Kingston Candy Co., and its officers.

*Mr. Stephen K. Bock*, of Poughkeepsie, N. Y., for Adam Winter.

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*Mr. Isaac Allison*, of Elmira, N. Y., for Empire Tobacco Co., Inc., and its officers.

*Mr. A. A. Montebello*, of Elmira, N. Y., for Federal Stores of Elmira.

*Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., and *Sayles, Flannery, Collins & Evans*, of Elmira, N. Y., for C. M. & R. Tompkins and its officers.

*Mr. Jacob Weissfeld*, of Buffalo, N. Y., for Henry Schrieber.

*Miss Edna M. Landers* for John C. Beltz.

*Mr. Maurice Yellen*, of Buffalo, N. Y., for David Ellis, David Gross, Arthur Haas, and E. J. Murray trading as Donovan & Haas, Seymour Morris and Martin Morris, and also along with *Mr. J. Francis Harter* and *Mr. John G. Lesswing* for Irving Morris.

*Mr. Leonard R. Lipowicz*, of Buffalo, N. Y., for Salesmen's Grocery Corp. and its officers.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent New York State Wholesale Confectionery Associations, Inc., with principal office and place of business in Syracuse, N. Y., and the regional members thereof, to wit, the Rochester Area Wholesale Confectioners Association, with principal office and place of business in Rochester, N. Y., the Capital District Wholesale Confectioners Association, Inc., with principal office and place of business in Troy, N. Y., the Mohawk Valley Wholesale Confectioners Association, with principal office and place of business in Utica, N. Y., the Central New York Wholesale Confectionery Distributors, Inc., with principal office and place of business in Syracuse, N. Y., the Northern New York Wholesale Confectioners Association, Inc., with principal office and place of business in Watertown, N. Y., the Hudson Valley Candy Distributors Association, with principal office and place of business in Newburgh, N. Y., the Southern Tier Candy Distributors Association, with principal office and place of business in Wellsboro, Pa., the Greater Buffalo Wholesale Confectioners Association, Inc., with principal office and place of business in Buffalo, N. Y., and the Empire State Candy Club, Inc., with principal office and place of business in Utica, N. Y., and the officers and numerous members thereof,<sup>1</sup> engaged at their respective places of business in the sale of confectionery and candy and allied products at wholesale as

<sup>1</sup> Specified in the complaint proper but omitted herefrom in the interest of brevity.

hereinafter specified, with combining or conspiring to suppress, hinder, and lessen competition in interstate commerce in the sale and distribution of confectionery, candy, and allied products through the establishment of respondents as a class of "recognized" wholesalers, distributors, and brokers in their respective trading areas, preventing competitors from obtaining candy, etc., directly from the manufacturers, fixing, and establishing uniform prices to be observed by the members and preventing others from selling at lower prices, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce, as set forth in paragraphs 11 to 17 of the complaint proper, as follows:<sup>2</sup>

PARAGRAPH 11. The aforesaid members of the "Rochester Association," "Capital Association," "Mohawk Association," "Central Association," "Northern Association," "Hudson Association," "Southern Association," and "Greater Buffalo Association" are now and for more than three years last past have been engaged, at the respective places of business of such members, in the sale of confectionery, candy and allied products at wholesale between and among the various States of the United States and in the District of Columbia, causing such confectionery, candy, and allied products when sold by them to be transported from their respective places of business to the purchasers thereof, some located in the States in which the aforesaid members have their respective places of business and others located in various other States of the United States and in the District of Columbia. The aforesaid members of the aforesaid associations purchase the products in which they deal, from the manufacturers thereof located for the most part in States other than the States of New York and Pennsylvania. Such manufacturers ship their said products, when purchased by the aforesaid members of the aforesaid associations, from their respective places of business in such other States to the aforesaid members of the aforesaid Associations in the States of New York and of Pennsylvania. In the course and conduct of their aforesaid respective businesses, the aforesaid members of the aforesaid respective associations, but for the matters and things hereinafter set out, would be and would have been naturally and normally in competition with the other members of their respective associations in price, and are in such competition with other individuals, partnerships, and corporations engaged in purchasing confectionery, candy, and other allied products in the States of New York and Pennsylvania from manufacturers thereof located in other

<sup>2</sup> Paragraphs 1 to 10 of the complaint as hereinabove indicated set forth at length the corporations and associations and their members joined as respondents.

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States, and the resale thereof in the States of New York and Pennsylvania and various other States of the United States and in the District of Columbia. The members of each of the aforesaid "Rochester Association," "Capital Association," "Mohawk Association," "Central Association," "Northern Association," "Hudson Association," "Southern Association," and "Greater Buffalo Association," constitute a large and important part of all the brokers, distributors, and wholesalers in confectionery, candy, and allied products in the territory in which the members of the aforesaid respective associations are located and in the aforesaid areas in which they trade, and such members of each of the aforesaid associations constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in such products within, to, and from the areas in which the members of the aforesaid respective associations trade. The members of each of the aforesaid associations as allied and banded together in their respective associations, are enabled thereby more effectively to exercise control and influence such trade and commerce for the promotion and enhancement of their own respective volumes of trade and profits. The volume of consumption of confectionery, candy, and allied products in the areas in which the members of the respective associations trade and the volume of trade and commerce dealt in by the members of such associations in, to, and from each of the said respective areas constitute an important part of the trade and commerce of the United States in the confectionery industry. The trade areas in which the members of each of the aforesaid associations do business is a large and important outlet and market for the sale of confectionery, candy, and allied products by manufacturers, producers, and distributors within said trade areas and also by those in various other States, particularly those of the eastern portion of the United States. The volume of business done by the members of all of the aforesaid associations is a substantial part of all the business done by wholesalers of candy, confectionery, and allied products in the States of New York and Pennsylvania.

PAR. 12. On or about September 1933, the aforesaid members of the "Rochester Association" entered into, have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves, to prevent competing dealers from obtaining candy, confectionery and allied products directly from the manufacturers thereof; to establish themselves as a class of "recognized" wholesalers, distributors, and brokers of said products in the areas in which they trade; to fix and establish uniform prices at which the said members of said "Rochester Association" should sell said products, and to prevent others from selling at less prices, and by and through the aforesaid means to suppress, hinder, and lessen



competition in substantial interstate commerce in the selling and distribution of said products in the aforesaid territory served by said members of said "Rochester Association." To carry out the aforesaid purposes the said respondents have done, among others, the following acts and things:

(a) By agreement among themselves have fixed and maintained and still fix, and maintain uniform prices for confectionery, candy and allied products sold by them and by each of them, and induced manufacturers not to sell to anyone who sold or who would resell at less than the price so fixed.

(b) Fixed and maintained prices, induced manufacturers not to sell to anyone not adhering to the prices so fixed. Exacted and procured pledges and other promises of agreements from each such "recognized" dealer and each member of "Rochester Association" and from manufacturers and producers of candy, confectionery and allied products to the effect that such dealers, members, manufacturers, and producers would support, adhere to and enforce the foregoing program of respondents set forth in paragraph 12 hereof.

(c) Printed and published lists (so-called "white lists") containing the names of "recognized" dealer members of said association, so as to include in said lists only so-called legitimate, regular, or "recognized" dealers, brokers, distributors, and wholesalers of said products, and supplied said lists to aforesaid manufacturers, and by the means and methods hereinafter set forth persuaded, induced, and compelled said manufacturers to cease dealing with and to refuse to open accounts with the dealers, brokers, distributors, and wholesalers not so reported.

(d) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers, and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of respondents, and to refrain from selling said products to other dealers, brokers, distributors, and wholesalers who were not members of said "Rochester Association."

(e) Held meetings of "Rochester Association," its members and officers, to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, producers, brokers, dealers, and wholesalers and others engaged in said tobacco and confectionery trade and industry to abide by and adhere to said program.

(f) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, advised and informed such manufacturers and producers of the names of said

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"recognized" dealers in said trade area of said respondents' purpose and determination to insist upon and require such manufacturers and producers to distribute their products through the medium of said "recognized" dealers exclusively, and in conformity with the aforesaid program of respondents; and also advised such manufacturers and producers that their sale and distribution of candy, confectionery, and allied products direct to certain "nonrecognized" dealers and purchasers, or their failure to conform to aforesaid program in the distribution of their products would be considered by respondents and such "recognized" dealers as "unfriendly" acts against respondents and such "recognized" dealers.

(g) Denied membership in "Rochester Association" and such "recognition" of dealers who failed to support, abide by, or carry out said program of respondents, and otherwise disciplined such members and dealers.

(h) Used and engaged in other acts, cooperative and concerted action, and coercive methods and practices in promoting, establishing, and carrying out the foregoing program and agreement, combination, conspiracy, confederation, and undertaking set forth in paragraph 12 hereof.

PAR. 13. In September 1933, or thereabouts, respondents named in paragraphs 3, 4, 5, 6, 7, 8, and 9<sup>\*</sup> hereof, by and through their respective associations described in those paragraphs, entered into, have since carried out and are still carrying out agreements, combinations, understandings, and conspiracies among the memberships of each of the aforesaid respective associations, through and by their respective memberships in their respective associations, each of such agreements, combinations, understandings, and conspiracies being of the same kind and nature as that alleged in paragraph 12 hereof to have been entered into and carried out by respondents named in paragraph 2 hereof, using the same means in carrying out the aforesaid agreements, combinations, understandings, and conspiracies as those alleged in paragraph 12 hereof to have been used by the respondents named in paragraph 2 hereof, the description of the conspiracy, agreement, combination, and understanding described in paragraph 12 hereof being hereby adopted as the description and allegation of each of the aforesaid agreements, combinations, understandings, and conspiracies entered into respectively by the members of the "Rochester Association," "Capital Association," "Mohawk Association," "Central Association," "Northern Association,"

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<sup>\*</sup> Makeup and practices of respondent Empire State Club, Inc., joined, along with members thereof in Par. 10, are described *infra* in Par. 15.

"Hudson Association," "Southern Association," and "Greater Buffalo Association," and being hereby made a part hereof as if the said allegations in paragraph 12 hereof were set forth in full herein.

PAR. 14. In November 1933, or thereabouts, the respondents named in paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 hereof organized respondent New York State Wholesale Confectionery Association, which they caused to be incorporated on May 11, 1934, under the corporate name New York State Wholesale Confectionery Associations, Inc., the corporation described in paragraph 1 hereof. Said respondent New York State Wholesale Confectionery Associations, Inc., and its predecessor were organized for the purpose of assisting the respondents named in paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 hereof in carrying out the agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof and have assisted by the following means the respondents named in paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 hereof in carrying out the various agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof;

(a) By inducing manufacturers not to sell to anyone who had resold or who would resell at less than prices fixed by the aforesaid agreements, combinations, understandings, and conspiracies.

(b) By inducing manufacturers not to sell to dealers who were not "recognized" dealers.

(c) By concerted action, by boycott, threats of boycott, and other united action against manufacturers to induce and to require them to agree to and to conform to and to support the agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof.

(d) By using and engaging in other acts, cooperative and concerted action and cooperative methods and practices in promoting, establishing, and carrying out the programs, agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof.

PAR. 15. Various of the members of the respondent "Empire State Club" are brokers in candy, confectionery, and allied products, while the others are factory salesmen of various manufacturers of candy, confectionery, and allied products. Said respondent "Empire State Club" was organized for the purpose of assisting the respondents named in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 hereof in carrying out the agreements, understandings, combinations, and conspiracies described in paragraphs 12 and 13 hereof, and has assisted in the carrying out of such agreements, combinations, understandings, and conspiracies in the following manner:

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(a) By refusing to sell and by inducing manufacturers not to sell to anyone who had resold or who would resell at less than prices fixed by the aforesaid agreements, combinations, understandings, and conspiracies.

(b) By refusing to sell and by inducing manufacturers not to sell to dealers who were not "recognized" dealers.

(c) By using and engaging in other acts, cooperative and concerted action and cooperative methods and practices in promoting, establishing, and carrying out the programs, agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof.

PAR. 16. The capacity, tendency, and effect of said agreements, combinations, understandings, and conspiracies, and the said acts and practices of respondents set forth in paragraphs 12, 13, 14, and 15 hereof are and have been in the New York and Pennsylvania area and other related or connected territory; to close and curtail sundry outlets within the States of New York and Pennsylvania for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the States of New York and Pennsylvania; to monopolize, in said respondents and "recognized dealers," the business of dealing in and distributing confectionery, candy and allied products; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said confectionery industry in the States of New York and Pennsylvania, and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to oppress, eliminate, and discriminate against small business enterprises which were or had been engaged in selling and distributing confectionery, candy, and allied products; to prejudice and injure the public and manufacturers, producers, dealers, brokers, distributors, and wholesalers and others who did not conform to respondent's program, or who did not desire, but were compelled, to conform to said program, and to spread into States other than New York and Pennsylvania the same methods of boycott and "white-listing" employed by respondents.

PAR. 17. The above alleged acts and things done by respondents as set forth in paragraphs 12, 13, 14, and 15 hereof are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved

September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 6th day of November 1935, issued and served its complaint in this proceeding upon the following named associations, their respective officers and members, respondents:

New York State Wholesale Confectionery Associations, Inc., hereinafter referred to as the State Association,

Rochester Area Wholesale Confectioners Association, hereinafter referred to as the Rochester Association,

Capital District Wholesale Confectioners Association, Inc., hereinafter referred to as the Capital District Association,

Mohawk Valley Wholesale Confectioners Association, hereinafter referred to as the Mohawk Association,

Central New York Wholesale Confectionery Distributors, Inc., hereinafter referred to as Central New York Association,

Northern New York Wholesale Confectioners Association, Inc., hereinafter referred to as Northern New York Association,

Hudson Valley Candy Distributors Association, hereinafter referred to as the Hudson Valley Association,

Southern Tier Candy Distributors Association, hereinafter referred to as the Southern Tier Association,

Greater Buffalo Wholesale Confectioners Association, hereinafter referred to as Greater Buffalo Association,

Empire State Candy Club, Inc., hereinafter referred to as the Candy Club.

After the issuance of said complaint, respondents, State Association, Rochester Association, Capital District Association, Northern New York Association, Central New York Association, Hudson Valley Association, Greater Buffalo Association, and the Candy Club filed their respective answers thereto. Subsequently the State Association, its officers and members; the Rochester Association, and its officers; the Capital District Association, and its officers; the Central New York Association, and its officers; the Northern New York Association, and its officers; the Greater Buffalo Association, and its officers; and the Hudson Valley Association, and its president, Eugene Brock, filed motions for leave to withdraw said respective answers, as to them, and to file substituted answers, as to them, which motions were duly allowed, and said substituted answers received and filed. The Mohawk Valley Association, and the Southern Tier Asso-

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ciation, having filed no answer to the complaint within the time limited therefor, subsequently said Mohawk Valley Association, and its president, Walter E. Bates, and its secretary, Charles E. Allen, and the Southern Tier Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, filed motions for leave to file answers, as to them, to said complaint, which motions were duly allowed, and said answers received and filed.

In the said answers of Mohawk Valley Association and Southern Tier Association, and in the said substituted answers heretofore mentioned, it was stated that they and each of them desire to and hereby waive hearing on the charges set forth in the complaint herein; that they and each of them refrain from contesting the proceeding; that they and each of them admit all the material allegations of the complaint to be true; that they and each of them consent that the Commission may, without trial, without further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion therein, and issue and serve upon the said New York State Wholesale Confectionery Associations, its officers and members, and upon the Rochester Area Wholesale Confectioners Association, and its officers, upon the Capital District Wholesale Confectioners Association, and its officers, upon Central New York Wholesale Confectionery Distributors, Inc., and its officers, upon Northern New York Wholesale Confectioners Association, and its officers, upon Greater Buffalo Wholesale Confectioners Association, and its officers, upon Empire State Candy Club, Inc., and its officers, upon the Mohawk Valley Wholesale Confectioners Association, and its president, Walter E. Bates, and its secretary, Charles E. Allen, upon the Hudson Valley Candy Distributors Association, and its president, Eugene Brock, and upon the Southern Tier Candy Distributors Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, an order to cease and desist from the methods of competition alleged in the complaint; and further in said answers and substituted answers it was stated that they and each of them as aforesaid mentioned agree that the complaint herein be considered as amended as of the date of its issuance, so that as amended the word "not" follows the word "wholesalers" in the next to the last line of subparagraph (c) of paragraph 12 of the complaint herein. The said complaint having been so amended, thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answers and substituted answers, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts, and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, State Association, Rochester Association, Capital District Association, Central New York Association, Northern New York Association, Greater Buffalo Association, and Candy Club are corporations duly organized, existing, and doing business by virtue of, and under the laws of the State of New York. Respondents, Mohawk Valley Association, Hudson Valley Association, and Southern Tier Association are unincorporated voluntary associations. Walter E. Bates is president, and Charles E. Allen is secretary of the said Mohawk Valley Association; Eugene Brock is the president of the said Hudson Valley Association; Chauncey M. Wirth is president, and Owen S. Smith is secretary and treasurer of the said Southern Tier Association.

PAR. 2. The members of the aforementioned Rochester Association, Capital District Association, Mohawk Association, Central New York Association, Northern New York Association, Hudson Valley Association, Southern Tier Association, and Greater Buffalo Association are now and have been for three years last past engaged, in the respective places of business of such members, in the sale of candy and allied products at wholesale between and among the various States of the United States, and in the District of Columbia, causing such candy and allied products being sold by them to be transported from their respective places of business to the purchasers thereof, some located in States in which the aforesaid members have their respective places of business, and others located in various other States of the United States, and in the District of Columbia. The aforesaid members of the aforesaid associations purchase products in which they deal from the manufacturers thereof located for the most part in States other than the States of New York and Pennsylvania. Such manufacturers ship their said products, when purchased by the aforesaid members of the aforesaid associations, from their respective places of business in such other States to the aforesaid members of the aforesaid associations in the State of New York. In the course and conduct of their aforesaid respective businesses, the aforesaid members of the aforesaid and respective associations, but for the matters and things hereinafter set out, would be and would have been naturally and normally in competition with the other members of their respective associations in price, and in such competition with other individuals, partnerships and corporations engaged in purchasing candy, confectionery, and allied products in the States of New York and Pennsylvania from manufacturers thereof located in other States, and the resale thereof in the States of New York and Pennsyl-

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vania and various other States of the United States, and in the District of Columbia. The members of each of the aforesaid associations constitute a large and important part of all the distributors and wholesalers in candy, confectionery, and allied products in the territory in which the members of the aforesaid respective associations are located and in the aforesaid areas in which they trade, and such members of each of the aforesaid associations constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in such products within, to and from the areas in which the members of the aforesaid respective associations trade. The aforesaid associations as allied and banded together in the State Association are enabled thereby more effectively to exercise control and influence such trade and commerce for the promotion and enhancement of their own respective volume of trade and profit. The volume of consumption of candy, confectionery, and allied products in the areas in which the respective associations trade, and the volume of trade and commerce dealt in by such associations in, to, and from each of the said respective areas constitute an important part of the trade and commerce of the United States in the confectionery industry. The trade area in which each of the aforesaid associations do business is a large important outlet in the course of the sale of candy, confectionery, and allied products by manufacturers, producers, and distributors within said trade area, and also by those in various other States, particularly those east of the Mississippi River. The volume of business done by the members of all of the aforesaid associations is a substantial part of all the business done by wholesalers of candy, confectionery, and allied products in the States of New York and Pennsylvania.

**PAR. 3.** All of the respondent associations, with the exception of the respondent Candy Club, were formed on or about September 1933, at the outset as unincorporated voluntary associations; later, said respondent associations with the exception of the respondents, Mohawk Valley Association, Hudson Valley Association, and Southern Tier Association, became incorporated under the laws of the State of New York. Since their inception on or about September 1933, all of the respondent associations entered into and have since carried out an agreement, combination, understanding, and conspiracy among themselves to prevent competing dealers not members of the aforesaid named association from obtaining candy, confectionery, or allied products directly from the manufacturers thereof; to establish themselves as a class of "recognized" wholesalers, distributors, and brokers of the said products in the areas in which they trade; to fix and establish uniform prices at which the said members of the aforesaid asso-



ciations should sell said products, and to prevent others from selling at less prices, and by the aforesaid means to suppress, hinder, and lessen competition in substantial interstate commerce in the selling and distribution of said products in the aforesaid territories served by the said associations. In order to carry out the aforesaid purposes the said respondent associations have done, among others, the following acts and things:

(a) By agreement among themselves have fixed and maintained uniform prices for candy, confectionery, and allied products sold by them, and induced manufacturers not to sell to anyone who sold or who would resell at less than the price so fixed.

(b) Fixed and maintained prices, induced manufacturers not to sell to anyone not adhering to the prices so fixed, exacted, and procured pledges and other promises of agreement from each such "recognized" dealer and each member of the respective associations, and from manufacturers and producers of candy and allied products to the effect that such dealers, members, manufacturers and producers would support, adhere to, and enforce the foregoing program of the respondent associations set forth in paragraph 2 hereof.

(c) Printed and published lists (so-called "white lists") containing names of "recognized" dealer members of said associations, so as to include in said list only so-called "legitimate, regular, or recognized" dealers, distributors, and wholesalers of said products, and supplied said lists to the aforesaid manufacturers, and in addition sent letters to the aforesaid manufacturers calling to their attention certain wholesalers, dealers, or distributors who were not members of the aforesaid associations, intending by said letters to induce said manufacturers to cease dealing with and refuse to open accounts with the dealers, distributors, and wholesalers mentioned in the aforesaid letters.

(d) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, and threats of boycott, and other united action against manufacturers, dealers, and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and support and enforce the said program of the respective associations, and to refrain from selling said products to other dealers, distributors, and wholesalers who were not members of said associations.

(e) Held meetings of the respective associations to devise means and methods of asserting influence, pressure, coercion, and other means of inducing, coercing, and requiring manufacturers, producers, brokers, dealers, and wholesalers and others engaged in said confectionery trade to abide by and adhere to said program.

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(f) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, advised and informed such manufacturers or producers of the names of said "recognized" dealers in said trade area of said respondents' purpose and determination to insist upon and require such manufacturers and producers to distribute their products through the medium of said "recognized" dealers exclusively, and in conformity with the aforesaid program of the respondent associations; and also advised such manufacturers and producers that their sale and distribution of candy and allied products direct to said "nonrecognized" dealers and purchasers, or their failure to conform to the aforesaid program in the distribution of their products would be considered by respondents and such "recognized" dealers as "unfriendly" acts against the associations and such "recognized" dealers.

(g) Denied membership in the respective aforesaid associations of dealers who failed to support, abide by, or carry out said program in the aforesaid respective associations, and to expel from membership of the said associations those dealers who failed to carry out the aforesaid program.

PAR. 4. The membership of the Candy Club are brokers in candy and allied products, while others are factory salesmen of various manufacturers of candy and allied products. Respondent Candy Club was organized for the purpose of assisting the respective associations named in paragraph 3 hereof in carrying out the agreement, understanding, combination, and conspiracy described in paragraph 3 hereof, and has assisted in carrying out such agreement, combination, understanding, and conspiracy in the following manner:

(a) By refusing to sell and by inducing manufacturers not to sell to anyone who had resold or who would resell their products at less than prices fixed by the aforesaid associations.

(b) By refusing to sell and by inducing manufacturers not to sell to dealers who were not "recognized" dealers.

(c) By refusing to call for orders upon dealers or distributors who were not members of the respective associations named in paragraph 3 hereof.

PAR. 5. The capacity, tendency, and effect of said agreements, combinations, understandings, and conspiracies, and the said acts and practices of respondents as hereinbefore mentioned are and have been in the New York area and other related or connected territories; to close and curtail sundry outlets within the State of New York for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the State of

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New York; to monopolize, by said respondent associations and "recognized" dealers, the business of dealing in and distributing candy, confectionery, and allied products; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the said confectionery industry in the State of New York, and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to suppress, eliminate, and discriminate against small business enterprises which were or had been engaged in selling and distributing candy, confectionery, and allied products; to prejudice and injure the public and manufacturers, producers, dealers, distributors, and wholesalers, and others who do not conform to the respondents' program, or who do not desire, but were compelled to conform to respondents' program, and to spread into States other than New York the same methods of boycotting and "white listing" employed by the respondent associations.

## CONCLUSION

The acts and practices and the things done by the respective associations described in the foregoing findings of fact are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition clearly within the intent and meaning, and in 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 AND ORDER OF DISMISSAL

This matter coming on to be heard by the Commission upon the complaint filed herein on November 6, 1935, and the answers and substituted answers of the New York State Wholesale Confectionery Associations, Inc., its officers and members; the Rochester Area Wholesale Confectioners Association, and its officers; Capital District Wholesale Confectioners Association, Inc., and its officers; Central New York Wholesale Confectionery Distributors, Inc., and its officers; Northern New York Wholesale Confectioners Association, Inc., and its officers; Greater Buffalo Wholesale Confectioners

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Association, and its officers; Empire State Candy Club, Inc., and its officers; Mohawk Valley Wholesale Confectioners Association, and its president, W. E. Bates, and its secretary, Charles E. Allen; Hudson Valley Candy Distributors Association, and its president, Eugene Brock; and the Southern Tier Candy Distributors Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, in which they state that they desire to and hereby waive hearing on the charges set forth in the complaint herein; that they and each of them refrain from contesting the proceeding; that they and each of them admit all the material allegations of the complaint to be true; that they and each of them consent that the Commission may, without trial, and without further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion therein, and issue and serve upon the said New York State Wholesale Confectionery Associations, Inc., its officers and members; the Rochester Area Wholesale Confectioners Association, and its officers; the Capital District Wholesale Confectioners Association, Inc., and its officers; the Central New York Wholesale Confectionery Distributors, Inc., and its officers; the Northern New York Wholesale Confectioners Association, Inc., and its officers; the Greater Buffalo Wholesale Confectioners Association, and its officers; the Empire State Candy Club, Inc., and its officers; the Mohawk Valley Wholesale Confectioners Association, and its president, Walter E. Bates, and its secretary, Charles E. Allen; The Hudson Valley Candy Distributors Association, and its president, Eugene Brock; and the Southern Tier Candy Distributors Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, an order to cease and desist from the methods of competition alleged in the complaint.

*Now, therefore, it is hereby ordered,* That the respondent, New York State Wholesale Confectionery Associations, Inc., its officers and members; the Rochester Area Wholesale Confectioners Association, and its officers; the Capital District Wholesale Confectioners Association, Inc., and its officers; the Central New York Wholesale Confectionery Distributors, Inc., and its officers; the Northern New York Wholesale Confectioners Association, Inc., and its officers; the Greater Buffalo Wholesale Confectioners Association, and its officers; the Mohawk Valley Wholesale Confectioners Association, its president, Walter E. Bates, and its secretary, Charles E. Allen; the Hudson Valley Candy Distributors Association, and its president, Eugene Brock; and the Southern Tier Candy Distributors Association, its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith; in connection with the purchase by them, or by any of them,

of confectionery, candy, or allied products in interstate commerce, or in connection with the sale by them, or by any of them, of confectionery, candy, or allied products in interstate commerce, forthwith cease and desist from:

(1) Combining, conspiring, or uniting in a common course of action, and cooperating or confederating together, among themselves or with others, to prevent competing dealers in confectionery, candy, or allied products, from obtaining confectionery, candy, or allied products directly from the manufacturers thereof;

(2) Publishing lists (so-called "white lists") containing the names of "recognized" dealers, members, or respondent associations, so as to include in said lists only so-called "legitimate, regular, or recognized" dealers, brokers, distributors, or wholesalers of said products;

(3) Conspiring or uniting to fix or establish uniform prices at which members of respondent associations or others should sell such products;

(4) Using any other cooperative or coercive means to suppress competition in price, or in the sale and distribution of such products in the States of New York or Pennsylvania, or in any other area.

*It is further ordered*, That the Empire State Candy Club, Inc., and its officers, in connection with the sale or offering for sale of candy, confectionery, or allied products in interstate commerce, cease and desist from:

(1) Refusing to sell or inducing manufacturers not to sell to anyone who has resold, or who would resell, their products at less than prices fixed by the New York State Wholesale Confectionery Association, Inc., the Rochester Area Wholesale Confectioners Association, the Capital District Wholesale Confectioners Association, Inc., the Mohawk Valley Wholesale Confectioners Association, the Central New York Wholesale Confectionery Distributors, Inc., the Northern New York Wholesale Confectioners Association, Inc., the Hudson Valley Candy Distributors Association, the Southern Tier Candy Distributors Association, and the Greater Buffalo Wholesale Confectioners Association;

(2) Refusing to sell, and inducing manufacturers not to sell to dealers who were not "recognized" dealers;

(3) Refusing to call for orders upon dealers or distributors who were not members of respective associations named in subdivision 1 of this order; and

(4) Using any other cooperative or coercive means to suppress competition in the sale and distribution of confectionery, candy, or allied products in the States of New York or Pennsylvania, or in any other area.

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*It is hereby further ordered,* That said respondents shall within 60 days from the day of the date of service upon them of this order file with this Commission a report, or reports, in writing, stating the manner and form in which they shall have complied with this order.

And it appearing to the Commission that compliance by the aforementioned respondents with the aforesaid order to cease and desist will effectively terminate the use by all the individual respondents, as well as by the corporate and unincorporated associations and their respective officers, of the methods of competition alleged in the complaint.

*Now, therefore, it is hereby ordered,* That the complaint in this proceeding, as amended, be and the same is hereby dismissed as to the individual respondents.

Complaint

IN THE MATTER OF

RETA TERRELL SLOAN, TRADING AS RETA TERRELL

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

*Docket 2760. Complaint, Apr. 10, 1936—Decision, June 2, 1936*

Where an individual engaged in the manufacture, distribution and sale of various cosmetic preparations, including "Austrian Formula," "Deep Tissue Cream," "Astringent Concentrate," and "Orange Blossom Skin Tonic"—Represented, in advertisements and in newspapers, periodicals of general circulation and in advertising literature circulated through the mails and otherwise, and upon the containers of said various preparations, that they possessed such properties and ingredients that they would serve as a food for the skin, muscles, or tissues and have a beneficial effect in feeding, toning, and firming and filling out and tightening the lines of broken tissues and would serve to restore elasticity to the skin, etc., and fill out hollows therein and eliminate dryness and remove wrinkles from and revitalize the skin, etc., and have a beneficial effect in the treatment of various conditions of the skin, muscles, or tissues, as above referred to;

Facts being none of said preparations possessed properties or contained ingredients so as to bring about such results, and said preparations do not penetrate the skin beyond the epidermis or outer layer thereof or reach the muscles and tissues underlying the same, or beneficially affect or nourish such underlying muscles or the pores or tissues or have a beneficial effect in feeding, nourishing, etc., the tissues, etc., or otherwise as above claimed;

With tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous belief that the aforesaid various items contained medicinal ingredients of such character and in such quantity as to effect such results, and that use of said products would actually produce such various benefits claimed, and with effect of inducing the purchase of substantial quantities of said various preparations by such public acting on such mistaken belief, and of diverting thereby a substantial volume of trade from competitors who do not in any way falsely represent their respective products; to the substantial injury of substantial competition in commerce:

*Held*, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. J. T. Welch* for the Commission.

COMPLAINT

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, having reason to believe that Reta Terrell Sloan, trading as Reta Terrell, hereinafter referred to as "re-

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spondent," has been, and is now, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Reta Terrell Sloan, has her principal office and place of business at 513 Oakdale Ave., in the city of Chicago, State of Illinois, and a branch place of business at 50 East 10th St., in the city of New York, State of New York. Respondent is now, and has been for some time, engaged in the business of manufacturing, distributing, and selling, in commerce as herein set out, a line of cosmetics.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said cosmetics, when sold, to be transported from her office and place of business in the State of Illinois, or in the State of New York, to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a constant current of trade in commerce in said cosmetics, manufactured, distributed, and sold by her, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her said business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling cosmetics and kindred preparations for treatment of the skin, in commerce, among and between the various States of the United States and in the District of Columbia. In the course and operation of said business, and for the purpose of inducing the purchase of said cosmetics, respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and has printed and circulated throughout the various States, to customers and prospective customers, advertising folders and literature. In all of her advertising literature, through statements and representations therein set out, and through statements and representations of similar import and effect displayed on the containers of said cosmetics, the respondent represents that said cosmetic preparations possess properties and ingredients of such character, and in such quantity, as to serve as a food for the human skin, muscles, or tissues; that said preparations have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues; that said preparations serve to restore elasticity to the human skin, muscles, or tissue, and fill out hollows therein; that said preparations eliminate dryness from, remove wrinkles, and revitalize



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the human skin, muscles, or tissue; and that the use of said preparations will have a beneficial effect in the treatment of the various conditions of the human skin, muscles, or tissue, above set out. Certain advertising matter used by the respondent in making said representations is herein set out as illustrative of said representations, but is not all inclusive. Such advertisements are as follows:

Austrian Formula. "The Austrian formula for the restoration of aging skin is for the removal of deep-seated and obstinate wrinkles—due to neglect, ill health or advancing years \* \* \* Contains secret organic substances which completely revitalize the skin. \* \* \* The skin firms up, sagging muscles push up where they belong, the eyes take on new life, clear up and the tiny lines disappear \* \* \* It is quite possible to take off from ten to fifteen years from one's appearance within a few months \* \* \* A complete corrective treatment \* \* \* Without doubt the finest complete antiwrinkle cream known \* \* \* Not only feeds and nourishes the skin but actually restores the vitality of aging cells \* \* \* Visible results in seemingly hopeless cases." (Booklet.)

Deep Tissue Cream. "This unique preparation contains secret life-giving essence which rebuilds impoverished tissues immediately. Fills out hollows, restores the fullness of youth." (label) "This unique preparation contains the rich oil which nourishes the underlying tissues and eliminates dryness \* \* \* Helps to eliminate dryness, rebuilds and nourishes the tissue and can be used on the most sensitive skin." (Newspaper.)

Astringent Concentrate. "Tightens the skin and restores its youthful elasticity." (label) "Makes relaxed muscles firm; contracts loose and flabby skin, reduces double chin \* \* \* Reduces puffiness under the eyes." (Booklet.)

Orange Blossom Skin Tonic. "Tones and firms the muscles, keeps the tissues firm and healthy" (label) "The skin and muscles are now in perfect condition to absorb the greatest amount of concentrated nourishment." (Booklet.)

PAR. 4. The representations made by the respondent with respect to the nature and effect of said cosmetic products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said products do not possess properties or contain ingredients that will remove, lessen, or erase lines or wrinkles of the skin on the human face, or elsewhere on the body. Said cosmetic products do not nourish the skin, or the pores thereof, or penetrate the skin beyond the epidermis, or outer layer thereof, so as to reach the muscles and tissues, and said products do not possess properties or ingredients that beneficially affect the muscles, tissues, or layers of skin beneath the epidermis, and said muscles, tissues, and inter layers of skin are not nourished by said preparation or the ingredients thereof when externally applied.

PAR. 5. There are among respondent's competitors many who manufacture, distribute, and sell similar cosmetic products, designed, intended, and sold for the purpose of treating the same or similar conditions of the human skin, tissues, and muscles, who do not in

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any way misrepresent the quality or character of their respective products, or their effectiveness in treating said conditions of the human skin, tissues, and muscles.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her product, or the effectiveness of said product in treating the human skin, tissues, and muscles, as hereinabove set out, in her advertising in newspapers, booklets, pamphlets, labels, and other advertising literature, in the course of distributing her product, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondent will be obtained by the purchasers thereof upon the use of said products in the treatment of the various conditions named herein. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and representations of respondent, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's cosmetic products with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling cosmetic products, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

## 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 10, 1936, issued and served its complaint in this proceeding upon the respondent, Reta Terrell Sloan, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondent filed an answer in which she stated that she waived hearing on the charges set forth in the complaint, that she did not wish to contest the proceeding, that she admitted all the material allegations of the complaint to be true, and that she consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon her, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondent, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Reta Terrell Sloan, trading and doing business as Reta Terrell, has her principal office and place of business at 513 Oakdale Ave., in the city of Chicago, State of Illinois. She also maintains a branch place of business at 50 E. 10th St., in the city of New York, State of New York. Respondent has been for some time, and is now, engaged in the business of manufacturing, distributing, and selling various items of cosmetic preparations, including Austrian Formula, Deep Tissue Cream, Astringent Concentrate, and Orange Blossom Skin Tonic.

When the respondent receives an order for cosmetics and ships said order, she causes said cosmetics to be transported from her place of business in the State of Illinois or in the State of New York to the various purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent has for some time maintained, and she now maintains, a substantial current of trade and commerce in said cosmetics distributed and sold by her between and among the various States of the United States and in the District of Columbia.

There are other individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling cosmetics and kindred preparations for treatment of the skin, in commerce among and between the various States of the United States and in the District of Columbia and said respondent is now, and has been at all times, engaged in substantial competition with said competitors.

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PAR. 2. In the course and operation of her business, the respondent, for the purpose of inducing the purchase of various items forming her cosmetic line of products, has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and has also printed and circulated, through the United States mails and through other means, various types of advertising literature in which she has caused her trade name, Reta Terrell, to be prominently and conspicuously displayed, together with various statements purporting to be descriptive of the various items of cosmetics themselves and of the benefits that may be expected to be obtained from the use thereof by the user. The boxes or containers in which the various items of cosmetic preparations are packed also contain statements similar in nature.

The various statements, made by the respondent in her advertising literature above referred to, with reference to the efficacy of said preparations and the results that may be expected to be obtained from the use thereof, import, imply, and serve as representations to the general purchasing public that said cosmetic preparations possess properties and ingredients of such character and in such quantity that various items in said cosmetic line (1) will serve as a food for the human skin, muscles or tissues; (2) will have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues; (3) will serve to restore elasticity to the human skin, muscles, or tissues and fill out hollows therein; (4) will eliminate dryness from, remove wrinkles from, and revitalize the human skin, muscles, or tissues; and (5) will have a beneficial effect in the treatment of the various conditions of the human skin, muscles, or tissues above referred to.

PAR. 3. The various items of cosmetic preparations manufactured and marketed by the respondent under her trade name, Reta Terrell, do not have medicinal properties as claimed by the respondent of such character, or in such quantity, as to produce the results claimed. None of said cosmetic preparations possess properties or contain ingredients that will remove, lessen, or erase lines or wrinkles of the skin on the human face or elsewhere on the body. Said cosmetic preparations do not nourish the skin, or the pores thereof, or penetrate the skin beyond the epidermis, or outer layer thereof, and do not reach the muscles and tissues underlying the outer skin and do not serve as food for the skin, muscles, or tissues. None of said cosmetic preparations beneficially affect or nourish the muscles, tissues, or layers of skin beneath the epidermis. None of said cosmetic preparations have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues and will not restore elas-

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ticity to the human skin, muscles, or tissues or fill out hollows therein. Said preparations do not remove dryness from, or revitalize the human skin, muscles, or tissues.

PAR. 4. Many of the respondent's competitors manufacture, distribute, and sell cosmetics and kindred preparations designed for similar usage and rightfully and truthfully represent the nature of their respective products, their medicinal value, and the degree of benefit that may be expected to be obtained from the use thereof.

PAR. 5. The representations and statements made by the respondent in her advertising literature, as set out in paragraph 2 hereof, have a tendency and a capacity to mislead and deceive a substantial number of the purchasing public in the various States into the mistaken and erroneous beliefs that the various items of cosmetic preparations sold and distributed by the respondent contain medicinal ingredients of such character and in such quantity as to effect the results claimed by the respondent from a use thereof and that the use of said products will actually produce the several benefits claimed. Acting on said mistaken and erroneous beliefs, above set out, which have been induced by the respondent's false and misleading representations, members of the purchasing public have purchased substantial quantities of respondent's various cosmetic preparations.

As a result of the erroneous and mistaken beliefs on the part of the consuming public, as induced by the representations and statements of the respondent, a substantial volume of trade has been diverted from competitors of the respondent engaged in similar businesses who do not, in any way, falsely represent their respective products and substantial injury has been done by the respondent to substantial competition, in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent are each and all to the prejudice of the public, and to the 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 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 matter coming on to be heard by the Commission upon a complaint filed herein on April 10, 1936, and answer to said complaint filed May 26, 1936, by Reta Terrell Sloan, trading as Reta Terrell,

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respondent herein, in which answer said respondent states that she desires to waive hearing and not to contest the proceeding, and that she admits all of the material allegations of the complaint to be true and consents that the Commission may, without trial, without further evidence, and without intervening procedure, make, enter, issue, and serve upon said respondent, its findings as to the facts and its conclusions based thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having considered the complaint and said answer, and being fully advised in the premises;

*It is now ordered*, That the time within which answer may be filed by said respondent be extended to this date and the answer of the respondent, Reta Terrell Sloan, trading as Reta Terrell, be received and filed.

*It is further ordered*, That the respondent, Reta Terrell Sloan, trading as Reta Terrell, her agents, representatives, servants, and employees, in connection with the distribution and sale of cosmetic preparations, in interstate commerce, cease and desist from:

Advertising or representing, directly or by implication, in newspapers, magazines, radio broadcasts, circulars, display cards, or any other form of advertising literature, or in any other way, that any of said cosmetic preparations:

(a) will serve as a food for, or nourish the human skin, muscles, or tissues;

(b) will have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out and tightening the lines of broken tissues;

(c) will serve to restore elasticity to the human skin, muscles, or tissues and fill out hollows therein;

(d) will eliminate dryness from, remove wrinkles from, and revitalize the human skin, muscles, or tissues;

(e) will penetrate the skin beyond the epidermis so as to reach the underlying muscles and tissues.

*It is further ordered*, That the respondent shall, within 60 days from the date of service upon her of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which she has complied with the order herein set forth.

## Complaint

## IN THE MATTER OF

I. TEICH AND A. MAKOWER, TRADING AS TEE AND EMM  
KNITTING MILLS

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

*Docket 2521. Complaint, Aug. 16, 1935—Decision, June 15, 1936*

Where a firm, engaged at wholesale in the sale and distribution of knitted goods—

Used a trade name containing the words "Knitting Mills" in soliciting the sale of and in selling their products, and featured said name in printed matter, together with the words "Manufacturers of worsted sweaters, bathing suits, and leather goods," notwithstanding fact that they did not knit or make products sold and distributed by them, nor own, operate, or control any mill or plant knitting or making said products;

With effect of deceiving and misleading retail merchants, their customers and prospective customers, among whom there is a preference on the part of some for dealing directly with the mill owner or manufacturer, in the impression that they can thus buy goods at a cheaper price and on more favorable terms, into the belief that the goods thus offered and sold were made by them in mills which they owned and operated or maintained and controlled, and of inducing such customers to purchase said goods from them because of such erroneous belief, and with the effect of diverting trade to them from competitors, including those who actually knit and manufacture their products for sale and distribution, and those who do not do so but truthfully advertise and do not represent themselves as knitters or manufacturers of such products:

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

Before *Mr. John J. Keenan*, trial examiner.

*Mr. Daniel J. Murphy* for the Commission.

*Mr. Samuel Rabinowitz*, of New York City, for respondents.

## COMPLAINT

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, having reason to believe that I. Teich and A. Makower, a copartnership, trading as Tee and Emm Knitting Mills, hereinafter called the respondents, have been or are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest,

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hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, I. Teich and A. Makower, are copartners trading under the name and style of Tee and Emm Knitting Mills, with their principal place of business located in the city of New York in the State of New York. They are now and for more than one year last past have been engaged as a wholesaler in the sale and distribution of knitted goods in commerce between and among various States of the United States, causing the same, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York. In the course and conduct of their business, said copartners were at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, said copartners adopted as and for their trade name the words Tee and Emm Knitting Mills, under which to carry on their business, and which trade name, containing the words "Knitting Mills," the said copartners have used in soliciting the sale of and selling their products in interstate commerce. Printed matter distributed in interstate commerce by said copartners featured the trade name "Tee and Emm Knitting Mills" and this was followed by "manufacturers of worsted sweaters, bathing suits, and leather goods"; when in truth and in fact the said copartners did not knit, make, or manufacture the products which they sold and distributed in interstate commerce; they did not own, operate, or control any mill, plant, or factory in which said products were knitted, made, or manufactured; but on the contrary filled orders with products which were knitted, made, or manufactured in a mill, plant, or factory which they neither owned, operated, nor controlled.

PAR. 3. There is a preference on the part of certain of the retail merchants in the different States of the United States for goods, wares, and merchandise to be resold by retail to the public, bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said retail merchants that by dealing directly with a mill owner or manufacturer they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or corporations, associations, individuals, firms, and partnerships not knitting or manufacturing goods, wares, and merchandise which they sell to such retail dealers by eliminating the profit of the middleman. The use by the respondent copartners of



the words "Knitting Mills" in their trade name and the word "manufacturers" in their printed matter have a tendency and capacity to deceive and mislead the retail merchants, who are the customers and prospective customers of respondent copartners, by causing them to believe that respondent copartners actually knit and manufacture the products they sell to said customers and prospective customers, and that thereby such customers or prospective customers save or will save the middleman's profit, and the said respondent copartners, in the use of the words "Knitting Mills" and "manufacturers", as aforesaid, represent to customers and prospective customers that by buying from them such customers and prospective customers will eliminate and save the middleman's profit. The use by respondent copartners of the words "Knitting Mills" and "manufacturers" has a tendency and capacity to unfairly divert trade to respondent copartners from other corporations, associations, individuals, firms, and partnerships who are actually knitting and manufacturing products similar to the products of respondent copartners, for sale and distribution in interstate commerce and those competitors of respondent copartners who do not knit or manufacture similar or like products to those of respondent copartners for sale and distribution in interstate commerce, but who truthfully advertise and label same, and who do not claim and represent themselves to be knitters or manufacturers.

PAR. 4. The practices of respondent copartners, described in paragraph 2 hereof, are all to the prejudice of the public and of respondents' competitors, and have been and are unfair methods of competition in interstate 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."

#### 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 the 16th day of August 1935, issued and served its complaint in this proceeding upon the respondents, I. Teich and A. Makower, copartners, trading as Tee and Emm Knitting Mills, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, testimony and evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, before John J.

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Keenan, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Samuel Rabinowitz, attorney for the respondent, and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, I. Teich and A. Makower, copartners, trading under the name and style of Tee and Emm Knitting Mills, have their principal place of business located in the city of New York, in the State of New York. They are now, and for more than one year last past have been engaged as a wholesaler in the sale and distribution of knitted goods in commerce between and among the various States of the United States. They cause said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York.

PAR. 2. In the course and conduct of their business, said copartners were at all times herein referred to in competition with other corporations, firms, associations, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. In the course and conduct of their said business, respondents adopted as, and for their trade name the words "Tee and Emm Knitting Mills," under which to carry on their business. Said copartners have used said trade name, containing the words "Knitting Mills," in soliciting the sale of, and selling, their products in interstate commerce. Printed matter distributed in interstate commerce by said copartners featured the trade name "Tee and Emm Knitting Mills," and this was followed by "Manufacturers of worsted sweaters, bathing suits, and leather goods." In truth and in fact, the said copartners did not knit, make, or manufacture the products which were sold and distributed in interstate commerce by them; nor did they own, operate, or control any mill, plant, or factory in which said products were knitted, made, or manufactured.

PAR. 4. There is a preference on the part of certain retail merchants of goods, wares, and merchandise, to deal directly with the mill owner or manufacturer thereof. There is an impression and belief existing among certain of said retail merchants that they can

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buy goods at a cheaper price and on more favorable terms by dealing directly with a mill owner or manufacturer. The use by the respondent copartners of the words "Knitting Mills" in their trade name, and the word "Manufacturers" on their printed matter, as aforesaid, has a tendency and capacity to deceive and mislead, and the same has deceived and misled, and does deceive and mislead, said retail merchants, customers, and prospective customers of respondent copartners into the belief that said goods so offered for sale, and sold, by respondent copartners are manufactured by them in mills which they own and operate, or maintain and control. The use by respondent copartners of the words "Knitting Mills" and "Manufacturers" has induced, and does induce, customers and prospective customers to purchase said goods from respondent copartners, because of the erroneous belief thereby engendered, and by such means trade has been and is, diverted to respondent copartners from its competitors, to the substantial injury of said competitors who are actually knitting and manufacturing for sale and distribution in interstate commerce products similar to the products of respondent copartners, and also from those competitors of respondent copartners who do not knit or manufacture, but who truthfully advertise and do not represent themselves to be knitters or manufacturers of similar or like products to those of respondent copartners.

## CONCLUSION

The aforesaid acts and practices of respondent copartners under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and to competitors of respondent copartners, and their unfair methods of competition in commerce 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, and the testimony and evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the charges of such complaint and in opposition thereto, and brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of an Act of Congress, approved Sep-

tember 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, I. Teich and A. Makower, copartners, trading as Tee and Emm Knitting Mills, their agents, representatives, and employees, in connection with the offering for sale and sale of knitted goods in interstate commerce forthwith cease and desist from:

Representing, through their trade name and letterheads, statements, labels, invoices, and through other printed matter, or in any other manner by the use of the words "Knitting Mills" or "Mills" or "Manufacturers," and by the use of any other word or words of similar import and meaning, that respondents own, operate, or control a mill or factory in which their said products are knitted or manufactured.

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

## Syllabus

IN THE MATTER OF  
K-W GRAPHITE CORPORATION

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

*Docket 2684. Complaint, Jan. 10, 1936—Decision, June 15, 1936*

Where a corporation engaged in the business of compounding an oil containing an admixture of colloidal graphite and in the sale and distribution thereof for addition to fuels and crank-case oils for combustion engines and machinery—

Represented through advertisements in newspapers and periodicals, in circular letters and otherwise and upon the face of the containers of its said products that it reduced friction as much as 25 to 30 percent, that only one oil change in each 3,000 miles was necessary when it was used, it lowered oil bills 50 percent, enabled a saving of from 8 percent to 12 percent in gasoline and increased motor life and efficiency 40 percent;

Facts being that while said product had merit and was especially valuable in reducing friction and in the building up of a graphoid surface which would stand extreme heat for short periods of time without injury to the metal, aforesaid representations as to the relative value and efficiency of said preparation were grossly exaggerated and misleading and it would not increase motor life and efficiency by any stated percentage or to a substantial percentage nor similarly reduce gas consumption or friction nor enable an automobile to run 3,000 miles or any stated mileage on one oil change, or effect any definite saving on oil bills;

With tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that such statements and representations were true and of inducing members of the public to purchase such product on account of such erroneous belief and with effect of placing in the hands of its dealers and distributors an instrument through which they might mislead and deceive the purchasing public and of unfairly diverting trade to it from competitors, among whom there are manufacturers or compounders and distributors of lubricating oils and similar products who do not misrepresent the same and falsely claim therefor such merits and such capacity to achieve results; to the damage and injury of distributors and the public and to the substantial injury of competition in interstate commerce:

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

*Mr. Joseph C. Fehr* for the Commission.

*Mr. Charles P. Woodbury*, of Kansas City, Mo., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission,

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to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that K-W Graphite Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, K-W Graphite Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at Kansas City, in the State of Missouri. It is now and, for more than 1 year last past, has been engaged in the compounding of a lubricating oil containing an admixture of colloidal graphite, and in the sale and distribution of said product, in commerce between and among various States of the United States; causing said product, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States of the United States other than the State of Missouri. In the course and conduct of its business, K-W Graphite Corporation is now and has been at all times hereinafter mentioned in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent has advertised and still advertises its said product in newspapers and periodicals, in circular letters and in and by other forms of advertisements and advertising matter in which it has represented and still represents, among other things, as follows:

**K-W MOTOR GRAPHITE REDUCES FRICTION AS MUCH AS 25 TO 40%**

**THREE THOUSAND MILES ON ONE OIL CHANGE** is recommended when K-W MOTOR GRAPHITE is used as directed in both oil and gasoline. Reduce oil consumption by using K-W MOTOR GRAPHITE. More Miles per gallon of gasoline.

**CHANGE OIL EVERY 3,000 MILES**

K-W MOTOR GRAPHITE added to your regular oil seals the pores and produces a breath-like Graphoid film on all friction surfaces such as pistons, cylinder walls and bearings. Frictional heat is reduced and oil life is increased. K-W MOTOR GRAPHITE will enable you to run 3,000 miles on one oil change, lowering your oil bills 50%.

## MORE MILES ON GASOLINE

Because K-W MOTOR GRAPHITE reduces the friction drag in your motor, power and gasoline mileage are increased. After 500 to 600 miles, readjust your carburetor. You will find the motor will operate smoother and use 8 to 12% less gasoline.

Increased speed and flexibility is the natural result of using K-W MOTOR GRAPHITE because when friction is reduced, speed and flexibility are increased.

You will find the motor smoother and more flexible and will use 8 to 12% less gasoline.

\* \* \* It actually increases motor life and efficiency 40%.

It is not merely another oil. It is pure colloidal graphite—the finest lubricant known—an element that will withstand 10 times the heat, pressure and grind that destroys even the best oil.

PAR. 3. In truth and in fact, the use of colloidal graphite in lubricants will not increase motor life and efficiency 40 percent; will not reduce gas consumption from 8 to 12 percent; will not reduce friction as much as 25 to 40 percent; and the aforesaid product will not enable a car to run 3,000 miles on one oil change thereby effecting a saving of 50 percent on oil bills.

The statements and representations made by the respondent as set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the beliefs that:

(a) Colloidal graphite oil increases motor life and efficiency 40 percent;

(b) Motors in which such oil is used require from 8 to 12 percent less gasoline;

(c) The use of K-W Motor Graphite reduces friction as much as 25 to 40 percent;

(d) Only one oil change in each 3,000 miles is necessary when K-W Motor Graphite is used;

and to purchase respondent's products in such erroneous beliefs.

PAR. 4. There are, among the competitors of the respondent mentioned in paragraph 1 hereof, manufacturers and compounders of lubricating oils containing an admixture of colloidal graphite who truthfully advertise their aforesaid products and who do not represent that:

The use of their products will increase motor life and efficiency 40 percent;

The use of their products will reduce gas consumption from 8 to 12 percent;

The use of their product will reduce friction as much as 25 to 40 percent;

Their products will enable the car to run 3,000 miles on one oil change, thereby effecting a saving of 50 percent on oil bills.

Respondent's said K-W Motor Graphite, or colloidal graphite, is offered for sale and sold to the consuming public by respondent and other dealers in competition with similar products of competitors. Respondent's use of the representations described in relation to its said product, as set forth in paragraph 2 hereof, are false and misleading. As a result of such false and misleading misrepresentations on the part of respondent, the consuming public is being and has been injured, trade is being and has been diverted to respondent from its competitors in interstate commerce, and thereby substantial injury is and has been done by the respondent to substantial competition in interstate commerce and there is and has been placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive and have misled and deceived the purchasing public.

PAR. 5. Said representations of respondent, as contained in newspapers and periodicals, in circular letters and in other forms of advertisements and advertising matter through which the trade and consuming public are reached, have resulted in injury to respondent's competitors and to retail dealers and to the prejudice of the buying 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."

#### 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 the 10th day of January 1936, issued and served its complaint in this proceeding upon the respondent, K-W Graphite Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of said respondent's answer thereto, the respondent, through its president, Robert L. Koehler, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the



material allegations of the complaint to be true and that it consented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue, and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondent, and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, K-W Graphite Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri. Its principal place of business is at 3246 Holmes St., Kansas City, in the State of Missouri. Respondent is now, and for more than 1 year last past has been, engaged in the business of compounding an oil containing an admixture of colloidal graphite known as K-W Motor Graphite, and in the sale and distribution of said product in commerce between and among various States of the United States and in the District of Columbia, it has caused and still causes said product, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located at various points in States other than the State of Missouri. During the aforesaid times the respondent was and still is in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in interstate commerce of similar products used for the same and similar purposes.

PAR. 2. Respondent's said product, which is a concentrated solution of oil and graphite, is used for addition to fuels and crank-case oils for combustion engines and machinery. The graphite contained in respondent's product is known as colloidal graphite for the reason that it is so finely ground that it will remain in suspension in a lubricating oil solution. To compound its product, respondent uses a special grade of mineral oil together with a certain amount of colloidal graphite. By way of this admixture respondent produces two grades of its product known to the trade as Grade "A" and Grade "B." Grade "A" is designed for use in the fuel supply of an ordinary automobile either by adding it directly to the gasoline or

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feeding it into the intake manifold through one of the several so-called top oilers. Grade "B" is a crank-case lubricant and is designed for use in the cylinder oil.

PAR. 3. Respondent's said product is packed in pint cans and both Grade "A" and Grade "B" sell at retail for 75 cents a pint. Grade "A," the upper cylinder lubricant, is recommended by respondent to be added to one full tank of gasoline every 3,000 miles. Grade "B," the crank case lubricant, is recommended to be added to the regular motor fuel on the basis of 2 ounces to each quart of lubricating oil. Except for large commercial orders, respondent's product is packed only in round pint cans which have printed matter lithographed on them.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has advertised and still advertises its said product in newspapers and periodicals, in circular letters, and in and by other forms of advertisements and advertising matter. On the face of every pint can is lithographed, among other statements, the following representation:

K-W MOTOR GRAPHITE Reduces Friction as much as 25 to 30%.

\* \* \* \* \*  
3,000 MILES ON ONE OIL CHANGE is recommended when K-W GRAPHITE is used as directed in both oil and gasoline.

Reduce Oil Consumption, by using K-W MOTOR GRAPHITE.

Circulars issued by the respondent in interstate commerce carry the following statements:

#### CHANGE OIL EVERY 3,000 MILES

K-W MOTOR GRAPHITE added to your regular oil seals the pores and produces a breath-like graphoid film on all friction surfaces such as pistons, cylinder walls, and bearings. Frictional heat is reduced and oil life is increased. K-W MOTOR GRAPHITE will enable you to run 3,000 miles on one oil change, lowering your oil bills 50%.

#### MORE MILES ON GASOLINE

Because K-W MOTOR GRAPHITE reduces the friction drag in your motor, power and gasoline mileage are increased. After 500 to 600 miles, readjust your carburetor. You will find the motor will operate smoother and use 8 to 12% less gasoline.

Increased speed and flexibility is the natural result of using K-W MOTOR GRAPHITE because when friction is reduced, speed and flexibility are increased. Respondent has also advertised and still advertises its product in newspapers having interstate circulation in which, among other things, it makes the following claims:

You will find the motor smoother and more flexible and will use 8 to 12% less gasoline.

\* \* \* It actually increases motor life and efficiency 40%.

\* \* \* It is not merely another oil. It is pure colloidal graphite—the finest lubricant known—an element that will withstand 10 times the heat, pressure, and grind that destroys even the best oil.

PAR. 5. The respondent's product has been found to have merit, its use being especially valuable in reducing friction and in the building up of a graphoid surface which will stand extreme heat for short periods of time without injury to the metal; but the representations made by respondent, as hereinabove set forth, with respect to the relative value and efficiency of its colloidal graphite are grossly exaggerated and misleading. The use of respondent's colloidal graphite in lubricants does not and will not increase its motor life and efficiency by any stated percentage or to a substantial percentage; its use does not and will not reduce gas consumption by any stated percentage or to a substantial percentage; nor does it or will it reduce friction by any stated percentage or to a substantial percentage; nor is it true that colloidal graphite does or will enable an automobile to run 3,000 miles or any stated mileage on one oil change, or that the use of respondent's colloidal graphite effects any definite saving on oil bills.

As a result of such false, misleading, and deceptive misrepresentations on the part of respondent, the consuming public is being and has been injured, trade is being and has been diverted to respondent from its competitors in interstate commerce, and thereby substantial injury is and has been done by the respondent to competition in interstate commerce, and there is and has been placed in the hands of respondent's dealers and distributors an instrument by means of which they may mislead and deceive the purchasing public.

PAR. 6. There are among the competitors of the respondent, manufacturers, compounders, and distributors of lubricating oils and similar products who do not misrepresent their products and who do not falsely claim that said products have the merits and capacity to achieve results such as the respondent herein claims for its product, as above described.

PAR. 7. The use of each and all of the foregoing false and misleading statements and representations by the respondent, as set out in paragraphs 2, 3, and 4 hereof, have had and do have the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that said statements and representations are true, and have induced and do induce members of the public to purchase respondent's said product on account of such erroneous

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belief, to the consequent damage and injury of distributors and to the injury of the general public, and said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to competition in interstate commerce.

## CONCLUSION

The aforesaid acts and practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent, 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion, and the Commission having duly considered the said motion;

*It is hereby ordered*, That the said motion be and the same is hereby granted; that the answer be and the same is hereby withdrawn; and that the said proposed substituted answer be and the same is filed in lieu of the said answer hereby withdrawn.

The said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises;

*It is hereby further ordered*, That the respondent, K-W Graphite Corporation, a corporation, its officers, agents, servants, representatives, and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of lubricating oil and similar products do forthwith cease and desist from:

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Representing, directly or indirectly, through circulars, catalogs, labels, or any other form of printed matter or by radio broadcasting, or in any other manner:

(a) That K-W Motor Graphite increases motor life and efficiency by any stated percentage or to a substantial percentage;

(b) That motors in which K-W Motor Graphite is used require less gasoline than do motors in which K-W Motor Graphite is not used;

(c) That the use of K-W Motor Graphite reduces friction by any stated percentage or that it reduces friction to any substantial percentage;

(d) That only one oil change in each 3,000 miles or any stated mileage is necessary when K-W Graphite is used;

(e) That the use of K-W Motor Graphite effects any definite saving on oil bills;  
and from making any other representations of similar tenor or import.

*And it is hereby further ordered,* That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it has complied with this order.

IN THE MATTER OF  
EUGENE D. PETRY, DOING BUSINESS AS WARNER  
STUDIOS

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

*Docket 2749. Complaint, Mar. 21, 1936—Decision, June 20, 1936*

Where an individual engaged in operation of a photograph and portrait studio in the city of Washington, D. C., and in many other cities in various States and in soliciting in said city sale of photographs and portraits of various types and kinds to persons sitting as subjects therefor, through house to house canvassers or salesmen—

- (a) Represented through coupons sold prospective purchasers at prices ranging from 50¢ to \$1.50, and through those presented without cost, in case of its so-called "Courtesy Offer," and variously entitling holders thereof to photographs of various types and kinds at said individual's studio upon payment there, in some cases, of an additional amount varying from 50¢ to \$1.00, but, in case of most, without further payment, that said coupons or "certificates" represented and entitled holder to a special favor or price, or "Special Advertising Offer" for the "latest in portraiture," and that regular value represented by such coupons or certificates, for which holder was thus charged amounts ranging from 50¢ to \$2.50, was from \$3.50 to \$7.50, as case might be, and represented in soliciting sale of said photographs or portraits as aforesaid through said salesmen that regular value thereof was far in excess of the usual prevailing prices for similar products in said city and offered same to such purchasers at pretended special prices which were considerably less than their represented regular value, upon the supposed consideration that the prospective purchaser would "advertise" his business to friends and neighbors in the purchaser's particular community;

Facts being such regular values or usual prices were fictitious and misleading, many purchasers of such special offer coupons found upon presentation thereof at his studio that he was reluctant and unwilling to honor same according to terms printed thereon, such supposed special offers were only a part of a continuous scheme of solicitation in the regular, usual course and conduct of his said business, and said photographs or portraits of the supposed regular value of from \$3.50 to \$7.50 each were exactly the same kind, type and quality as regularly and ordinarily sold by popular priced studios operated and conducted by competitors in such District at prices ranging from \$1.00 to \$2.00;

With effect of misleading and deceiving purchasers into the belief that they were obtaining such photographs at prices far below their usual selling prices and below their true or regular value or worth; and

- (b) Set forth upon said certificates or coupons the trade name "Warner Studios" employed by him and such statements and representations as "Operating Exclusively with Movie Lighting Equipment" and "New Motion Picture Film Used," notwithstanding fact he did not use such film nor operate exclusively with such equipment in making his said photographs or

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portraits; with effect of misleading many purchasers into the belief that he was in some manner connected with the Warner Brothers Motion Picture Studios of Hollywood; and

- (c) Designated and described photographs sold by it as "Goldtone Colored in Oil," notwithstanding fact it was not a Goldtone but a less costly sepia print which he did not actually color in oil but bathed by rubbing with oil-soaked cotton;

With capacity and tendency to mislead and deceive purchasing public and induce purchasers to buy its said photographic products in and on account of the belief that said representations and statements were true and thus unfairly divert trade from his competitors located in said District of Columbia who in nowise make the same or similar false and misleading representations and statements, and employ such methods and practices, but truthfully represent to the public the true or real values and prices for their said products, and in connection therewith accurately and truthfully represent the kind or quality thereof offered for such prices, and do not through use of simulation of corporate or trade name in connection with other statements used, create the inference in the minds of the members of such public that they are dealing with some outstanding and well known Hollywood motion picture studio:

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

*Mr. DeWitt T. Puckett* for the Commission.

*Mr. Daniel C. Eberly* and *Mr. Chester A. Bennett*, of Washington, D. C., for respondent.

## COMPLAINT

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, having reason to believe that Eugene D. Petry, an individual, doing business under the trade name of Warner Studios, hereinafter referred to as respondent, has been, and now is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eugene D. Petry, is an individual trading under the firm name and style of Warner Studios, with his principal office and place of business, located at 1317 F St., in the city of Washington, in the District of Columbia; and also maintains offices, and does business, as an individual, under said trade name of Warner Studios in many other cities located in various States of the United States.

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PAR. 2. Respondent is now, and has been, for more than 1 year last past, engaged in the business of conducting and operating a photograph and portrait studio in the city of Washington, in the District of Columbia, at and from which he solicits the sale of, and sells, photographs and portraits of various types and kinds to members of the purchasing public located and residing in said District, and who sit as subjects for such photographs or portraits in respondent's said studio. In the course and conduct of his said business, as aforesaid, respondent is in competition with other individuals, firms, partnerships, and corporations likewise engaged in conducting and operating photograph and portrait studios in said District of Columbia, and who likewise are engaged in the sale of photographs and portraits of those persons who reside in said District, and who sit as subjects in their studios.

PAR. 3. In the course and conduct of his said business, the respondent, in offering for sale, in soliciting the sale of, and in selling said photographs or portraits, employs salesmen or canvassers to canvass from house to house in the said District of Columbia for the purpose of contacting prospective purchasers of such photographs or portraits, and inducing them to have such photographs or portraits taken of themselves, and having them take the necessary sittings therefor at respondent's studio in said District; and, as an inducement to such prospective purchasers to purchase such photographs or portraits, and to take such necessary sittings therefor, the respondent has caused, authorized, instructed, suffered, and permitted his said salesmen or canvassers in soliciting the sale of such photographs or portraits to make false and misleading statements and representations in the distribution and sale by them, for varying amounts ranging from 50 cents to \$1.50, of purported coupons or "certificates," which, according to the terms thereof, entitle the holders and purchasers of same to certain alleged favored or special prices for photographs or portraits of various types and kinds to be taken of them at respondent's said studio. Almost all of these coupons or "certificates" deal with, and have stated therein in bold type, an alleged "Special Advertising Offer," or other special offer, for what is claimed by respondent, in much smaller type contained therein, to be the "latest in portraiture"; and each of which has, when used by the purchaser thereof, according to the terms of the particular offer contained in each of said various coupons or "certificates," a "regular value" varying from \$3.50 to \$7.50, as will hereinafter appear and be more particularly and fully set forth. Some of these purported coupons



or "certificates" contain the respondent's direction and authorization to the prospective purchaser to pay his "representative 50¢ for this certificate"; and, some, the respondent's direction and authorization to the prospective purchaser to "pay representative \$1.00 for this certificate"; while, in other instances, no sum is required, and in these latter instances the coupon or "certificate" is represented as a "courtesy offer" featured in bold, large type.

In the case of one particular type of coupon or "certificate," so sold and distributed by respondent's salesmen or canvassers, having an alleged and purported "regular value" of \$7.50, there are contained therein the statements "for \$2.50 only," and respondent's direction and authorization to "pay representative \$1.50," calling for the "balance at studio \$1.00," which balance, presumably, is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. In the case of most of these coupons or "certificates," according to the terms printed thereon, "no balance at studio" is required from the purchaser; while, in others there is contained the statement that the purchaser is required to pay in addition "50¢ balance at the studio," which balance, presumably, is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. Except for some of these said instances, where additional payment of a "balance" is required, as hereinabove enumerated and described, the particular amount paid to respondent's canvasser or "representative" for each said particular type or kind of coupon or "certificate" by the purchaser thereof, constitutes, or is supposed to constitute, the total cost for the particular type of photograph or portrait offered thereby by the respondent in accordance with the terms printed in each of said coupons or "certificates."

PAR. 4. Some of these coupons, so sold, contain other statements and representations, such as, "Operating Exclusively With Movie Lighting Equipment" and "New Motion Picture Film Used"; and, displayed in prominent bold type on each of these coupons or "certificates," there appears respondent's trade name "WARNER STUDIOS"; and, each of these coupons contains substantially, and with very little difference, the same language in connection with featuring the various offers and inducements of special prices made therein to prospective purchasers of respondent's photographs and portraits, which, exclusive of such language are, in each instance substantially as follows:

Complaint

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(a)

This Offer Can Not Be Purchased at Studio

WARNER STUDIOS

\* \* \*

\* \* \*

Regular  
VALUE \$3.50Selection of Proofs  
UnmountedLatest in  
PortraitureNew Motion Pic-  
ture Film Used

## SPECIAL ADVERTISING OFFER

ONE 8 x 10 PORTRAIT COLORED IN OIL

Pay Representative 50¢  
for this Certificate

FOR 50¢ ONLY

No balance  
at Studio

\* \* \*

Good until ----- Representative-----

\* \* \*

\* \* \*

\* \* \*

(b)

This Offer Can Not Be Purchased at Studio

WARNER STUDIOS

\* \* \*

\* \* \*

Regular  
VALUE \$5.00

Selection of Proofs

Latest in  
PortraitureNew Motion Picture  
Film Used

## SPECIAL ADVERTISING OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative \$1.00  
for this Certificate

FOR \$1.00 ONLY

No Balance  
at Studio

\* \* \*

Good until ----- Representative-----

\* \* \*

\* \* \*

\* \* \*

650

Complaint

(c)

SPECIAL PORTRAIT OFFER

\* \* \*

\* \* \*

WARNER STUDIOS

\* \* \*

\* \* \*

Introducing to Washington Photography's Latest Creation

ONE 11 x 14 TAPESTRY OIL PAINTING

Pay Representative 50¢  
for this Certificate

FOR \$1.00 ONLY

Pay 50¢  
Balance at  
Time of Sitting

\* \* \*

Operating Exclusively with Movie Lighting Equipment

\* \* \*

\* \* \*

----- Salesman  
Good Until-----

(d)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

\* \* \*

\* \* \*

Regular  
VALUE \$5.00

Selection of 4 to 6 proofs

Latest in  
Portraiture

New Motion Pic-  
ture Film Used

SPECIAL CHRISTMAS OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative \$1.00  
for this Certificate

FOR \$1.00 ONLY

No Balance at  
Studio

\* \* \*

Good Until----- Representative-----

\* \* \*

\* \* \*

\* \* \*

Complaint

22 F. T. C.

(e)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

\* \* \*

\* \* \*

Regular  
VALUE \$5.00

Selection of 4 Proofs

Latest in Portraiture

New Motion Picture  
Film Used

## SPECIAL CHRISTMAS OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative 50¢  
for this Certificate

FOR \$1.00 ONLY

50¢ Balance at  
Studio

\* \* \*

Good until ----- Representative -----

\* \* \*

\* \* \*

\* \* \*

(f)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

\* \* \*

\* \* \*

Regular  
VALUE \$5.00

Selection of Proofs

Latest in Portraiture

New Motion Picture  
Film Used

## SPECIAL ADVERTISING OFFER

ONE 8 x 10 FRENCH VIGNETTE

Pay Representative 50¢  
for this Certificate

FOR 50¢ ONLY

No Balance at  
Studio

\* \* \*

Good Until ----- Representative -----

\* \* \*

\* \* \*

\* \* \*

650

Complaint

(g)

COURTESY OFFER

\* \* \*

Selection of  
Proofs

ONE 8 x 10 PORTRAIT  
of Yourself or any Member of your Family  
FREE

This offer cannot be purchased at Studio

\* \* \*

WARNER STUDIOS

\* \* \*

\* \* \*

\* \* \*

This Portrait has been Paid for by -----

(h)

This Offer Can Not Be Purchased At Studio

WARNER STUDIOS

\* \* \*

\* \* \*

Regular  
VALUE \$5.00

Selection of Proofs

Latest in Portraiture

New Motion Picture  
Film Used

SPECIAL ADVERTISING OFFER

ONE 8 x 10 GOLDTONE COLORED IN OIL

Pay Representative 50¢  
for this Certificate

FOR \$1.00 ONLY

50¢ Balance at  
Studio

\* \* \*

Good Until ----- Representative-----

\* \* \*

\* \* \*

\* \* \*

Complaint

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(1)

This Offer obtained through Representative only. Regular Price without this certificate \$7.50.

## WARNER STUDIOS

\* \* \*

\* \* \*

VALUE \$7.50

Operating Exclusively with Movie Lighting Equipment

## SPECIAL ADVERTISING OFFER

One Ivora Miniature in Oil, Complete with Frame  
(SELECTION OF PROOFS)

Pay Representative \$1.50

For \$2.50 ONLY

Balance at  
Studio \$1.00

Additional Portraits at Special prices to Holders of Certificates Only.

-----  
(Special representative)

Good Until-----

\* \* \*

\* \* \*

\* \* \*

(J)

This Offer Can Not Be Purchased At Studio

## WARNER STUDIOS

\* \* \*

\* \* \*

Regular  
VALUE \$5.00

Selection of Proofs  
Unmounted

Latest in  
Portraiture

New Motion  
Picture  
Film Used

## SPECIAL PORTRAIT OFFER

ONE 8 x 10 VELOUR OIL PAINTING

Pay Representative 50¢  
for this Certificate

FOR 50¢ ONLY

No Balance at Studio

\* \* \*

Good Until----- Representative-----

\* \* \*

\* \* \*

\* \* \*

PAR. 5. In the course and conduct of his business, as aforesaid, and in soliciting the sale of and selling of said photographs or portraits, as heretofore described and set forth, respondent, through his salesmen or canvassers, appointed by him as agents in his behalf, in order to induce prospective customers to purchase said various types of photographs or portraits, and to take the necessary sittings therefor represents, the "regular value" thereof to be far in excess of the prices at which such photographs or portraits actually, ordinarily and usually sell in the city of Washington, District of Columbia; and, the respondent, together with, and, in connection with such representations of "regular value," then offers the said prospective purchasers, in each of the instances above enumerated and set forth, pretended special prices which are considerably much less than the represented "regular value" for such photographs or portraits; and, which pretended "Special Advertising Offers" or, other special offers, are made upon the claimed consideration that such prospective purchasers will "advertise" the business of the respondent to their friends and neighbors residing in their respective communities; when, in truth and in fact, such special prices represented by respondent to be the usual prices or "regular value" of his photographs or portraits are fictitious and misleading, and are calculated to, and actually do mislead and deceive purchasers and prospective purchasers as to the real value of said photographs or portraits and their usual selling prices, and do mislead and deceive them into the belief that they are obtaining said photographs or portraits at prices far below their usual selling prices and below their true and "regular value" or worth, when they buy at the pretended special prices offered by respondent, as hereinabove set forth; and, further, when respondent's said special prices made and offered by him to purchasers and prospective purchasers in his said coupons or "certificates" in the manner and method heretofore described and set forth, are in fact misleading and a misrepresentation in that:

(a) Many of said purchasers who purchased, from respondent's "representatives" or canvassers, the so-called "Special Advertising Offer" and other special offer coupons or "certificates," as hereinabove enumerated and set forth, have, upon presentation of same, at the respondent's studio, either found the respondent reluctant and unwilling to honor same according to the terms printed thereon; or were either high-pressured or unfairly coerced by a most intensive sales effort into purchasing additional photographs or portraits at higher prices; or were informed and told that the photographs or portraits called for on the face of the "certificate" could not be furnished by respondent except upon the payment of additional

money; or were in other instances flatly refused the particular photograph or portrait provided and called for by the terms of said coupon or "certificate."

(b) Many such purchasers have inferred from the use of respondent's trade name, "WARNER STUDIOS" printed on some of said coupons or "certificates," when taken together with other statements printed thereon, such as, "Operating Exclusively With Movie Lighting Equipment," and "New Motion Picture Film Used," that the respondent is in some manner connected with Warner Brothers Motion Picture Studios of Hollywood, Calif., when such is actually not the fact.

(c) Prospective purchasers and purchasers were misled and deceived by respondent's claim that he was making "Special Advertising Offers" and other special offers, when actually such offers were only a part of a continuous scheme of solicitation in the regular, usual course and conduct of his said business.

(d) Prospective purchasers and purchasers were misled and deceived by respondent's claim of offering for sale and selling photographs or portraits, represented by him to be of from \$3.50 to \$7.50 "regular value," when in fact, exactly the same kind, type, and quality of photographs or portraits are regularly, usually and ordinarily sold by popular price studios operated and conducted by respondent's competitors in said District, at prices ranging from \$1.00 to \$2.00.

(e) The photograph which the respondent advertises and represents to be a "Goldtone Colored in Oil," is not in fact a Goldtone, but a sepia print which costs less to produce than the Goldtone, and which respondent does not actually color in oil but bathes by rubbing with oil-soaked cotton.

PAR. 6. In the course and conduct of his business, as aforesaid, respondent is in competition with corporations, partnerships, firms, and individuals likewise engaged in conducting and operating photograph and portrait studios located in the said District of Columbia, who in nowise make the same or similar false and misleading representations and statements as are made by the respondent, and who do not employ, use, or indulge in the methods and practices, hereinabove alleged and set forth in this complaint, but who truthfully represent to the purchasing public the true, honest, and real values or prices for their photographs or portraits, and who accurately and truthfully, in connection with such prices, do not misrepresent the type, kind, or quality of the photographs or portraits offered for sale by them for such prices; and, who do not, by the use of a false and misleading corporate or trade name, or other statements used



or employed in connection therewith, create the inference in the minds of members of the purchasing public that they are dealing with some outstanding and well known motion picture studio located in Hollywood, Calif.

PAR. 7. The aforesaid representations made by the respondent about and concerning his photographs or portraits, and the employment and use by him of the name "WARNER STUDIOS" as hereinabove stated, have the capacity and tendency to deceive and mislead the purchasing public, and to induce purchasers to buy the said photographic products of the respondent in and on account of the belief that said representations and statements are true, and thus unfairly divert trade to respondent from his said competitors located in the said District of Columbia.

PAR. 8. The acts and things done by respondent, and the methods and practices employed, used, and indulged in by him, as hereinabove alleged, described and set forth are all to the injury and prejudice of the public and to 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 21st day of March 1936, issued and served its complaint in this proceeding upon the respondent, Eugene D. Petry, doing business under the trade name of Warner Studios, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer thereto, a stipulation as to the facts was entered into between the respondent through his attorneys, Daniel C. Eberly, Esq., and Chester A. Bennett, Esq., and this Commission, subject to its approval, through its chief counsel, W. T. Kelley, Esq., in and by which stipulation it was agreed that the statement of facts contained therein might be taken as the facts in this proceedings and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and in which stipulation it was provided that the Commission might proceed upon said statement of facts to make its report; its findings as to the facts (including inferences which it

## Findings

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might draw from the said stipulated facts) and its conclusion based thereon and under its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Eugene D. Petry, is an individual trading under the firm name and style of Warner Studios, and is engaged in the operation of a photograph and portrait studio, with his principal office and place of business located at 1317 F St., in the city of Washington, in the District of Columbia. He also does business under said trade name in many other cities located in various States of the United States.

PAR. 2. In the course and conduct of his business, respondent operates a photograph and portrait studio in the city of Washington, in the District of Columbia, at and from which he solicits the sale of, and sells, photographs and portraits of various types and kinds to persons who sit as subjects for such photographs or portraits. In said business, respondent is in competition with other individuals, firms, partnerships, and corporations likewise engaged in operating photograph and portrait studios in said District of Columbia, and in selling photographs and portraits to those persons who sit as subjects therefor.

PAR. 3. In the course and conduct of his said business, the respondent, in soliciting the sale of and in selling said photographs or portraits, employs salesmen to canvass from house to house in the said District of Columbia for the purpose of contacting prospective purchasers of such photographs or portraits, and inducing them to have such photographs or portraits taken of themselves, and having them take the necessary sittings therefor at respondent's studio in said District. As an inducement to such prospective purchasers to purchase such photographs or portraits, the respondent has caused, instructed, suffered, and permitted his said salesmen to make false and misleading statements and representations in the distribution and sale by them, for varying amounts ranging from 50 cents to \$1.50 of purported coupons or "certificates," which, according to the terms thereof, entitle the holders and purchasers of same to certain alleged favored or special prices for photographs or portraits of various types and kinds to be taken of them at respondent's said studio. Almost all of these coupons or "certificates" deal with, and

have stated therein in bold type, an alleged "Special Advertising Offer," or other special offer, for what is claimed by respondent, in much smaller type contained therein, to be the "latest in portraiture"; and each of which has, when used by the purchaser thereof, according to the terms of the particular offer contained in each of said various coupons or "certificates," a "regular value" varying from \$3.50 to \$7.50. Some of these purported coupons or "certificates" contain the respondent's direction and authorization to the prospective purchaser to pay his "representative 50¢ for this certificate"; and, some, the direction to "pay representative \$1.00 for this certificate." In other instances no sum is required; and, in these latter instances the coupon or "certificate" is represented as a "Courtesy Offer" featured in bold large type.

In the case of one particular type of coupon or "certificate," so sold and distributed by respondent's salesmen, having an alleged and purported "regular value" of \$7.50, there are contained therein the statements "for \$2.50 only," and respondent's direction and authorization to "pay representative \$1.50," calling for the "balance at studio \$1.00," which balance is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. In the case of most of these coupons or "certificates," according to the terms printed thereon, "no balance at studio" is required from the purchaser; while, in others there is contained the statement that the purchaser is required to pay in addition "50¢ balance at the studio," which balance is required to be paid at the time of the sitting, or when otherwise used by the purchaser thereof. Except for some of these said instances, where additional payment of a "balance" is required, as hereinabove described, the particular amount paid to respondent's canvasser or "representative" for each said particular type or kind of coupon or "certificate" by the purchaser thereof, constitutes, or is supposed to constitute, the total cost for the particular type of photograph or portrait offered thereby by the respondent in accordance with the terms printed in each of said coupons or "certificates."

PAR. 4. Some of these coupons, so sold, contain other statements and representations such as "Operating Exclusively with Movie Lighting Equipment" and "New Motion Picture Film Used"; and, displayed in prominent bold type on each of these coupons or "certificates," there appears respondent's trade name "WARNER STUDIOS." In fact respondent does not use new motion picture film and does not operate exclusively with Movie Lighting Equipment in making his photographs and portraits. Each of these coupons contains substantially, and with very little difference, the same language

## Findings

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in connection with featuring the various offers and inducements of special prices made therein to prospective purchasers of respondent's photographs and portraits.

PAR. 5. In the course and conduct of his business, as aforesaid, and in soliciting the sale of and selling of said photographs or portraits, as heretofore described and set forth, respondent, through his salesmen, in order to induce prospective customers to purchase said various types of photographs or portraits, and to take the necessary sittings therefor, represents the "regular value" thereof to be far in excess of the prices at which such photographs or portraits actually, ordinarily and usually sell in the city of Washington, District of Columbia. The respondent, in connection with such representations of "regular value," then offers the said prospective purchasers, in each of the instances above set forth, pretended special prices which are considerably less than the represented "regular value" for such photographs or portraits; and, which pretended "Special Advertising Offers" or other special offers, are made upon the claimed consideration that such prospective purchasers will "advertise" the business of the respondent to their friends and neighbors residing in their respective communities. In truth and in fact, such prices represented by respondent to be the usual prices or "regular value" of his photographs or portraits are fictitious and misleading, and are calculated to and actually do mislead and deceive purchasers and prospective purchasers as to the real value of said photographs or portraits and their usual selling prices, and do mislead and deceive them into the belief that they are obtaining said photographs or portraits at prices far below their usual selling prices and below their true and "regular value" or worth, when they buy at the pretended special prices offered by respondent, as hereinabove set forth. Further, respondent's said special prices made and offered by him to purchasers and prospective purchasers in his said coupons or "certificates" in the manner and method heretofore described and set forth are in fact misleading and a misrepresentation in that:

(a) Many of said purchasers who purchased from respondent's salesmen the so-called "Special Advertising Offer" and other special offer coupons or "certificates," as hereinabove set forth, have, upon presentation of same at the respondent's studio, found the respondent reluctant and unwilling to honor same according to the terms printed thereon.

(b) Many such purchasers have inferred from the use of respondent's trade name, "WARNER STUDIOS," printed on some of said coupons or "certificates," when taken together with other statements printed

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## Findings

thereon, such as "Operating Exclusively With Movie Lighting Equipment" and "New Motion Picture Film Used," that the respondent is in some manner connected with Warner Brothers Motion Picture Studios of Hollywood, Calif.

(c) Prospective purchasers and purchasers were misled and deceived by respondent's claim that he was making "Special Advertising Offers" and other special offers, when actually such offers were only a part of a continuous scheme of solicitation in the regular, usual course and conduct of his said business.

(d) Prospective purchasers and purchasers were misled and deceived by respondent's claim of offering for sale and selling photographs or portraits represented by him to be of regular value of from \$3.50 to \$7.50 each, when in fact exactly the same kind, type, and quality of photographs or portraits are regularly, usually, and ordinarily sold by popular price studios operated and conducted by respondent's competitors in said District at prices ranging from \$1.00 to \$2.00.

(e) The photograph which the respondent advertises and represents to be a "Goldtone Colored in Oil" is not in fact a Goldtone, but a sepia print which costs less to produce than the Goldtone, and which respondent does not actually color in oil but bathes by rubbing with oil-soaked cotton.

PAR. 6. In the course and conduct of his business, as aforesaid, respondent is in competition with corporations, partnerships, firms, and individuals likewise engaged in conducting and operating photograph and portrait studios located in the said District of Columbia, who in no wise make the same or similar false and misleading representations and statements as are made by the respondent. Said competitors do not employ, use, or indulge in the methods and practices hereinabove set forth, but truthfully represent to the purchasing public the true, honest, and real values or prices for their photographs or portraits, and accurately and truthfully in connection with such prices represent the type, kind, or quality of the photographs or portraits offered for sale by them for such prices. Said competitors do not by the use of simulating a corporate or trade name, when taken together with other statements used or employed in connection therewith, create the inference in the minds of members of the purchasing public that they are dealing with some outstanding and well-known motion picture studio located in Hollywood, Calif.

PAR. 7. The aforesaid representations made by the respondent about and concerning his photographs or portraits, and the employment and use by him of the name "WARNER STUDIOS" as hereinabove stated, have the capacity and tendency to deceive and mislead the purchasing public, and to induce purchasers to buy the said photo-

## Order

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graphic products of the respondent in and on account of the belief that said representations and statements are true, and thus unfairly divert trade to respondent from his said competitors located in the said District of Columbia.

## CONCLUSION

The aforesaid acts and practices of 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 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 and a stipulation entered into between the respondent herein, Eugene D. Petry, an individual doing business under the trade name of Warner Studios, by his counsel, Daniel C. Eberly and Chester A. Bennett, and counsel for this Commission, 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."

*Now, therefore, it is hereby ordered,* That said respondent, Eugene D. Petry, an individual, doing business under the trade name of Warner Studios, his agents, representatives and employees, in the sale and offering for sale in interstate commerce, and in the District of Columbia, of photographs and portraits of various types and kinds to persons who sit as subjects therefor, forthwith cease and desist from:

(1) Representing, directly or by implication, that the various types of photographs and portraits made in his studio have actual and regular values, and customarily sell for sums, in excess of the prices actually charged for said photographs and portraits.

(2) Representing, through advertising literature containing the descriptive language "Goldtone Colored in Oil" or language of similar import, or in any manner whatever, that sepia print photographs are Goldtones or are Goldtones Colored in Oil.

(3) Representing in connection with his trade name, Warner Studios, through advertising literature containing the descriptive language "Operating Exclusively With Movie Lighting Equipment"

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## Order

or "New Motion Picture Film Used" or language of similar import or in any manner whatever, directly or by implication, that his photographic and portrait studio is in any way connected with Warner Brothers Motion Picture Studios of Hollywood, Calif.

*It is further ordered,* That said respondent shall within 60 days from the date of service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which this order had been complied with.

IN THE MATTER OF  
VAUGHN C. SALTER AND PAUL TESSON, TRADING AS  
FALCON CAMERA CO.

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

*Docket 2778. Complaint, Apr. 23, 1936—Decision, June 20, 1936*

Where two individuals, engaged in business of distributing and selling cameras to retail merchants in connection with a sales promotion plan sold by them, and under which they solicited and sold to retailers, through their traveling representatives, trade coupons at \$4.50 a thousand in minimum 5,000 lots, as a rule, at a cost to the retail dealer of \$22.50, paid by deposit when contract was signed, and by C. O. D. balance payment upon receipt of shipment, and under which plan such coupons were to be distributed to dealers' customers and customers were entitled to receipt of a camera upon remitting 30 coupons to said individuals, together with a small sum to cover, ostensibly, cost of packing and shipping and safe delivery, and with undertaking on part of said individuals to reimburse said \$4.50 a thousand to dealer when 25 percent of the trade coupons or tickets has been sent in for redemption—

- (a) Represented directly and through sales talk of their said representatives acting under their instructions and through their advertising literature, trade tickets, and contracts, in soliciting sale of said tickets, that they were the manufacturers of the Falcon camera, name of which they included in their trade name, and of the film used in connection therewith, facts being they were not the manufacturers of such cameras or films, but purchased cameras sold by them in wholesale lots from the manufacturer thereof;
- (b) Represented that they had devised and put into operation their said sales promotion plan under which Falcon cameras were allegedly given free or for approximately the expense of packing and shipping only, for the purpose of increasing the number of such cameras in use by the public and with result, incident thereto, of materially increasing the sale of such film as only film that can be used in said cameras, facts being that such statement was false and they had no interest in the sale of films for use in such cameras;
- (c) Represented that sum of 30 cents, to be remitted by each person sending in trade tickets for redemption, was not intended to apply in any way to purchase of cameras but merely to cover cost of packing and shipping same, together with cost of one trial roll of film, and stated upon said trade tickets that cost of packing and shipping, including purported safe delivery, was 40 cents, facts being that the smaller sum covered not only cost of packing and shipping camera actually sent, but entire costs to said individuals of said camera and roll of film included, and cost of packing and shipping was covered by the additional 10 cents requested, as aforesaid, on such tickets, purportedly to cover insured safe delivery;
- (d) Represented that a five-camera display, to be furnished to retailer upon execution of contract and to become his property, would consist of one Falcon Model No. 2 and four Falcon Model No. 1 cameras, and represented retail value of the No. 1 model as \$4 or more, and depicted such various



models in advertising literature supplied in its salesmen's kits for use in soliciting prospective purchasers of such plan, facts being that the five-camera display actually supplied consisted of one Falcon Model No. 2 and one Falcon Model No. 1, and three Univex Model A cameras, retail prices of which latter generally range from 40 cents to 50 cents apiece, and value of which is substantially less than either of aforesaid Falcon models;

- (e) Represented in soliciting as aforesaid, that the cameras furnished to persons sending in such trade tickets for redemption would be the Falcon Model No. 1 and be identical with that exhibited to the retailer, and in their said sales talk and in all of their display posters and advertising literature made reference only to Falcon Models No. 1 and 2, and actually exhibited to prospective purchaser only such cameras, neither of which show any distinguishing marks, or lettering identifying them, respectively, as such models or as Model A cameras, and through all the negotiations leading to the signing of the contract represented that the Falcon Model No. 1, depicted thereon, was the Model A camera referred to therein, and in the trade tickets, and made no reference to the Model A Univex camera actually supplied and which was manufactured by a different concern and in no way comparable with Falcon in price or value, and which was not contained in salesmen's kits nor exhibited to prospective purchasers of such sales plan nor referred to in such negotiations;
- (f) Falsely represented that retailer entering into such promotional sales plan would be furnished a supply of hand bills for circularization among customers; and
- (g) Falsely represented that use of such sales promotional plan and distribution of cameras in connection therewith would promote the retailer's business, secure the good will of his customers, and result in a substantial increase of his sales;

With result that such false and misleading representations on the part of said individuals and their traveling representatives mislead a substantial portion of the consuming public by inducing them to believe that such representations were true and that, upon purchase of such sales plan, such retail dealers would receive the benefits represented to accrue therefrom, and that, upon sending in such tickets for redemption, their respective customers would receive the merchandise represented, and such plan and merchandise were sold in substantial quantities to such dealers and to the consuming public on account of the erroneous beliefs induced as aforesaid, and said individuals, in accordance with their plan and expectation, and in view of their failure to supply camera represented, and resulting complaints to retailer and subsequent discontinuance of further distribution of such tickets by him and sending thereof in for redemption by his customers, could not be called upon to refund, as promised, such \$4.50 a thousand upon return of 25 percent of the tickets, and trade was diverted from competitors, among whom there are those who truthfully represent the purpose and nature of their plans and the quality of the merchandise used in conjunction therewith, and who do not in any wise misrepresent the benefits that may be expected to be obtained therefrom; to the substantial injury of competition in commerce:

*Held*, That such practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. J. T. Welch*, for the Commission.

## Complaint

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## COMPLAINT

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, having reason to believe that Vaughn C. Salter and Paul Tesson, trading and doing business under the trade name, Falcon Camera Co., hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Vaughn C. Salter and Paul Tesson, trading and doing business as Falcon Camera Co., have their principal office and place of business located at 8277 De Soto Ave., in the city of Detroit, State of Michigan. Respondents are now, and have been for approximately 1 year last past, engaged in the business of distributing and selling, in commerce as herein set out, a sales promotional plan together with certain items of merchandise, such as cameras, used in furthering said plan, to retailers.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said merchandising plan, together with the advertising literature used in connection therewith and the various items of merchandise also used in connection therewith, when sold, to be transported from their office and principal place of business in the State of Michigan to the purchasers thereof located at various points in States of the United States other than the State of Michigan and in the District of Columbia. The respondents have at all times mentioned herein, maintained a constant current of trade and commerce in said sales promotional plan and the merchandise sold in connection therewith, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and operation of their said business, respondents have been, and are now, engaged in substantial competition with other firms and with corporations and individuals likewise engaged in the business of distributing and selling sales promotional plans of various types, and various items of merchandise sold in connection with said plans, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of their business, the respondents, either acting by themselves or in conjunction and in cooperation with their various traveling representatives, have engaged

in a scheme to defraud, and have defrauded, the retail dealers purchasing their said sales promotional plan in the following manner:

Respondents' sales promotional plan consists in the retailer purchasing trade tickets printed by the respondents at a high and exorbitant price of approximately \$4.50 per thousand. These tickets are distributed by the retailer to his customers, one ticket being distributed with each purchase of a stipulated amount. When the purchaser has accumulated 25 trade tickets, the said tickets, together with the sum of 30 cents, purported to cover only the cost of packing and shipping and one trial roll of film, are forwarded by said customer to the respondents, and the respondents in turn ship a camera to said customer.

Respondents employ a number of traveling representatives for the purpose of securing from retailers the purchase of said sales promotional plan and the execution of certain contracts in connection therewith.

Respondents provide each of said traveling salesmen with a salesman's kit in which are included certain posters and circulars hereinafter more particularly described, one Falcon Automatic Camera, Model No. 2, and one Vestpocket Falcon Camera, Model No. 1, together with samples of trade tickets used in connection with said sales promotional plan, and a number of blank contracts. The traveling representatives, being supplied by the respondents with the said salesman's kit and its contents, call on and visit dealers located in various States of the United States and solicit said retail dealers to become purchasers of the respondents' promotional plan, including the items of merchandise sold in connection therewith. In making said solicitations, the respondents or said traveling representatives, acting under instructions from the respondents, use a sales talk for the purpose of inducing prospective purchasers to purchase the said sales promotional plan.

In this sales talk and in the advertising literature, trade tickets and contracts, the respondents themselves, or their representatives, represent: (1) that the said respondents trading under the name, Falcon Camera Co., are the manufacturers of the Falcon cameras and the film used in connection therewith; (2) that said respondents devised and put into operation said sales promotional plan by which Falcon cameras are claimed to be given free or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith; which films are the only ones that can be used in said cameras; (3) that the sum of 30 cents, which is to be remitted by each person sending in trade tickets for redemption, is intended not to apply

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in any way to the purchase of the camera, but merely to cover the cost of packing and shipping said camera together with the cost of one trial roll of film; (4) that the 5-camera display agreed to be furnished to the retailer upon execution of the contract, said display becoming the property of the retailer, will consist of one Falcon Model No. 2 and four Falcon Model No. 1 cameras; (5) that the cameras furnished those persons sending in trade tickets for redemption will be Model 1 Falcon cameras; (6) that the retailer will be supplied with a supply of hand bills for circularization among his customers; and (7) that the use of said sales promotional plan and the distribution of the cameras in connection therewith will promote his business, secure the good-will of his customers, and result in a substantial increase of sales by said retailer.

The respondents or their representatives, in connection with the presentation of said sales talk, exhibit to the prospective purchaser of said sales plan, the various items included in the salesman's kit, including the Falcon cameras, Models 1 and 2, and said prospective purchasers are advised that the cameras furnished to persons sending in trade tickets for redemption will be the Falcon camera Model No. 1, and will be identical to the Falcon camera exhibited to said retailer.

Certain advertising literature contained in said salesman's kit is also exhibited to the prospective purchaser of the sales promotional plan. In one poster designed for display by the retail dealer to his customers, one Falcon Model No. 2, together with four Falcon Models No. 1 are depicted, and the object of the campaign is represented to be for the purpose of starting the consumers and customers into using a certain type of roll film for said cameras. In another of the posters designed for display by the retailer to his customers, a Falcon Model No. 1 camera is depicted, and said camera therein depicted is represented to have a retail value of \$4 or more. In still another of the posters designed for display by the retailer to his customers and for circularization among said customers, the Falcon camera Model No. 2 is depicted.

On said trade tickets printed and furnished by the respondents, it is also represented that said camera to be obtained by customers of the retail dealer upon redemption of said trade tickets, is to be obtained free and without cost, except the cost of packing and shipping which, including purported insured safe delivery is represented to be 40 cents.

In said sales talk and in all of said display posters and advertising literature exhibited to the prospective purchaser of the respondents' sales promotional plan, reference is made only to Falcon cameras, Models Nos. 1 and 2, and the respondents, or their salesmen, actu-

ally exhibit to said prospective purchaser of said plan, only Falcon cameras. The Falcon cameras of both models do not show any distinguishing marks or lettering to indicate that they are respectively Models No. 1 or 2, or to show whether or not said models are Model A cameras. In the contracts and on the trade tickets Model A cameras are the ones promised by the respondents and their representatives to be furnished to those persons sending in trade tickets for redemption. On the contracts the Falcon camera, without any lettering to indicate what model it is, is depicted. Throughout all the negotiations leading up to the execution of the contracts in connection with said plan, respondents and their representatives represent that the Falcon camera Model No. 1 is the Model A camera referred to in said contracts and in said trade tickets and no reference whatever is made to the Model A Univex camera, and this model camera is not contained in salesmen's kits and is not exhibited to the prospective purchaser of said sales plan.

The minimum order generally accepted by the respondents in connection with their said sales promotional plan is 5,000 cards, which cost the retail dealer \$22.50. A deposit is paid at the time the contract is signed, and the remainder of the purchase price is paid when the shipment is received C. O. D., without the purchaser having an opportunity to examine the contents of said shipment.

PAR. 5. In truth and in fact the respondents are not the manufacturers of the Falcon cameras or of the films used in connection with said cameras, but purchase said cameras in wholesale lots from the manufacturer. In truth and in fact the respondents' sales promotional plan is not one by which Falcon cameras are given free, or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith. The respondents actually ship to the retail dealers' customers who send in tickets for redemption, cameras that are not Falcon cameras and that do not in any wise approximate the Falcon Model No. 1 camera in appearance, size, or value. The respondents are not in fact interested in the sale of films to be used in Falcon cameras, but are interested principally and primarily in the sale of said promotional plan for the purpose of obtaining the profits resulting therefrom. The sum of 30 cents which is remitted by each person sending in trade tickets for redemption does not cover solely the cost of packing and shipping the camera actually shipped to said person, but actually covers the entire cost to the respondents of said camera, together with the cost of one roll of film sent therewith. The cost of packing and shipping the camera that is actually shipped to such person is included in the 10 cents

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requested by the respondents on said trade tickets, purportedly to cover insured safe delivery. In truth and in fact the 5-camera display furnished to the retailer upon execution of the contract consists of one Falcon Model No. 2, and one Falcon Model No. 1 camera, together with three Univex Model A cameras. Said Univex Model A cameras generally retail for prices ranging from 40 cents to 50 cents each, and are substantially less valuable than either of said Falcon cameras. The cameras actually shipped to those persons sending in trade tickets for redemption are Model A Univex cameras and are not manufactured by the same concern manufacturing the Falcon cameras, and are in no way comparable to said Falcon cameras in price or value. In truth and in fact respondents do not furnish said retailers with any supply of handbills for circularization among said retailers' customers. The execution of said contracts does not increase said retailers' sales or secure for said retailers the good will of their customers.

PAR. 6. In connection with the execution of the contracts ordering trade tickets on the high and exorbitant basis of \$4.50 per thousand, the respondents guarantee to make a cash refund to said retailers so executing said contracts, of \$4.50 per thousand upon redemption of 25 percent of said trade tickets. Said guarantee of cash refund is designed and intended to and does influence retail dealers into purchasing said trade tickets at the high and exorbitant prices charged therefor and into executing said contracts in the belief that they can and will readily secure redemption of at least 25 percent of said trade tickets and, as a consequence thereof, secure from respondents cash refunds sufficient to minimize or entirely cover the cost of said promotional plan. At the time said guarantee is made the respondents know, or have reason to believe, that when the first customers of the retail dealers executing said contracts send in trade tickets for redemption, and receive in exchange therefor the Model A Univex camera, said customers will take such action as to cause said retail dealers to withdraw said trade tickets from further circulation and distribution, and that said dealers will be forced, on account of the nature of the respondents' acts and practices as hereinabove set forth, so to refrain from further circulating said trade tickets as to make possible a redemption of 25 percent thereof. The respondents well know, or have reason to believe, that said purported guaranteed cash refund is a lure and a snare, devised and intended for the sole purpose of securing the execution of said contracts by said retail dealers in the expectation of being able, through the cooperation of the respondents, to comply with the terms of the guaranty and secure said cash refunds and that said dealers will be unable, on account of respondents' acts and practices as hereinabove detailed,

to comply with the terms of the contracts to such an extent as to qualify for said refunds.

PAR. 7. As a result of said sales talk and the other acts and practices of the respondents as herein set forth, and as a result of the confidence and reliance placed in the statements and representations made by the respondents and their representatives, a number of retail dealers have purchased, and they continue to purchase, said sales plan, and execute the contracts in connection therewith.

Many of respondents' competitors engaged in the business of distributing and selling sales promotional plans of various types and various items of merchandise in connection with said plans, truthfully represent the purpose and nature of said plans and truthfully represent the character and quality of the merchandise used in conjunction with said plans, and do not in any wise misrepresent the benefits that may be expected to be obtained from a use of said sales plans.

PAR. 8. The effect of the foregoing false and misleading representations on the part of the respondents and their traveling representatives is to mislead a substantial number of retail dealers, as well as a substantial portion of the consuming public by inducing them to believe that the representations made by the respondents and their representatives, as set out hereinabove in detail, are true and that, upon purchase of respondents' sales promotional plan, said retail dealers will receive the benefits represented to accrue therefrom and that, upon sending in trade tickets for redemption, their respective customers will receive the merchandise represented.

The foregoing false and misleading statements and representations on the part of respondents serve as inducements for substantial numbers of retail dealers to purchase the sales promotional plan of the respondents and execute the contracts in connection therewith, and said false and misleading statements and representations have a tendency to, and do, divert trade from respondents' competitors engaged in similar businesses with the result that substantial quantities of respondents' sales promotional plan and the merchandise used in conjunction therewith are sold to said dealers and to the consuming public on account of said beliefs induced as aforesaid. As a consequence thereof, a substantial injury has been done by respondents to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914,

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entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 23, 1936, issued and served its complaint in this proceeding upon the respondents, Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondents filed an answer in which they stated that they waived hearing on the charges set forth in the complaint, that they did not wish to contest the proceeding, that they admitted all the material allegations of the complaint to be true, and that they consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon them, the said respondents, its findings as to the facts and conclusions based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondents, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Vaughn C. Salter and Paul Tesson, trading and doing business as Falcon Camera Co., have had their principal place of business located at 8277 De Soto Ave., in the city of Detroit, State of Michigan. They have been engaged in the business of distributing and selling cameras to retail merchants in connection with a certain sales promotional plan which they also sold. Said respondents ship said cameras and advertising literature used in connection with the distribution thereof and their sales promotional plan from their place of business in Detroit, Mich., to retail merchants located at points in various States of the United States other than the State of Michigan who purchase said sales promotional plan and the cameras sold in connection therewith. Respondents have, since their entry into business, maintained a constant current



of trade in said sales promotional plan and said cameras in commerce among and between the various States of the United States.

PAR. 2. Other partnerships, corporations, and individuals also sell and distribute sales promotional plans of various types and various items of merchandise used in connection with said plans, in commerce among and between the various States of the United States, and respondents, in the operation of their business, are engaged in substantial competition with said corporations, partnerships, and individuals.

PAR. 3. The respondents, either acting by themselves or in conjunction and in cooperation with their various traveling representatives, in the course of the operation of their business, have engaged in a scheme to induce the purchase of their said cameras and sales promotional plan in the following manner:

The retailer purchases trade tickets printed by the respondents at a price of approximately \$4.50 per thousand. These tickets are then distributed by the retailer to his customers, one ticket being distributed with each purchase of a stipulated amount. When the purchaser has accumulated 25 trade tickets, the said tickets, together with the sum of 30 cents, purported and represented to cover only the cost of packing and shipping of one camera and one trial roll of film, are forwarded by said customer direct to the respondents. The respondents in turn ship a camera and one roll of film to said customer.

For the purpose of securing a large number of retailers to purchase said sales promotional plan and execute certain contracts in connection therewith respondents employ a number of traveling representatives and provide each of said representatives with a salesman's kit in which are included certain posters and circulars, hereinafter more particularly described; one Falcon Automatic Camera, Model No. 2, and one Vest Pocket Falcon Camera, Model No. 1, together with samples of trade tickets used in connection with said sales promotional plan, and a number of blank contracts. The representatives, being supplied by the respondents with said salesman's kit and its contents, call on and solicit retail dealers located at points in various States of the United States for the purpose of inducing said dealers to become purchasers of said sales promotional plan and the items of merchandise sold in connection therewith. In making said solicitations the respondents themselves, or their traveling representatives, acting under instructions from the respondents, use a sales talk. In this sales talk and in the advertising literature, trade tickets, and contracts, the respondents themselves represent:

(1) that the said respondents, trading under the name Falcon Camera Co., are the manufacturers of the Falcon cameras and the film used in connection therewith;

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(2) that said respondents devised and put into operation said sales promotional plan by which Falcon cameras are claimed to be given free or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith; which films are the only ones that can be used in said cameras;

(3) that the sum of 30 cents, which is to be remitted by each person sending in trade tickets for redemption, is intended not to apply in any way to the purchase of the camera, but merely to cover the cost of packing and shipping said camera together with the cost of one trial roll of film;

(4) that the five-camera display agreed to be furnished to the retailer upon execution of the contract, said display becoming the property of the retailer, will consist of one Falcon Model No. 2 and 4 Falcon Model No. 1 cameras;

(5) that the cameras furnished those persons sending in trade tickets for redemption will be Model 1 Falcon cameras;

(6) that the retailer will be supplied with a supply of handbills for circularization among his customers;

(7) that the use of said sales promotional plan and the distribution of the cameras in connection therewith will promote his business, secure the good-will of his customers, and result in a substantial increase of sales by said retailer.

In the course of said sales talk and in the solicitation of retail dealers to execute contracts in connection with said sales promotional plan, the respondents and their various representatives exhibit to said retail dealers the various items included in the salesman's kit, including the Falcon cameras, Models 1 and 2, and said retail dealers are advised that the cameras furnished to persons sending in trade tickets for redemption will be the Falcon camera Model No. 1, and will be identical to the Falcon camera exhibited to said retailer.

Certain advertising literature contained in said salesman's kit is also exhibited to the prospective purchaser of the sales promotional plan. In one poster designed for display by the retail dealer to his customers, one Falcon Model No. 2, together with 4 Falcon Models No. 1 are depicted, and the object of the campaign is represented to be for the purpose of starting the consumers and customers into using a certain type of roll film for said cameras. In another of the posters designed for display by the retailer to his customers, a Falcon Model No. 1 camera is depicted, and said camera therein depicted is represented to have a retail value of \$4 or more. In still another of the posters designed for display by the retailer to his

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customers and for circularization among said customers, the Falcon camera Model No. 2 is depicted.

On said trade tickets printed and furnished by the respondents, it is also represented that said camera to be obtained by customers of the retail dealer upon redemption of said trade tickets, is to be obtained free and without cost, except the cost of packing and shipping which, including purported insured safe delivery is represented to be 40 cents.

In said sales talk and in all of said display posters and advertising literature exhibited to the prospective purchaser of the respondents' sales promotional plan, reference is made only to Falcon cameras, Models Nos. 1 and 2, and the respondents, or their salesmen, actually exhibit to said prospective purchaser of said plan, only Falcon cameras. The Falcon cameras of both models do not show any distinguishing marks or lettering to indicate that they are respectively Models No. 1 or 2, or to show whether or not said models are Model A cameras. In the contracts and on the trade tickets Model A cameras are the ones promised by the respondents and their representatives to be furnished to those persons sending in trade tickets for redemption. On the contracts the Falcon camera, without any lettering to indicate what model it is, is depicted. Throughout all the negotiations leading up to the execution of the contracts in connection with said plan, respondents and their representatives represent that the Falcon camera Model No. 1 is the Model A camera referred to in said contracts and in said trade tickets and no reference whatever is made to the Model A Univex camera, and this model camera is not contained in salesmen's kits and is not exhibited to the prospective purchaser of said sales plan.

The minimum order generally accepted by the respondents in connection with their said sales promotional plan is 5,000 cards, which cost the retail dealer \$22.50. A deposit is paid at the time the contract is signed, and the remainder of the purchase price is paid when the shipment is received C. O. D., without the purchaser having an opportunity to examine the contents of said shipment.

PAR. 4. The respondents are not the manufacturers of the Falcon cameras or of the film used in connection with said cameras. They purchase said cameras in wholesale lots from the manufacturer thereof. The respondents' sales promotional plan is not one by which Falcon cameras are given free, or for approximately the expense of packing and shipping only, for the purpose of increasing the number of said cameras in use by the public with the result of materially increasing the sale of films to be used in connection therewith, or for any other purpose. They are not interested in the sale of films to be used in Falcon cameras. The respondents actually ship

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to the customers who send in tickets for redemption, cameras that are not Falcon cameras and that do not in any wise approximate the Falcon Model No. 1 camera in appearance, size, or value. The sum of 30 cents which is remitted by each person sending in trade tickets for redemption does not cover solely the cost of packing and shipping the camera actually shipped to said customer, but actually covers the entire cost to the respondents of said camera, together with the cost of one roll of film sent therewith. The cost of packing and shipping the camera that is actually shipped to such customer is included in the 10 cents requested by the respondents on said trade tickets, purportedly to cover insured safe delivery. The five-camera display furnished to the retailer upon execution of the contract consists of one Falcon Model No. 2, and one Falcon Model No. 1 camera, together with three Univex Model A cameras. The Univex Model A cameras generally retail at prices ranging from 40 cents to 50 cents each, and are substantially less valuable than either of said Falcon cameras. The cameras actually shipped to those persons sending in trade tickets for redemption are Model A Univex cameras and are not manufactured by the same concern manufacturing the Falcon cameras, and are in no way comparable to said Falcon cameras in price or value. Respondents do not furnish said retailers with any supply of hand bills for circularization, and the execution of contracts for said sales promotional plan does not increase said retailers' sales or secure for said retailers the good-will of their customers.

PAR. 5. The respondents guarantee to make a cash refund, to the retail dealers purchasing their sales promotional plan, of \$4.50 per thousand upon redemption of 25 percent of said trade tickets. This guarantee of a cash refund is designed and intended to and does influence retail dealers into purchasing said trade tickets at the high and exorbitant prices charged and into executing said contracts in the erroneous belief that they can and will readily secure redemption of at least 25 percent of said trade tickets and thus secure cash refunds from the respondents sufficient to minimize or entirely cover the cost of said promotional plan. The respondents know, or have reason to believe, at the time the guarantee is made to the retail dealer, that when the first customers send in their trade tickets for redemption and receive in exchange therefor the Univex Model A camera, said customers will complain to the retail dealers from whom they obtained the trade tickets and that said dealers will thereby be forced to refrain from further circulating said trade tickets. Upon failing to circulate said trade tickets, a redemption of 25 percent thereof is thus made impossible. Said purported guarantee cash refund is devised and intended solely for the purpose of securing the execution of said contracts by the retail dealers and the payment of

the sum of \$4.50 per thousand for trade tickets and certain hereinabove described merchandise which does not have a value in any way approximating the cost thereof to said retail dealers. Respondents know, or have reason to believe, that the retail dealers executing contracts and purchasing said sales promotional plan will be unable to qualify for the refunds claimed.

PAR. 6. As a result of said sales talk and the other acts and practices of the respondents, as herein set out, and as a result of the confidence and reliance placed in the statements and representations made by the respondents and their representatives, a number of retail dealers have purchased said sales promotional plan, including the merchandise in connection therewith, and have executed the contracts herein referred to.

Many of respondents' competitors engaged in the business of distributing and selling sales promotional plans of various types and various items of merchandise in connection with said plans, truthfully represent the purpose and nature of said plans and truthfully represent the character and quality of the merchandise used in conjunction with said plans, and do not in any wise misrepresent the benefits that may be expected to be obtained from a use of said sales plans.

PAR. 7. The effect of the foregoing false and misleading representations on the part of the respondents and their traveling representatives is to mislead a substantial portion of the consuming public by inducing them to believe that the representations made by the respondents and their representatives, as set out hereinabove in detail, are true, and that, upon purchase of respondents' sales promotional plan, said retail dealers will receive the benefits represented to accrue therefrom and that, upon sending in trade tickets for redemption, their respective customers will receive the merchandise represented.

The foregoing false and misleading statements and representations on the part of respondents serve as inducements for substantial numbers of retail dealers to purchase the sales promotional plan of the respondents and execute the contracts in connection therewith, and said false and misleading statements and representations have a tendency to, and do, divert trade from respondents' competitors engaged in similar businesses with the result that substantial quantities of respondents' sales promotional plan, and the merchandise used in conjunction therewith are sold to said dealers and to the consuming public on account of said beliefs induced as aforesaid. As a consequence thereof, a substantial injury has been done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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## CONCLUSION

The aforesaid acts and practices of the respondents are each and all to the prejudice of the public, and to the competitors of the respondents, and constitute unfair methods of competition in 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 powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon a complaint filed herein on the 23rd day of April 1936 and answer to said complaint dated May 25, 1936, and filed on this date by Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., respondents herein, in which answer said respondents state that they desire to waive hearing and not to contest the proceeding and that they admit all of the material allegations of the complaint to be true and consent that the Commission may, without trial, without further evidence, and without intervening procedure, make, enter, issue, and serve upon said respondents, its findings as to the facts and its conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the complaint and said answer, and being fully advised in the premises;

*It is now ordered*, That the time within which answer may be filed by said respondents be extended to this date and the answer of the respondents, Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., be received and filed.

*It is further ordered*, That the respondents, Vaughn C. Salter and Paul Tesson, trading as Falcon Camera Co., their agents, representatives, servants, and employees, in connection with the distribution and sale of promotional sales plans and items of merchandise, such as cameras, used in connection with said plans, in interstate commerce, cease and desist from:

Representing or advertising, directly or by implication, through their trade name Falcon Camera Co. or through circulars, display cards, sales talks, or any other form of advertising, or in any other way,

(a) that they are the manufacturers of Falcon cameras and the film used in connection with Falcon cameras;

(b) that their sales promotional plan was devised and put into operation principally for the purpose of increasing the sale of films to be used in said Falcon cameras;

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(c) that the sum directed to be remitted by each person sending in trade tickets for redemption covers only the cost of packing and shipping said cameras, together with the cost of one trial roll of film;

(d) that the five-camera display furnished the retailer in connection with the sales promotional plan will consist of one Falcon Model No. 2 and four Falcon Model No. 1 cameras;

(e) that the cameras shipped to those persons sending in trade tickets for redemption will be Model No. 1 Falcon cameras;

(f) that the retailers entering into said sales promotional plan will be furnished a supply of handbills for circularization among customers; and

(g) that the use of said sales promotional plan and the distribution of cameras in connection therewith will promote the retailer's business, secure an increase in sales, and secure the good-will of his customers.

*It is further ordered,* That the respondents shall, within 60 days from the date of service upon them of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which they have complied with the order herein set forth.

IN THE MATTER OF  
GLENN LEACH, TRADING AS G. LEACH & COMPANY

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

*Docket 2480. Complaint, June 29, 1935—Decision, June 23, 1936.*

Where an individual engaged in the offer, sale, and distribution of earthenware kitchen utensils to members of the public in the various States through salesmen, representatives, and agents employed to sell his said product, and authorized and directed by him to canvass from house to house in various cities and towns and solicit prospective purchasers of such products, and exhibit samples thereof and distribute leaflets, pamphlets, etc., concerning the same and the various materials out of which made, and relative value of each to the user and, in connection with exhibition of such samples, and distribution and reading of such printed matter to make statements to such prospective purchasers concerning his products and the product of competitors to induce purchase of the former—

- (a) Defamed and disparaged through aforesaid means competitors' aluminum kitchen utensils by falsely representing that consumption of food prepared or kept therein would cause ulcers, cancers, cancerous growths, and other ailments and diseases, and that food so prepared, or kept therein was deleterious to user and that consumption of food prepared in his own utensils would not lead to dire conditions falsely attributed to consumption of food prepared in the other;

Facts being aluminum in contact with food causes no deleterious contamination, nor is there any scientific evidence that it causes or contributes to cancer, and said various statements were false;

With intent of inducing purchasing public to buy such earthenware, and refrain from purchasing such aluminum products, in belief that use of former would safeguard, and use of latter would injure, health of user and cause disease, and with effect of misleading and deceiving a substantial number thereof into the false belief that such various statements and representations were true and of inducing them to refrain from buying such aluminum ware and to purchase his said products and of substantially diverting trade to him from competitors who do not make such false representations;

- (b) Represented as aforesaid to customers or potential customers that the price at which his said products were offered was much lower than the retail price charged therefor and that they were being offered and sold at factory cost and only a few sales were to be made at such low price to introduce product in particular locality in which it was being offered;

Facts being price at which offered was its regular retail price at which sales were invariably made and so-called higher retail price was wholly fictitious and greatly in excess of that at which it had been or was intended to be sold in usual course of trade, and he never offered same at factory cost;

With intent of inducing purchasing public to buy such articles in the belief they were obtaining same at a financial saving and that, if they were not then purchased, regular price would later be asked, and with effect of misleading and deceiving a substantial number thereof into false belief that by buying at offered price they were securing greater value than they



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might have otherwise secured, and that by purchasing at particular time and place they were effecting a saving from the purported, usual, and customary prices, and of substantially diverting trade to him from competitors who do not make such false representations, and with capacity and tendency to mislead and deceive such public to their injury;

- (c) Falsely represented through printed matter used in connection with sale of its said products that he was the manufacturer thereof, with intent to induce customers and potential customers to buy same in belief that they were thereby saving profit received by middleman in accordance with common belief among members of purchasing public, and their preference thus to buy for such purpose, and with capacity and tendency to mislead and deceive a substantial number thereof and substantially divert trade to him from competitors who do not falsely represent themselves as the manufacturers of their products and from those who actually so manufacture the same;
- (d) Represented as aforesaid to prospective purchasers that his said product was fire resistant and would not break when placed directly in or over an open flame, facts being it was not thus resistant in all cases nor in any case until it had been gradually tempered before use, and was not in many cases thus unbreakable; with intent of inducing prospective purchasers to buy his said product in the belief that it would efficiently serve as a cooking utensil when used on any kind of stove and would wear longer and be more durable than the product of competitors, and with capacity and tendency to mislead and deceive, to their injury, a substantial number of such public into the false belief that by purchasing said product they would secure a product which would in all cases withstand heat and use over an open flame, and divert trade substantially to said individual from competitors who do not thus falsely represent their product:

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

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. Allen C. Phelps* for the Commission.

*Mr. Thomas J. Collins*, of Springfield, Mass., for respondent.

## COMPLAINT

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, having reason to believe that Glenn Leach, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual, trading under the firm name G. Leach & Co., with his principal place of business in

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the city of Pittsburgh, State of Pennsylvania. Respondent is now, and has been for the several years last past, engaged in offering for sale and selling, earthenware kitchen utensils to customers located in the several States of the United States and respondent causes said product when sold to be transported from the factory in the State of Ohio where it is manufactured into and across the several States of the United States for delivery to the said purchasers thereof located at various points in said several States of the United States other than the State of Ohio. Other persons and corporations, associations, and partnerships, who do not use the methods used by the respondent as hereinafter alleged, are engaged in offering for sale and selling kitchen utensils in said commerce among the several States of the United States. Many of said competitors manufacture and sell kitchen utensils made of aluminum. Respondent, in the course and conduct of his said business, as aforesaid, is in substantial competition with such other persons and corporations, associations, and partnerships so engaged in offering for sale and selling said products in said commerce.

PAR. 2. Respondent, in offering for sale and selling his said product in said commerce as aforesaid, employs salesmen or agents to canvass from house to house in various cities located in the several States of the United States to contact prospective purchasers of his said product; to exhibit samples of his said product to such prospective purchasers; to distribute among, or read to, said prospective purchasers leaflets, pamphlets, and circulars concerning the various materials out of which kitchen utensils are made and the relative value of each to the user thereof; and, in connection with the exhibiting of said samples and the distribution or reading of said printed matter, to make statements to such prospective purchasers concerning the product of respondent and the products of his competitors. All of which is done for the purpose of inducing said prospective purchasers to purchase the product of respondent.

Respondent, by the means and in the manner above alleged, has defamed and disparaged, and does defame and disparage, his competitors' products by falsely representing to purchasers and prospective purchasers of such products that the consumption of food prepared or kept in aluminum kitchen utensils will cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases of mankind and, generally, that such food so prepared or kept in aluminum utensils is deleterious to the user thereof. Respondent represents that the consumption of food prepared in his product will not lead to the dire conditions he falsely attributes to the consumption of food prepared in kitchen utensils made of aluminum.

All users of kitchen utensils prefer utensils made of a ware in which food does not acquire the characteristics falsely attributed by the respondent to food prepared or left in aluminum ware utensils as above set forth.

PAR. 3. Respondent, by the means and in the manner alleged, falsely represents to prospective purchasers of his said product that the price at which it is offered is much lower than the regular retail price charged for such product and that only a few sales are to be made at such low price for the purpose of introducing the product in the particular locality and that thereafter such product may only be purchased from some local department store at a price approximately 100 percent greater than that at which such product is offered to such prospective purchasers. In truth and in fact the price at which such product is offered is the regular retail price for the product and the so-called retail price thereafter said to prevail is wholly fictitious and greatly in excess of the price at which such product is sold or was ever intended to be sold in the usual course of trade. In connection with the false representations as to the retail price of his product, respondent falsely represents, by designating G. Leach & Co. as the manufacturer of said product on the printed matter used in connection with the sale of said product and by the oral representations of his salesmen made to prospective purchasers, that he is the manufacturer of said product and that such special offer is possible because of the elimination of the profit that would ordinarily accrue to a distributor purchasing from a manufacturer and selling from house to house. In truth and in fact respondent is not the manufacturer of the product sold by him, but purchases the same from a factory owned and operated by one C. W. Lowry at Roseville, Ohio. Many users of kitchen utensils prefer to purchase direct from the manufacturer, thereby eliminating the profit of the distributor from the price charged such purchasers.

PAR. 4. Respondent, by the means and in the manner above alleged, falsely represents to prospective purchasers of his said product that it is fire resistant and that it will not break when placed directly in or over an open flame and that said product is fully guaranteed against such breakage and that any of his product that breaks by reason of exposure to fire will be replaced without cost to the purchaser. In truth and in fact said product is not fire resistant when placed in or over an open flame and respondent does not replace his product when broken because of exposure to fire without cost to the purchaser. In many instances respondent fictitiously claims that said product was not used as directed, and in some instances respondent makes replacements, but requires the purchaser to pay the postage necessary to transport the product supplied to replace the broken

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product. All purchasers of kitchen utensils prefer utensils made of a ware that is fire resistant and backed by the guarantee of the seller.

PAR. 5. The above alleged acts and practices of the respondent have the capacity and tendency to and do mislead and deceive prospective purchasers of kitchen utensils into the erroneous belief that the representations made are true and to cause a substantial number of such prospective purchasers to buy respondent's said product in lieu and instead of the products of his competitors, which such prospective purchasers would purchase but for such acts and practices of the respondent, thereby substantially diverting trade to the respondent from his competitors.

PAR. 6. The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and of the competitors of respondent, and constitute unfair methods of competition within the intent and meaning 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."

## 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 the 29th day of June 1935 issued and served its complaint in this proceeding on the respondent, Glenn Leach, an individual trading as G. Leach & Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Allen C. Phelps, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Thomas J. Collins, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is an individual trading under the firm name of G. Leach & Co., with his business headquarters and principal place of business in the city of Pittsburgh, State of Pennsylvania.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of offering for sale, selling and distributing earthenware kitchen utensils to members of the public located in various States of the United States, and respondent causes and has caused said products, when sold, to be transported from the factory in which the same are manufactured, located in the State of Ohio, into and across the several States of the United States for delivery to the said purchasers thereof located at various points in said several States of the United States other than the State of Ohio. Respondent admits in his answer and the evidence shows that he is and has been engaged in commerce between and among the several States of the United States.

PAR. 3. There are persons, other than respondent, and various corporations, associations, and partnerships engaged in offering for sale and selling kitchen utensils in said commerce between and among the several States of the United States, some of whom manufacture and sell kitchen utensils made of aluminum. Respondent, in the course and conduct of his said business, has been and is in substantial competition with such other persons and such corporations, associations, and partnerships so engaged in offering for sale and selling said products in said commerce.

PAR. 4. Respondent, in the course and conduct of his said business, has employed and does employ salesmen, representatives, and agents to sell his said product, who are and have been authorized and directed by respondent to canvass from house to house in various cities and towns located in the various States of the United States, to solicit prospective purchasers of his said product, to exhibit samples thereof, and to distribute among or read to said prospective purchasers leaflets, pamphlets, and circulars concerning his said product and the various materials out of which kitchen utensils are made and the relative value of each to the user thereof; and in connection with the exhibiting of said samples and the distribution or reading of said printed matter to make statements to such prospective purchasers concerning the product of respondent and the products of his competitors, all of which is done for the purpose of inducing said prospective purchasers to buy respondent's product.

PAR. 5. Respondent, by the use of the above means and through his salesmen, agents, and representatives, has defamed and dispar-

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aged aluminum kitchen utensils, being the products of some competitors, by falsely representing to purchasers and prospective purchasers of his product that the consumption of food prepared or kept in aluminum kitchen utensils will cause ulcers, cancers, cancerous growths and various other ailments, afflictions and diseases of mankind, and, generally, that such food so prepared or kept in aluminum utensils is deleterious to the user thereof. Respondent represents and has represented that the consumption of food prepared in his kitchen utensils will not lead to the dire conditions he has falsely attributed to the consumption of food prepared in kitchen utensils made of aluminum. Users of kitchen utensils prefer utensils made of a ware in which food does not acquire the characteristics falsely attributed by the respondent to food prepared or left in aluminum ware utensils, as set forth above.

Aluminum is the most abundant metallic element in nature and is found in all foods and ordinary drinking water. Aluminum in contact with foods causes no deleterious contamination. In the quantities in which aluminum is absorbed in food from being cooked in aluminum utensils and ingested into the human system by the consumption of such food, neither aluminum nor any of its compounds which may be formed are toxic in effect or deleterious to the health, nor do they cause cancer, cancerous growths, ulcers or any other disease or ailment. Aluminum in food combines with phosphorus present and the phosphorus in food exceeds the amount of aluminum a thousand times. A low phosphorus content in the blood of a person resulting from the presence of aluminum in food could never occur from the amount of aluminum absorbed in foods from being cooked in aluminum utensils. The interference with phosphorus is negligible as far as the amount of aluminum present in foods cooked in aluminum vessels is concerned. There is no scientific evidence that aluminum, as ingested into the human system in food, causes cancer or contributes to the cause of cancer or aggravates or increases the rate of growth of cancer. The amounts of aluminum found in foodstuffs under conditions most favorable for its accumulation there are inadequate to account for any of the irritations preceding cancer. Aluminum utensils are extensively used in hospitals in the preparation of foods for cancer and other patients. None of the known underlying causes of cancer have any relationship or connection with aluminum or its ingestion into the human system in food.

The purpose and intent of the respondent in causing to be made the false representations concerning aluminum ware, above set forth, was to induce members of the purchasing public to purchase respondent's earthenware utensils and refrain from purchasing aluminum utensils in the belief that the use of earthenware kitchen

utensils in cooking and storing food would safeguard the health of the user and that the use of aluminum utensils would injure the health of the user and cause disease.

PAR. 6. Respondent, by use of the means above stated, has falsely represented and does represent to customers or potential customers of his said product that the price at which the same is offered is much lower than the retail price regularly charged for such product, that it is being offered for sale and sold at factory cost, and that only a few sales are to be made at such low price for the purpose of introducing the product in the particular locality where same is being offered for sale.

The price at which such product was and is offered for sale was and is the regular and usual retail price for the same, and the price at which sales were invariably made, and the so-called higher retail price which it was represented was thereafter to be used was wholly fictitious and greatly in excess of the price at which said product had been sold or was ever intended to be sold in the usual course of trade. Respondent does not and has never offered for sale or sold any of his said product at factory cost.

The purpose and intent of the respondent in making and causing to be made the representations aforesaid was to induce members of the purchasing public to purchase the commodity so offered in the belief that they were obtaining such commodity at a financial saving and in the belief that if such commodity was not then purchased, the so-called regular price would later be asked.

PAR. 7. Respondent, by means of printed matter used in connection with the sale of his said product, has falsely represented to the public that he is the manufacturer of the same.

Respondent is not and never was the manufacturer of said kitchen utensils and the same were purchased by respondent from a factory formerly owned and operated by one C. W. Lowry, Roseville, Ohio.

There is a common belief among members of the purchasing public that in making purchases direct from the manufacturer of commodities a substantial financial saving is effected in that the profit of the middleman is thereby eliminated and the sums of money represented by the usual profit of such middleman are directly saved the purchaser or purchasers. There is a preference among a substantial number of the members of the purchasing public for purchasing commodities direct from the manufacturer of the same for the purpose of effecting such a financial saving.

The purpose and intent of respondent in so representing that he was the manufacturer of his product was to induce customers and potential customers to purchase said product in the belief that they were thereby saving the usual profit received by the middleman.

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PAR. 8. Respondent by the use of the means above set forth, has falsely represented to prospective purchasers of his said product that it was fire resistant and that it would not break when placed directly in or over an open flame.

Said product has not been fire resistant in all cases, and in no case unless and until said product has been gradually tempered before use. Said product has not, in many cases, been unbreakable over an open flame.

The purpose and intent of respondent in making such representations has been to induce prospective purchasers to buy said product in the belief that it would efficiently serve as a cooking utensil when used on any kind of a stove and that it would wear longer and be more durable than the products of competitors.

PAR. 9. The use by the respondent, in connection with the conduct of his business, as above stated, of oral representations and of pamphlets, circulars, and other means of advertising containing statements and representations that the use of aluminum cooking utensils is deleterious to health, is poisonous and promotes the growth of cancer, and other statements and representations of similar import, had the capacity and tendency to and did mislead and deceive a substantial number of the members of the purchasing public into the false belief that the statements and representations thereby made were true, and a substantial number of the members of the purchasing public, believing such statements and representations to be true, have refrained from buying aluminum ware and have been induced to purchase the product of respondent. Such practices have caused a substantial diversion of trade to respondent from his competitors who do not make such false representations.

PAR. 10. The false representations so made by the respondent to the effect that the price at which his product was offered for sale was much lower than the regular retail price, that said offered price was factory cost, and that only a few sales were to be made at such low price, had and has the capacity and tendency to and did and does mislead and deceive a substantial number of the members of the purchasing public into the false belief that by making the purchase of the product at the price offered they were securing a greater value than they might otherwise have secured and that by making the purchase at that particular time and place they were effecting a financial saving from the purported usual and customary price. Such practice had and has the capacity and tendency to mislead and deceive the purchasing public to their injury and has caused and now causes a substantial diversion of trade to respondent from his competitors who do not make such false representations.



PAR. 11. The false representation so made by the respondent to the effect that he was the manufacturer of the product sold by him has had the capacity and tendency to mislead and deceive a substantial number of the members of the purchasing public and to cause a substantial diversion of trade to respondent from his competitors who do not falsely represent that they are manufacturers of the products sold by them and to likewise cause a diversion of trade from competitors who actually manufacture the commodity or commodities vended by them.

PAR. 12. The false representation so made by respondent that his product was fire resistant and that it would not break when placed directly in or over an open flame has had the capacity and tendency to mislead and deceive a substantial number of the members of the purchasing public into the false belief that by purchasing respondent's product they would secure a kitchen utensil which would in all cases withstand heat and use over an open flame. Such practice has the tendency and capacity to mislead and deceive a substantial number of the members of the purchasing public to their injury and to cause a substantial diversion of trade to respondent from his competitors who do not falsely represent their product to be fire resistant and unbreakable over an open flame.

#### CONCLUSION

The aforesaid acts and practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's 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 before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and in opposition thereto, briefs filed on behalf of the Federal Trade Commission and the respondent, and the Commission having made its findings as to the facts and conclusion that the respondent, Glenn Leach, an individual, trading as G. Leach & Co., has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An

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Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

*It is now ordered*, That the respondent, Glenn Leach, an individual, trading as G. Leach & Co., his agents, salesmen, representatives, and employees, in connection with the sale or offering for sale in interstate commerce of cooking utensils, cease and desist from:

(1) Representing or causing to be represented through advertising literature, oral statements or in any other manner, that the use of aluminum cooking utensils is deleterious to the health; or that the consumption of food prepared or kept in aluminum kitchen utensils causes or contributes to the causation of ulcers, cancers, cancerous growths, or any other disease or ailment, or that such food as a result of being prepared or kept in aluminum cooking utensils is injurious to the consumer thereof; and from making any other statements or representations of similar tenor or effect falsely disparaging or tending to falsely disparage the quality or value of such aluminum cooking utensils with respect to the effect the use of the same might have on the health of the user or users thereof.

(2) Representing that the usual, regular, and customary selling price of said cooking utensils is a special or advertising price or the factory cost of such utensils or that only a few sales are to be made at such special price, and from representing that a higher and fictitious or marked-up price of said cooking utensils is the customary, usual, or regular price.

(3) Representing that the respondent is the manufacturer of such cooking utensils.

(4) Representing that such cooking utensils are fire resistant in all cases, or that they will never break when placed directly in or over an open flame.

*It is further ordered*, That the respondent shall, within 90 days from and after the date of service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied and is complying with the order to cease and desist hereinabove set forth.

## Syllabus

IN THE MATTER OF  
ABRAHAM PLATELL, DOING BUSINESS AS PLATELL  
SHOE COMPANY

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

*Docket 2505. Complaint, July 31, 1935—Decision, June 23, 1936*

Where an individual, engaged in the sale of shoes at wholesale, and neither a doctor, nor with medical or other such degree—

- (a) Caused the words "Dr. Florence Scientific Shoe" to be imprinted across the sole of a certain brand sold by him, and on the sock lining of said shoes the words "Dr. Florence Scientific Arch Support," and packed and shipped the same in cartons upon which appeared said last-named words and "Reg. U. S. Pat. Off.," and used as an advertising medium a counter card upon which appeared "Sole agency for Dr. Florence Scientific Arch Support Shoes, Reg. U. S. Pat. Off.," and more recently used said various words with "Dr." changed to "DI.";

Facts being said shoes were designed by said individual and there was no doctor employed by him, nor in any way connected with his said business, and his said shoes marked as above and sold as "Dr." or "Doctor" shoes were not made in accordance with design or under the supervision of a doctor and did not contain special scientific or orthopedic features which were the result of medical advice or services, and were not designed or constructed to correct or alleviate any foot troubles or weakness;

With capacity and tendency to mislead many among the trade and consuming public into the belief that said shoes had been made or designed by doctors or others with special orthopedic knowledge or contained at least some feature or features not common to the ordinary line of footwear, and designed or intended to correct some foot ailment or weakness or at least afford some relief therefrom, and with effect of causing such public to purchase said shoes in such belief, and of unfairly diverting trade from and otherwise injuring competitors; and

- (b) Included in his correspondence and on his invoices, letterheads, or stationery, along with his name, the words "Manufacturing Wholesalers of Shoes", notwithstanding fact he neither owned, operated, nor controlled any factory or place at which his shoes, made for, and as specified by, him, were manufactured;

With capacity and tendency to divert trade to him from competitors; to the substantial injury of competition throughout the States:

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

Before *Mr. John L. Hornor*, trial examiner.

*Mr. Morton Nesmith* for the Commission.

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## COMPLAINT

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, having reason to believe that Abraham Platell, doing business under the trade name and style of Platell Shoe Co., hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Abraham Platell is an individual trading and doing business under the name and style of Platell Shoe Co., with his principal place of business at 158 Duane St., in the city of New York, State of New York. Said respondent is now and for more than 12 years last past has been engaged in the sale of shoes, being a wholesaler thereof, between and among the different States of the United States. He has caused and still causes said shoes when sold to be shipped from his place of business in the city of New York, State of New York, to purchasers thereof located in States other than the State of New York.

In the course and conduct of his business as aforesaid, the respondent is in competition with other individuals, partnerships, and corporations likewise engaged in the sale and distribution of shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., in the course and conduct of his business as aforesaid, in soliciting the sale of and selling his shoes in interstate commerce, for a period of 12 years prior to October 1933, caused the words

Dr. Florence  
Scientific  
Arch Support

to be stamped on or across the sole of a certain brand of shoes sold by him.

Said respondent also during the said period of time caused said shoes to be packed and shipped in cartons on which the said words "Dr. Florence Scientific Arch Support" were conspicuously displayed.

Said respondent also during the said period of time furnished and distributed to his customers an agency sign upon which the words "Dr. Florence Scientific Arch Support Shoes" conspicuously ap-

peared, together with a depiction of certain features of a shoe claimed by respondent to be orthopedic in character.

Said respondent also during said period of time on a few occasions paid a portion of the advertising expenses of his customers or dealers when they advertised his "Dr. Florence" shoes.

PAR. 3. Subsequent to October 1933, said respondent Abraham Platell, doing business under the trade name and style of Platell Shoe Co., discontinued the practice of causing said brand of shoes to be advertised or labelled as "Dr. Florence" by deleting the "r" from the "Dr." and inserting in lieu thereof "i."

Said respondent since October 1933 has caused and still causes this brand of shoes so sold by him in interstate commerce to be marked, labelled, and advertised as "Di. Florence Shoes."

PAR. 4. The respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., in the course and conduct of his business as aforesaid, caused and still causes letterheads and invoices to be printed for him and distributed in interstate commerce on which appeared the following words "Platell Shoe Company—Manufacturing Wholesalers of Shoes—158 Duane Street."

PAR. 5. In truth and in fact the shoes so marked, stamped, labelled, advertised, and sold as described in paragraph 2 hereof were not made in accordance with design of or under the supervision of a doctor, and did not contain special scientific or orthopedic features which were the result of medical advice or services, or anyone skilled in the science of orthopedics, nor was such footwear designed or constructed for the purpose of correcting or alleviating any particular kind of foot trouble, except to the extent that the arch in the shoes so branded was purported to correct or support ailing arches, all of which has the capacity and tendency to mislead many among the aforesaid trade and many among the consuming public into the belief that said shoes were fashioned and designed by a doctor or others with special orthopedic knowledge.

In truth and in fact the trade name for the shoes so marked, stamped, labelled, branded, advertised, and sold as described in paragraph 3 hereof closely simulates the trade name described in paragraph 2 hereof, and said shoes are not made in accordance with or under the supervision of a doctor and do not contain special scientific or orthopedic features which are the result of medical advice or services, or anyone skilled in the science of orthopedics, nor is such footwear designed or constructed for the purpose of correcting or alleviating any particular kind of foot trouble, except to the extent that the arch in the shoes so branded is purported to correct or support ailing arches, all of which has the capacity and tendency to mislead many among the aforesaid trade and many among the con-

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suming public into the belief that said shoes are fashioned and designed by a doctor or others with special orthopedic knowledge.

PAR. 6. In truth and in fact the respondent, Abraham Platell, doing business as Platell Shoe Co., is not a manufacturer of shoes nor a manufacturing wholesaler, nor does he own, operate, or control any factory wherein the shoes which he sells and distributes in interstate commerce as aforesaid are made, manufactured, or constructed. Said representations made by respondent are false and misleading, and have the tendency and capacity to mislead and deceive the purchasers of respondent's shoes into the belief that when purchasing from respondent, they are dealing with the manufacturer or his direct wholesaler, thereby gaining an advantage by saving the middleman's profits.

PAR. 7. The respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., in the sale of his shoes as aforesaid, ships and distributes to retail dealers, and said retail dealers resell the shoes so labelled and branded to the consuming public.

PAR. 8. There are among the competitors of the respondent referred to in paragraph 1 hereof many persons, firms, and corporations who manufacture and sell at wholesale shoes which contain special features designed to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent, persons, firms, and corporations who manufacture and sell at wholesale shoes manufactured along standard lines, over standard lasts, and for which no special featured claims or representations are made, and the use by the respondent of the abbreviation "Dr." or the simulation thereof "Di." in connection or in conjunction with the name or with any other word or words, or in any way as a trade name, brand, or designation for his shoes, or in the advertisement of his shoes, together with other special feature representations, and the representation by the respondent that he is a manufacturing wholesaler, have the capacity and tendency to unfairly divert trade from or otherwise injure and prejudice respondent's competitors in interstate commerce.

PAR. 9. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, 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.

## 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 August 1, 1935, issued and served its complaint in this proceeding upon respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by respondent without counsel; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence and brief in support of the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Abraham Platell, is an individual doing business under the trade name and style of Platell Shoe Co., with his principal place of business at 158 Duane St., New York City. Said respondent is now, and has been for several years last past, engaged in the business of selling shoes at wholesale and has sold the same during said time between and among the several States of the United States. Respondent has sold, and still causes the articles in which he deals to be sold and transported from his place of business into and through other States of the United States to various retail dealers located at points in the different States of the United States other than the State of New York. In the course and conduct of his business, respondent has been, and is, in competition with other jobbers and wholesalers, engaged in the sale and transportation of shoes at wholesale, in interstate commerce.

PAR. 2. Respondent, in the course and conduct of his business in soliciting the sale of and selling his shoes in interstate commerce, did cause the words, "Dr. Florence Scientific Shoe," to be imprinted on and across the sole of a certain brand of shoes sold by him. Respondent, in the course and conduct of his business, also caused to

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be stamped on the sock lining of said shoes the words, "Dr. Florence Scientific Arch Support." Said shoes were, until sometime in the year 1933, packed and shipped in cartons on which appeared a label, "Dr. Florence Scientific Arch Support, Reg. U. S. Pat. Off."

In the course and conduct of his business, respondent used as an advertising medium, a counter card upon which appeared the following: "Sole agency for Dr. Florence Scientific Arch Support Shoes, Reg. U. S. Pat. Off."

In 1933, respondent changed his labels and advertising, deleting the "r" and using the letter "i" so that it read "Di. Florence."

PAR. 3. Respondent used in his correspondence, and for invoicing his products, letterheads or stationery upon which appeared the following: "Platell Shoe Company, Manufacturing Wholesalers of shoes, 158 Duane Street, New York, New York." Respondent does not own, operate, or control any factory, business, or place of business at which his shoes are manufactured. All shoes are manufactured for him in accordance with his specifications.

PAR. 4. The shoes sold by respondent were designed by the respondent himself and there is not, nor has there ever been, a Dr. Florence employed by the respondent, nor any other doctor in respondent's employ, or in any way connected with his business. "Florence" is the given name of respondent's sister, and this appellation was given his brand of shoes for that reason. Respondent is not a doctor and has no medical or other degree of that character.

PAR. 5. The members of the public are and were of the opinion and belief that a shoe which is labeled or marked "Dr." is one which has been designed or constructed on the advice of a doctor, or one having a special scientific knowledge about the formation of the foot, bones, etc.; that a doctor would know more about the functions of the foot, bones of the foot, and have a better idea of how to build shoes than an ordinary shoemaker, and that when a shoe is marked or labeled with a "Dr." brand their belief would be that it is an orthopedic shoe expected to correct imperfections in feet which were causing trouble.

PAR. 6. In truth and in fact the shoes so marked, stamped, branded, or labeled and sold as "Dr." or "Doctor" shoes, as described in paragraph 2 hereof, were not made in accordance with the design or under the supervision of a doctor, and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor was such footwear designed or constructed for the purpose of correcting or alleviating any foot troubles or weakness of the feet, all of which has a capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes have been made or were manufactured or designed by doctors or others with special orthopedic knowledge, or at



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least contain some feature or features not common to the ordinary line of footwear which feature or features were designed or intended to correct some foot ailment or weakness, or at least afford some relief therefrom and caused said public to purchase respondent's shoes under this belief, all of which unfairly diverts trade from and otherwise injures respondent's competitors in interstate commerce.

PAR. 7. The aforesaid advertisements, representations, and statements made by the respondent as set forth in the foregoing paragraphs hereof, have had the capacity and tendency to divert trade to said respondent from competitors. Competition throughout the various States of the United States has been substantially injured by said respondent through the use of or by means of such representations and statements.

## CONCLUSION

The aforesaid 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 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."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, and testimony and evidence taken before John L. Hornor, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provision 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 respondent, Abraham Platell, doing business under the trade name and style of Platell Shoe Co., his agents, servants, and employees, in connection with soliciting the sale of or selling his shoes in interstate commerce, cease and desist from:

(1) Representing, directly or indirectly, through advertisements or on labels, stationery, invoices, and other printed matter, or in any other manner, that his shoes are made in accordance with the design or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

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(2) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name in the advertising or designation of his shoes; or in any way which may have the tendency and capacity to confuse, mislead, or deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

(3) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name, brand, label, or designation on his shoes; or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

(4) Directly or indirectly using or causing to be used the abbreviation "Di." or any other abbreviation simulating the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name in the advertising or designation of his shoes; or in any way which may have the tendency and capacity to confuse, mislead, or deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

(5) Directly or indirectly representing that he is a manufacturer through the use of the word "manufacturing" or any other word or words of similar import and effect, when he does not absolutely own, operate, or control a factory wherein said shoes are made or manufactured.

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

## Complaint

## IN THE MATTER OF

DAVID RUBENSTEIN AND HERMAN SCHWARTZ DOING  
BUSINESS AS NU-WAY SHOE CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2560. Complaint, Sept. 26, 1935—Decision, June 23, 1936*

Where a firm engaged in sale of shoes at wholesale—

- (a) Stamped or printed upon boxes, cartons, invoices, and other printed matter used by them in the sale of certain brands of their said product, labels or titles "Dr. Carol's Health Shoes," "Dr. Martin's Walk-O-Pedic", and "Dr. Rubenshaw's Supreme Stout," and caused such labels and titles to be affixed and sewn into the interlining of said products, facts being said shoes, were not made in accordance with design, or under supervision of, a doctor, and there was no such doctor employed by or connected with them as indicated by aforesaid fictitious names; with capacity and tendency to mislead some of the trade and many ultimate consumers into the belief that said shoes were or had been fashioned or designed by a doctor; and
- (b) Caused word "Manufacturers" to be printed on certain invoices, stationery and billheads, and other printed matter used by them in the course and conduct of their business, notwithstanding fact they neither owned, operated, nor controlled any factory in which their shoes were made; with capacity and tendency to mislead and deceive purchasers of their said products into the belief that in buying from them they were dealing with manufacturers and thereby gaining an advantage in saving the middleman's profit; and

With capacity and tendency unfairly to divert trade from or otherwise injure and prejudice competitors, among whom there are those who manufacture and sell at wholesale shoes which do contain special features designed to correct and alleviate certain foot ailments and weaknesses, and those who similarly sell shoes made along standard lines and over standard lasts and for which no special feature representations or claims are made, and among whom are also many manufacturers who rightfully call themselves such; to the substantial injury of competition throughout the various States:

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

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. Morton Nesmith* for the Commission.

*Mr. Alexander Bicks*, of New York City, for respondents.

## COMPLAINT

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,"

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the Federal Trade Commission, having reason to believe that David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

**PARAGRAPH 1.** David Rubenstein and Herman Schwartz are copartners doing business as the Nu-Way Shoe Co., with their principal place of business at 142 Duane St., in the city of New York, State of New York. The respondents have for more than 10 years last past been and are still engaged in the business of selling shoes, being a wholesaler thereof between and among the different States of the United States. Said respondents have caused and still cause their shoes when so sold to be transported and shipped from their said place of business in the State of New York to purchasers thereof located in States other than the State of New York.

In the course and conduct of their business as aforesaid the respondents are and have been in competition with other individuals, partnerships, corporations, and associations likewise engaged in the business of wholesaling shoes and distributing said shoes in commerce between and among the different States of the United States.

**PAR. 2.** The respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., in the course and conduct of their business as aforesaid, in soliciting the sale of and selling their shoes in interstate commerce, for several years last past have caused the words

**Dr. Carol's Health Shoe**

to be imprinted, stamped, or printed upon boxes, cartons, invoices, and other printed matter used by them in the sale of a certain brand of their shoes, and also caused the said words to be affixed to a label sewn into the lining of said shoe.

The respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., in the course and conduct of their business as aforesaid, in soliciting the sale of and selling their shoes in interstate commerce, for several years last past have also caused the words

**Dr. Martin's Walk-O-Pedic**

to be imprinted, stamped, or printed upon boxes, cartons, invoices, and other printed matter used by them in the sale of a certain brand

of their shoes, and also caused the said words to be affixed to a label sewn into the lining of said shoe.

The respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., in the course and conduct of their business as aforesaid, in soliciting the sale of and selling their shoes in interstate commerce, for several years last past have also caused the words

Dr. Rubenshaw's Supreme Stout

to be imprinted, stamped, or printed upon boxes, cartons, invoices, and other printed matter used by them in the sale of a certain brand of their shoes, and also caused the said words to be affixed to a label sewn into the lining of said shoe.

PAR. 3. The respondents in the course and conduct of their business as aforesaid caused and still cause to be printed on certain invoices, stationery, billheads, and other printed matter to be printed for them the word "Manufacturers," which invoices, stationery, billheads, and other printed matter were and are used by the respondents in the course and conduct of their business in interstate commerce.

PAR. 4. In truth and in fact the shoes so marked, stamped, labeled, branded, advertised, and sold, as described in paragraph 2 hereof, were not made in accordance with the design of or under the supervision of a doctor and did not contain special orthopedic features which were the results of medical advice or services, all of which has a capacity and tendency to mislead many among the aforesaid trade and among the purchasing public into the belief that said shoes had been fashioned or designed by a doctor or someone with a special orthopedic knowledge.

PAR. 5. In truth and in fact the respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., are not manufacturers of shoes, nor do they own, operate, or control any factory wherein their shoes are made or manufactured. Said representation made by respondents on their invoices, stationery, billheads, and other printed matter that they are "Manufacturers" is false and misleading and has a capacity and tendency to mislead and deceive purchasers of respondents' shoes into the belief that when purchasing from respondents they are dealing with manufacturers, thereby gaining an advantage and saving the middleman's profit.

PAR. 6. The respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., in the sale of their shoes as aforesaid, ship and distribute to their retail dealers their shoes, and said retail dealers resell the same so labeled and branded to the consuming public.

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PAR. 7. There are among the competitors of the respondents many persons, firms, corporations, and associations who manufacture and sell at wholesale shoes which contain special features designed to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondents many persons, firms, corporations, and associations who manufacture and sell at wholesale shoes manufactured along standard lines, over standard lasts and for which no special feature representation or claims are made, and the use by the respondents of the abbreviation "Dr." in connection or conjunction with the name, brand, or designation of their shoes or in the advertisement of same, together with other special feature representations, and the further representation by respondents that they are manufacturers when they are not, has the capacity and tendency to unfairly divert trade from or otherwise injure and prejudice respondents' competitors in interstate commerce.

PAR. 8. The above alleged acts and things done by the respondents are all to the injury and prejudice of the public and of the competitors of the respondents in interstate commerce, 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.

## 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 September 30, 1935, issued and served its complaint in this proceeding upon the respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Thereafter respondents filed their answer to said complaint, denying the material allegations thereof. Subsequently on June 13, 1936, respondents filed a motion to withdraw said answer, and substituted answer, which substituted answer admitted all of the allegations of the complaint, and consented that the Commission make its findings as to the facts and conclusion. Respondents also executed a stipulation as to the facts, admitting the material allegations of the complaint, and in their substituted answer consented that the Commission could make its findings as to the facts and conclusion from the facts so stipulated and to enter, issue, and serve upon them an order to cease and desist from the practices alleged in said complaint. The

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Commission thereafter granted respondents' motion to withdraw its original answer and received and filed respondents' substitute answer. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, substituted answer and stipulation as to the facts; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, David Rubenstein and Herman Schwartz, are copartners doing business as the Nu-Way Shoe Co., with their principal place of business at 142 Duane St. in the city of New York, State of New York. The respondents have for more than 10 years last past been and are still engaged in the business of selling shoes, being wholesalers thereof between and among the different States of the United States. They have caused and still cause their shoes when so sold to be transported and shipped from their said place of business in the State of New York to purchasers located in States other than the State of New York.

In the course and conduct of their business, the respondents are and have been in competition with other individuals, corporations, and associations likewise engaged in the business of wholesaling shoes and distributing said shoes in commerce between and among the different States of the United States.

PAR. 2. The respondents, doing business as the Nu-Way Shoe Co., in the course and conduct of their business, and in soliciting the sale of and selling their shoes in interstate commerce, did for several years cause to be stamped or printed upon boxes, cartons, invoices, and other printed matter used by them in the sale of certain brands of their shoes, the following labels or titles: "Dr. Carol's Health Shoes," "Dr. Martin's Walk-O-Pedic," "Dr. Rubenshaw's Supreme Stout."

The respondents also caused these labels and titles to be affixed and sewn into the interlining of their shoes.

The respondents, copartners doing business as the Nu-Way Shoe Co., have, however, discontinued the use of these labels and have not used the same since March 4, 1934.

PAR. 3. The respondents, in the course and conduct of their business, for several years last past, did cause to be printed on certain invoices, stationery, and billheads and other printed matter, the word "Manufacturers," which invoices, stationery, billheads, and other printed matter were used by them in the course and conduct

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of their business in interstate commerce. However, at the present time the respondents have discontinued this practice and do not use the word "Manufacturers" on any of their printed matter or advertising.

PAR. 4. The shoes advertised as "Dr. Carol's Health Shoes," "Dr. Martin's Walk-O-Pedic" and "Dr. Rubenshaw's Supreme Stout" were not made in accordance with the design of or under the supervision of a doctor, neither is there a Dr. Carol, a Dr. Martin, or a Dr. Rubenshaw employed by the respondents or connected with them, these names being entirely fictitious. This advertising has a capacity and tendency to mislead some of the shoe trade and many ultimate consumers into the belief that respondents' shoes were or had been fashioned or designed by a doctor.

PAR. 5. The respondents, doing business as Nu-Way Shoe Co. do not own, operate, or control any factory wherein their shoes are made or manufactured and their use of the word "Manufacturers" is false and misleading and has a capacity and tendency to mislead and deceive purchasers of their shoes into the belief that when purchasing from respondents they are dealing with manufacturers, thereby gaining an advantage and saving the middleman's profit.

PAR. 6. There are many persons, firms, and corporations in competition with the respondents and among them those who manufacture and sell at wholesale shoes which do contain special features designed to correct and alleviate certain foot ailments and weaknesses. Some of respondents' competitors are those who sell shoes at wholesale, manufactured along standard lines over standard lasts and for which no special feature representations or claims are made. There are also many manufacturers of shoes who rightfully call themselves such. The use by respondents of the abbreviation "Dr." in connection and conjunction with the name, brand, or designation for their shoes or in the advertisement of same and the representation that respondents are manufacturers when they are not, has the capacity and tendency to unfairly divert trade from or otherwise injure and prejudice respondents' competitors in interstate commerce.

PAR. 7. The aforesaid advertisements, representations, and statements made by the respondents as set forth in the foregoing paragraphs hereof have had the capacity and tendency to divert trade to said respondents from competitors. Competition throughout the various States of the United States has been substantially injured by said respondents through the use of, or by means of such representations and statements.



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## CONCLUSION

The aforesaid acts and practices of respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and 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."

## ORDER TO CEASE AND DESIST

The respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., having heretofore on October 18, 1935, filed an answer herein denying the material allegations of the complaint, and subsequently on the 13th day of June 1936, respondents having filed with the Commission a motion that they be permitted to withdraw said answer and be permitted to file in lieu thereof their substituted answer which is incorporated in said motion, and respondents having also executed a stipulation as to the facts in lieu of testimony; and the Commission having duly considered said motion, substituted answer, and stipulation as to the facts, and being fully advised in the premises.

*It is hereby ordered*, That the said motion be, and the same is, hereby granted, that the said answer be, and the same is hereby withdrawn, that the said substituted answer be and the same is hereby filed in lieu of the said answer so withdrawn.

And the respondents in and by their substituted answer having admitted the allegations contained in the complaint, consented that the Commission make its findings as to the facts and conclusion from the facts stipulated, and having consented to the entry, issuance, and service upon them of an order to cease and desist from the practices alleged in the complaint; and the Commission being fully advised in the premises and having made its findings as to the facts and its conclusion that 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 hereby further ordered*, That the respondents, David Rubenstein and Herman Schwartz, copartners doing business as Nu-Way Shoe Co., their agents, servants, representatives, and employees, in connection with soliciting the sale of and selling their shoes in interstate commerce, forthwith cease and desist from:

(1) Representing directly or indirectly through advertisements or on labels, stationery, invoices, and other printed matter, or in any

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other manner that their shoes are made in accordance with the design or under the supervision of a doctor, when such is not the fact.

(2) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with the name or with any word or words or in any way as a trade name in the advertising or designation of their shoes; or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said shoes are made in accordance with the design or under the supervision of a doctor, when such is not the fact.

(3) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name or with any word or words or in any way as a trade name, brand, label, or designation on their shoes; or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said shoes are made in accordance with the design or under the supervision of a doctor, when such is not the fact.

(4) Representing directly or indirectly through the use of the word "manufacturer" alone, or in conjunction with other words, or through the use of any other word or words of similar import or meaning in their advertising matter, or in or through other means, that they are manufacturers.

*It is further ordered,* That the respondents 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 hereinabove set forth.

## Syllabus

## IN THE MATTER OF

## AMERICAN SHEET &amp; TIN PLATE CO. ET AL.

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

*Docket 2741. Complaint, Mar. 26, 1936<sup>1</sup>—Decision, June 24, 1936*

Where some fifteen corporations engaged in (1) manufacture of tin plate and in sale thereof to tin plate jobbers and to metal container and tin can manufacturers, including the two principal purchasers of such plate's below described "production" grade and consumers of approximately sixty-five per cent of the domestic production; and in the course of their said business, (2) producing the (a) "production plate" grade made in accordance with customers' specifications and constituting bulk of tin plate made by them, (b) "stock plate" grade of overruns, seconds and warming-up sizes accumulated in large quantities without specific orders therefor in course of manufacture of former and theretofore sold, in substantial part, to such jobbers, and, by resale by latter, to small can manufacturers and packers unable to carry "production" in stock in various sizes and quantities required, and (c) "waste-waste," in which defects are so great as not to permit same to qualify as seconds—

- (a) Agreed not to quote prices on "stock" nor to offer same to jobbers and manufacturers, and to restrict and eliminate competition in interstate sale and distribution of such tin plate to jobbers thereof and to metal container and tin can manufacturers, through certain conferences resulting in elimination of the "stock plate" classification and in requirement that buyers of "production" accept seconds up to twenty-five per cent of their orders;
- (b) Refused, in pursuance of their aforesaid agreement, to quote prices on "stock" or to offer or sell same to jobbers and manufacturers, although producing it in substantial quantities, and sold as "production," at prices higher than those theretofore received for "stock," some of latter produced and accumulated by them; and
- (c) Cut up some of such "stock" into such shapes as to render it unfit for manufacture of tin cans or other metal containers, and classified and sold same as "waste-waste" for domestic consumption, while classifying and selling as "waste-waste," "stock" for export, without mutilation;

With result that there was an undue tendency to substantially lessen, restrict, and suppress competition in interstate sale of tin plate throughout the United States and particularly in sale of "stock," and to enhance prices of latter above those which had theretofore prevailed and which would prevail under normal, natural, and open competition between them, and there was a tendency to destroy business of tin plate jobbers and force them out and to create a monopoly in manufacture of tin containers in two aforesaid companies by depriving their small manufacturer competitors of their normal source of supply of tin plate, and such small tin can and metal container manufacturers who had theretofore purchased their neces-

<sup>1</sup> Amended.

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sary supplies of plate classified as "stock" through such jobbers were forced to purchase "production" at prices which were substantially higher than formerly paid by them for "stock" and, purchased in less than 100-case lots, higher than price paid therefor by said can companies:

*Held*, That such acts and practices, and each of them, were to the prejudice of the buying public generally and competitors, and constituted unfair methods of competition.

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

*Mr. Everett F. Haycraft* and *Mr. Reuben J. Martin* for the Commission.

*Mr. Kenneth B. Halstead* and *Mr. Harold H. Corbin*, of New York City, for American Sheet and Tin Plate Co. and Columbia Steel Co.

*Cravath, DeGersdorff, Swaine & Wood*, of New York City, for Bethlehem Steel Co.

*Black, McCuskey, Ruff & Souers*, of Canton, Ohio, for Canton Tin Plate Corp.

*Reed, Smith, Shaw & McClay* and *Smith, Buchanan, Scott & Ingersoll*, of Pittsburgh, Pa., for John Follansbee, George T. Ladd, and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co.

*Chadbourne, Stanchfield & Levy*, of New York City, for Granite City Steel Co.

*Mayer, Meyer, Austrian & Platt*, of Chicago, Ill., for Inland Steel Co.

*Mr. W. L. Copeland*, of Pittsburgh, Pa., for Jones and Laughlin Steel Corp.

*Mr. Ralph H. Frank* and *Mr. J. P. Fife*, of Pittsburgh, Pa., for McKeesport Tin Plate Co.

*Mr. T. F. Patton* and *Mr. A. J. Gentholtz*, of Cleveland, Ohio, and *Mr. John S. Brookes, Jr.*, and *Mr. Stuart Young*, of Washington, D. C., for Republic Steel Corp. and The N. and G. Taylor Co.

*Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., also for Washington Tin Plate Co.

*Thorp, Bostwick, Reed & Armstrong*, of Pittsburgh, Pa., for Weirton Steel Co., and along with *Mr. Wright Hugus* and *Mr. J. E. Bruce*, of Wheeling, W. Va., for Wheeling Steel Corp.

*Manchester, Ford, Bennett & Powers*, of Youngstown, Ohio, for The Youngstown Sheet & Tube Co.

## AMENDED COMPLAINT

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 having reason to believe that American Sheet & Tin Plate Co., Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd, and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, the N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, Youngstown Sheet & Tube Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, American Sheet & Tin Plate Co., is a corporation organized under the laws of the State of New Jersey in 1900, with its principal office and place of business located in the Frick Building in the city of Pittsburgh in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 2. Said respondent, Bethlehem Steel Co., is a corporation organized under the laws of the State of Pennsylvania in 1899, with its principal office and place of business located in the city of Bethlehem, in said State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 3. Said respondent, Canton Tin Plate Corporation, is a corporation organized under the laws of the State of Ohio in 1930, with its principal office and place of business located in the city of Canton in said State of Ohio. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other articles, of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in

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States other than the State of Ohio, causing said tin plate when sold to be transported from the place of manufacture within said State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 4. Said respondent, Columbia Steel Co., is a corporation organized under the laws of the State of Delaware in 1930, with its principal office and place of business located in the Russ Building in the city of San Francisco, in the State of California. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of California, causing said tin plate when sold to be transported from the place of manufacture within said State of California to the purchasers thereof located in States other than the State of California.

PAR. 5. Said respondent, John Follansbee, George T. Ladd and Isaac M. Scott, are trustees in bankruptcy for Follansbee Bros. Co., a corporation, organized under the laws of the State of Pennsylvania in 1894, with its principal office and place of business located at Third Avenue and Liberty Avenue, in the city of Pittsburgh within the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 6. Said respondent, Granite City Steel Co., is a corporation organized under the laws of the State of Delaware in 1927, with its principal office and place of business located at Twentieth Street and Madison Avenue in Granite City, in the State of Illinois. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Illinois, causing said tin plate when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 7. Said respondent, Inland Steel Co., is a corporation organized under the laws of the State of Delaware in 1917, with its principal office and place of business located at 38 South Dearborn Street

in the city of Chicago, in the State of Illinois. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Illinois, causing said tin plate when sold to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 8. Said respondent, Jones & Laughlin Steel Corporation, is a corporation organized under the laws of the State of Pennsylvania in 1922, with its principal office and place of business located at Third Avenue and Ross Street in the city of Pittsburgh, in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 9. Said respondent, McKeesport Tin Plate Co., is a corporation organized under the laws of the State of Pennsylvania in 1902, with its principal office and place of business located at Port Vue, McKeesport, in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 10. Said respondent, Republic Steel Corporation, is a corporation organized under the laws of the State of New Jersey in 1899, with its principal office and place of business located at Youngstown in the State of Ohio. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate when sold to be transported from the place of manufacture within said State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 11. Said respondent, The N. & G. Taylor Co., is a corporation organized under the laws of the State of Maryland in 1929, with its principal office and place of business located in the city of Cumberland, in the State of Maryland. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Maryland, causing said tin plate when sold to be transported from the place of manufacture within said State of Maryland to the purchasers thereof located in States other than the State of Maryland.

PAR. 12. Said respondent, Washington Tin Plate Co., is a corporation organized under the laws of the State of Pennsylvania in 1907, with its principal office and place of business located in the city of Washington, in the State of Pennsylvania. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate when sold to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 13. Said respondent, Weirton Steel Co., is a corporation organized under the laws of the State of Delaware in 1925, with its principal office and place of business located in the city of Weirton, in the State of West Virginia. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing said tin plate when sold to be transported from the place of manufacture within said State of West Virginia to the purchasers thereof located in States other than the State of West Virginia.

PAR. 14. Said respondent, Wheeling Steel Corporation, is a corporation organized under the laws of the State of Delaware in 1920, with its principal office and place of business located in the city of Wheeling, in the State of West Virginia. Said respondent since the date of its organization has been and now is engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing said tin plate when sold to be transported from the place of manufacture within said State of West Virginia to the purchasers thereof located in States other than the State of West Virginia.



PAR. 15. Said respondent, The Youngstown Sheet & Tube Co., is a corporation organized under the laws of the State of Ohio in 1900, with its principal office and place of business located in the Stambaugh Building in the city of Youngstown, in the State of Ohio. Said respondent since the date of its organization has been and now is engaged in the manufacture of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate when sold to be transported from the place of manufacture within said State of Ohio to purchasers thereof located in States other than the State of Ohio.

PAR. 16. Said respondents, in the regular course and conduct of their said business, have been and now are producing several grades of tin plate—namely, “production plate,” “stock plate,” and “waste-waste.” These several grades of tin plate are described as follows:

“Production plate” which constitutes the bulk of the tin plate manufactured by said respondents, is the trade name and designation for tin plate made by the respondents in accordance with their customers’ specifications.

“Stock plate” is the trade name or designation for over-runs, seconds, and warming-up sizes accumulated by said respondents in the course of the manufacture of “production plate.” Because of the difficulties in controlling production in the manufacture of “production plate” large quantities of this “stock plate,” for which the said respondents have no specific orders, are accumulated by the respondents.

“Waste-waste” is the trade name or designation for tin plate which contains defects so great as not to permit said tin plate to qualify as seconds.

The said respondents have been selling and now sell the bulk of the tin plate produced by them to manufacturers of tin cans and other metal containers. The two large can companies, the American Can Co. and the Continental Can Co., who together consume approximately 65 percent of the domestic production of tin plate, are, by virtue of their size and large purchasing power, the principal purchasers of “production plate.”

“Stock plate” which has been accumulated in the course of the manufacture of “production plate,” as herein above set forth, was prior to January 1, 1935, sold by respondents to jobbers of tin plate who in turn disposed of the “stock plate” to small can manufacturers and packers who, because of lack of financial capacity were, and are not, able to carry “production plate” in stock in the various sizes and quantities required.

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PAR. 17. Said respondents on or about October 15, 1934, entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of the certain grade and quality of tin plate known in the trade as "stock plate" to jobbers of tin plate and to manufacturers of tin cans and other metal containers located throughout the several States of the United States, as aforesaid, by agreeing not to quote prices on said "stock plate" nor to offer the same for sale to said jobber customers and manufacturers.

PAR. 18. Said respondents, in furtherance of and pursuant to their aforesaid understanding, agreement, combination, or conspiracy, and acting in cooperation with each other, have, since on or about January 1, 1935, refused to sell, and now refuse to sell, "stock plate" or to offer the same for sale to said jobber customers and manufacturers, although said "stock plate" has been since January 1, 1935, and is now being produced by said respondents in substantial quantities. The said "stock plate" which is now accumulated by said respondents in the course of the manufacture of "production plate" has been since January 1, 1935, and is now being cut up by said respondents into such shape that it cannot be used by the jobbers of tin plate or small can manufacturers or other manufacturers of metal containers and is now being classified as "waste-waste" and sold for domestic consumption. Said product is also being sold as "waste-waste" for export but without mutilation of shape.

PAR. 19. The result of the acts of the said respondents, as hereinbefore set out in paragraphs 17 and 18, have been and now are to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of tin plate throughout the United States, particularly in the sale of "stock plate," and to enhance the prices of said tin plate above the prices which had theretofore prevailed and which would prevail under normal, natural and open competition between said respondents; and also tends to destroy the business of and force out of business the jobbers of tin plate; and also tends to create a monopoly in the manufacture of tin containers in the American Can Co. and the Continental Can Co. by depriving their competitors, the said small manufacturers of tin containers, of their normal source of supply of tin plate. The said small manufacturers of tin cans and metal containers, who heretofore, purchased their necessary supplies of "stock plate" through the jobbers of tin plate are now forced to purchase "production plate" at prices which are substantially higher than they were formerly required to pay and in fact higher than the

price that is paid for the same product by the said American Can Co. and the said Continental Can Co.

PAR. 20. The foregoing alleged acts and practices of the said respondents have been and still are to the prejudice of the buying public generally and to the jobber and small manufacturer of containers, customers of said respondents, in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers 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, 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 17th day of February, A. D. 1936, issued and served its complaint in this proceeding, and on the 26th day of March, A. D. 1936, issued and served its amended complaint in this proceeding upon the respondents, American Sheet & Tin Plate Co., Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., a corporation; Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, The N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, and Youngstown Sheet & Tube Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and said amended complaint, said respondents filed their answers thereto. Thereafter said respondents petitioned said Commission to allow them to withdraw the answers theretofore filed and, pursuant to permission granted by the said Commission, filed their substituted answers thereto, admitting the material facts alleged in the amended complaint, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, American Sheet & Tin Plate Co., is a corporation organized under the laws of the State of

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New Jersey on March 28, 1900, and until May 29, 1936, it maintained an office for the transaction of business in the Frick Building, Pittsburgh, Pa. From the date of its organization to May 29, 1936, said respondent had been engaged in the manufacture of sheet steel products, but was engaged in the manufacture of tin plate only from on or about December 31, 1930, to May 29, 1936; which said tin plate it sold to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania. On May 29, 1936, and after the issuance of the complaint against said respondent, the said American Sheet & Tin Plate Co. was duly merged into Carnegie-Illinois Steel Corporation (a New Jersey corporation maintaining an office for the transaction of business in Carnegie Building at Pittsburgh, Pa.) under and pursuant to the laws of the State of New Jersey, and thereupon said Carnegie-Illinois Steel Corporation succeeded to the assets and liabilities, and took over and continued, and still continues, the business of said respondent, American Sheet & Tin Plate Co.

PAR. 2. Said respondent, Bethlehem Steel Co., is a corporation organized under the laws of the State of Pennsylvania in 1899, with its principal office and place of business located in the city of Bethlehem, within said State of Pennsylvania. Said respondent has for a number of years been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers and to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 3. Said respondent, Canton Tin Plate Corporation, is a corporation organized under the laws of the State of Ohio in 1930, with its principal office and place of business located in the city of Canton, within said State of Ohio. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other articles, of tin plate which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 4. Said respondent, Columbia Steel Co., is a corporation organized under the laws of the State of Delaware in 1930, with its principal office and place of business located in the city of San Francisco, in the State of California. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of California, causing said tin plate, when sold, to be transported from the place of manufacture within said State of California to the purchasers thereof located in States other than the State of California.

PAR. 5. Said respondent, Follansbee Bros. Co., is a corporation organized under the laws of the State of Pennsylvania in 1894 with its principal office and place of business located at Third Avenue and Liberty Avenue in the city of Pittsburgh, within the State of Pennsylvania. Said respondent, on June 18, 1934, filed its petition under section 77-B of the Bankrupt Act in the District Court of the United States for the Western District of Pennsylvania at No. 18787 in bankruptcy, alleging its inability to meet and discharge its obligations as they matured, stating its desire to effect a plan of reorganization, and praying for the appointment of trustees of its property and assets pursuant to the provisions of said section 77-B; that thereupon said court appointed John Follansbee and George T. Ladd as trustees of all the property and assets of Follansbee Bros. Co., and directed the said trustees to continue to operate the business of said corporation; that said trustees duly qualified under their said appointment and continued to operate the business of said corporation as directed by said court until July 17, 1934; that on the last mentioned date the said court made an order continuing said John Follansbee and George T. Ladd in office as permanent trustees of Follansbee Bros. Co. under said section 77-B, and appointed Isaac M. Scott as a third permanent trustee of Follansbee Bros. Co. under said section 77-B, and directed the said three permanent trustees to continue the operation of the business of said corporation; and that said three permanent trustees, respondents herein, duly qualified as such by filing the bond approved by the District Court of the Western District of Pennsylvania, and have ever since continued, and are now continuing, to operate the business of said corporation. Said respondents have been, and now are, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in the State of Pennsylvania and other States, causing said tin plate, when sold, to be transported from its

manufacturing plant located at Follansbee, W. Va., to the purchasers thereof located in the State of West Virginia and States other than the State of West Virginia.

PAR. 6. Said respondent, Granite City Steel Co., is a corporation organized under the laws of the State of Delaware in 1927, with its principal office and place of business located in Granite City, in the State of Illinois. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and to manufacturers of tin cans and other metal containers located in States other than the State of Illinois, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 7. Said respondent, Inland Steel Corporation, is a corporation organized under the laws of the State of Delaware in 1917 with its principal office and place of business located at 38 South Dearborn Street, in the city of Chicago, in the State of Illinois. Said respondent, since on or about the 1st of January 1934, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in the various States of the United States, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Illinois to the purchasers thereof located in States other than the State of Illinois.

PAR. 8. Said respondent, Jones & Laughlin Steel Corporation, is a corporation organized under the laws of the State of Pennsylvania in 1922, with its principal office and place of business located in the city of Pittsburgh, in the State of Pennsylvania. Said respondent, since the date of its organization has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

PAR. 9. Said respondent, McKeesport Tin Plate Co., is a corporation organized under the laws of the Commonwealth of Pennsylvania in 1901, with its principal office and place of business located in the Borough of Port Vue in the County of Allegheny, in the Commonwealth of Pennsylvania. Said respondent, since the date of its

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organization, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in the State of Pennsylvania and in States other than Pennsylvania.

PAR. 10. Said respondent, Republic Steel Corporation, is a corporation, organized under the laws of the State of New Jersey in 1899, with its principal office and place of business located in the city of Cleveland, in the State of Ohio. Said respondent, since the year 1928, has been, and now is, engaged in the manufacture, among other products, of tin plate, which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 11. Said respondent, the N. & G. Taylor Co., is a corporation organized under the laws of the State of Maryland in 1929, with its principal office and place of business located in the city of Cumberland, in the State of Maryland. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Maryland, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Maryland to the purchasers thereof located in States other than the State of Maryland.

PAR. 12. Said respondent, Washington Tin Plate Co., is a corporation organized under the laws of the State of Pennsylvania in 1907, with its principal office and place of business located in the city of Washington, in the State of Pennsylvania. Said respondent, since the date of its organization, has been and now is engaged in the manufacture, among other products, of tin plate which it sells to manufacturers of tin cans and other metal containers, and which it some years prior to January 1, 1935, also sold to jobbers of tin plate located in States other than the State of Pennsylvania, causing said tin plate, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania.

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PAR. 13. Said respondent, Weirton Steel Co., is a corporation organized under the laws of the State of Delaware in 1925, with its principal office and place of business located in the city of Weirton, in the State of West Virginia. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing said tin plate, when sold, to be transported from the place of manufacture within said State of West Virginia to the purchasers thereof located in States other than the State of West Virginia.

PAR. 14. Said respondent, Wheeling Steel Corporation, is a corporation organized under the laws of the State of Delaware in 1920, with its principal office and place of business located in the city of Wheeling, in the State of West Virginia. Said respondent, since the date of its organization, has been, and now is, engaged in the manufacture, among other products, of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of West Virginia, causing such tin plate, when sold, to be transported from the place of manufacture within the State of Ohio to the purchasers thereof located in States other than the State of Ohio.

PAR. 15. Said respondent, The Youngstown Sheet & Tube Co., is a corporation organized under the laws of the State of Ohio in 1900, with its principal office and place of business located in the city of Youngstown, in the State of Ohio. Said respondent, since the fall of 1926 has been, and now is, engaged in the manufacture of tin plate which it sells to jobbers of tin plate and also to manufacturers of tin cans and other metal containers located in States other than the State of Ohio, causing said tin plate, when sold, to be transported from the place of manufacture within the State of Indiana to purchasers thereof located in States other than the State of Indiana.

PAR. 16. Said respondents, and each of them, in the regular course and conduct of their business have been, and now are, producing several grades of tin plate, namely, "production plate," "stock plate," and "waste-waste."

"Production plate" constitutes the bulk of the tin plate manufactured by said respondents, and by each of them, and is the trade name and designation for tin plate made by respondents, and each of them, in accordance with their customers' specifications.

"Stock plate" is the trade name or designation for over-runs, seconds and warming-up sizes, which is accumulated by the said



respondents, and each of them, in the course of the manufacture of "production plate." Large quantities of "stock plate" for which the respondents, and each of them, have no specific orders are accumulated by the respondents, and by each of them, due to the difficulties in controlling production in the manufacture of "production plate."

"Waste-waste" is the trade name or designation for tin plate which contains defects so great as not to permit said tin plate to qualify as seconds.

The said respondents, and each of them, have sold and now sell the bulk of tin plate produced by them to manufacturers of tin cans and other metal containers. The American Can Co. and the Continental Can Co. are the principal purchasers of tin plate, including "production plate," and together consume approximately 65 percent of the domestic production of tin plate.

Prior to January 1, 1935, a substantial portion of said "stock plate" which had been accumulated in the course of the manufacture of "production plate" was sold by said respondents, and each of them, to jobbers of tin plate. The said jobbers of tin plate in turn disposed of said "stock plate" to small can manufacturers and packers who were not able to carry "production plate" in stock in the various sizes and quantities required.

PAR. 17. During the summer and early fall of 1934 representatives of the respondents held conferences with respect to the elimination of the classification of tin plate theretofore known as "stock plate," and at one of such conferences held on, to wit, October 15, 1934, representatives of all of said respondents being present, adopted a recommendation that the production and sale of tin plate under the classification known as "stock plate" be eliminated entirely after January 1, 1935, and requiring buyers of "production plate" to accept seconds up to 25 percent of their orders, which recommendation was referred by them to their respective principals; that each and all of the respondents thereafter adopted the recommendations submitted to them, and thereafter, on or about January 1, 1935, each and every one of said respondents discontinued the manufacture and sale of the classification of tin plate known as "stock plate" with the full knowledge and belief, as a result of said conferences and recommendations resulting therefrom, that each and all of the respondents intended to and would take the same action on that date.

The said action taken by said respondents under the circumstances just recited constituted an agreement by said respondents not to quote prices on "stock plate" and not to offer the same for sale to jobbers and manufacturers, and said respondents thereby entered into an understanding, agreement, combination and conspiracy with each

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other to restrict and eliminate competition in interstate sale and distribution of the grade and quality of tin plate known as "stock plate," as herein defined, to jobbers of tin plate and to manufacturers of tin cans and other metal containers.

PAR. 18. Said respondents, and each of them, acting in cooperation with each other, and in furtherance of and pursuant to their said understanding or agreement, have since on or about January 1, 1935, refused to quote prices on "stock plate" and have refused to offer for sale or to sell "stock plate" to jobbers and manufacturers, although said respondents, and each of them, have since January 1, 1935, produced "stock plate" in substantial quantities. Some of the "stock plate" which has been produced and accumulated since January 1, 1935, by said respondents, and each of them, in the course of the manufacture of "production plate" has been sold as "production plate" at prices higher than the prices theretofore received for "stock plate", and some of the "stock plate" is cut up by said respondents into such shapes as to render it unfit for the manufacture of tin cans or other metal containers, and such "stock plate" has been classified by said respondents, and each of them, as "waste-waste" and sold for domestic consumption. Some of said respondents have also since January 1, 1935, classified some grades of "stock plate" as "waste-waste" and have sold the same for export without mutilation of shape. Said respondents, pursuant to said agreement, have also since January 1, 1935, required purchasers of "production plate" to accept seconds up to 25 per cent of their orders.

PAR. 19. The said respondents in their answers set up as justification for entering into the agreement hereinbefore set out in paragraph 17 hereof, and in justification of their actions thereunder, the following facts:

In August 1933, the members of the steel industry, including said respondents, were operating under the National Recovery Act of June 16, 1933, and the Code of Fair Competition for the Iron and Steel Industry adopted pursuant thereto; that the provisions of said code required manufacturers to file tin plate prices with the Code Authority for the Iron and Steel Industry and to refrain from certain unfair trade practices defined in said code, and provided penalties for the violation of the said provisions; that the sale of materials, including tin plate at less than filed prices, whether directly by overgrading or otherwise, constituted a violation of the said act and of said code; that many manufacturers, acting in alleged evasion and contravention of the provisions of said act and said code, engaged in the sale of tin plate as "stock plate" which should properly, according to trade usages and the practices theretofore prevailing,

and provided by the code, have been classified and sold as "production plate"; that respondents considered such practices unfair to manufacturers or purchasers of tin plate and to the buying public, and that it enabled manufacturers, while apparently selling at the same prices, to discriminate in favor of one customer as against another, and that such actions were an evasion and violation of the said code and the said act; and that in the summer and fall of 1934 said respondents believed that the foregoing facts necessitated corrective action within the industry.

The foregoing facts recited by the respondents, as herein set out, do not constitute any justification for the said agreement or the actions taken by said respondents pursuant to said agreement; the said code contained no provisions prohibiting the sale of "stock plate," and did not authorize the entering into agreements among and between the respondents, or activities thereunder, as hereinabove set forth in paragraphs 17 and 18. Further, since the termination of the National Recovery Act on or about June 1, 1935, said respondents have continued to observe the provisions of said agreement to not quote prices on "stock plate" and not to offer same for sale to jobbers and manufacturers as more particularly set forth in paragraphs 17 and 18 herein.

PAR. 20. The result of the acts and conduct of said respondents, and each of them, as hereinbefore set out in paragraphs 17, 18 and 19, has been and now is to unduly tend to substantially lessen, restrict and suppress competition in the interstate sale of tin plate throughout the United States, particularly in the sale of "stock plate," and to enhance the prices of said "stock plate" above the prices which have theretofore prevailed and which would prevail under normal, natural, and open competition between said respondents; and also tends to destroy the business of and force out of business jobbers of tin plate; and also tends to create a monopoly in the manufacture of tin containers in the American Can Co. and the Continental Can Co. by depriving their competitors, the small manufacturers of tin containers, of their normal source of supply of tin plate. Said small manufacturers of tin cans and metal containers who had heretofore purchased their necessary supplies of tin plate classified as "stock plate" through the jobbers of tin plate are now forced to purchase "production plate" at prices which are substantially higher than they formerly paid for "stock plate," and, when purchased in lots of less than 100 base boxes, are higher than the price paid for the same product by the American Can Co. and the Continental Can Co.

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## CONCLUSION

The foregoing acts and practices of the said respondents, and each of them, have been and still are to the prejudice of the buying public generally and customers of said respondents in particular, and constitute unfair methods of competition in 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 powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on February 17, 1936, and the amended complaint filed herein on March 26, 1936, and substituted answers of the respondents, American Sheet and Tin Plate Co. (now Carnegie-Illinois Steel Corporation), Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., a corporation, Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, the N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, and Youngstown Sheet & Tube Co., in which they state they desire to and have thereby waived hearing on the charges set forth in the amended complaint; that they, and each of them, refrain from contesting the proceeding, and that they, and each of them, admit the material facts alleged in the amended complaint; that they, and each of them, consent that the Commission may, without trial and without further evidence, and without any intervening procedure, make and enter its findings as to the facts and the conclusion thereon, and issue and serve upon them, and each of them, the said respondents, an order to cease and desist from the methods of competition alleged in the amended complaint:

*Now, therefore, it is hereby ordered,* That the respondent corporations, American Sheet & Tin Plate Co. (now Carnegie-Illinois Steel Corporation), Bethlehem Steel Co., Canton Tin Plate Corporation, Columbia Steel Co., John Follansbee, George T. Ladd and Isaac M. Scott, trustees in bankruptcy for Follansbee Bros. Co., a corporation, Granite City Steel Co., Inland Steel Co., Jones & Laughlin Steel Corporation, McKeesport Tin Plate Co., Republic Steel Corporation, The N. & G. Taylor Co., Washington Tin Plate Co., Weirton Steel Co., Wheeling Steel Corporation, and Youngs-

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## Order

town Sheet & Tube Co., their successors, officers, agents, or employees, and each of them, cease and desist from:

(1) Acting in cooperation with each other by entering into agreements not to sell, offer for sale, or quote prices in interstate commerce on "stock plate", consisting of warming-up sizes, over-runs and seconds, resulting from the manufacture of tin plate;

(2) Refusing, pursuant to agreement, to sell or offer to sell in interstate commerce to jobbers and manufacturers of tin cans and other metal containers "stock plate", consisting of warming-up sizes, over-runs and seconds, resulting from the manufacture of tin plate;

(3) Acting in cooperation with each other by entering into agreements to cut up or otherwise to mutilate warming-up sizes, over-runs or seconds, resulting from the manufacture of tin plate and known and described in the trade as "stock plate", for the purpose of classifying the same as "waste-waste" for domestic sale in interstate commerce and at the same time offering it for sale in foreign countries without mutilation;

(4) Cutting up or otherwise mutilating, pursuant to agreement, warming-up sizes, over-runs or seconds, resulting from the manufacture of tin plate and known and described in the trade as "stock plate", for the purpose of classifying the same as "waste-waste" for domestic sale in interstate commerce and at the same time offering it for sale in foreign countries without mutilation.

*It is hereby further ordered*, That said respondents, and each of them, shall within 60 days from the date of service of this order, file with the Commission a report or reports in writing, stating the manner and form in which they have complied with this order.

Complaint

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IN THE MATTER OF  
NATIONAL SILVER CO.

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

*Docket 2512. Complaint, Aug. 13, 1935—Decision, June 25, 1936*

Where a corporation, engaged in the sale and distribution of silverware to jobbers, wholesale and retail dealers, and to chain, hardware, department, and house-furnishing stores—

Sold and delivered sets of a certain pattern of silverware, upon each and every piece of which there was stamped the quality mark or words "Sectional Overlay", notwithstanding fact that ornamental pieces thereof did not have an extra deposit of silver at points of wear, so as to be properly represented, designated, or referred to by said quality mark;

With effect of deceiving ultimate purchasers into buying that which they did not intend to buy, and of placing thereby in the hands of its wholesale and retail purchasers means of deceiving ultimate purchasers, and with capacity and tendency so to do, and to divert to it trade of competitors engaged in selling similar products, truthfully advertised, represented, and described, and of competitors engaged in selling products which (1) do have extra deposits of silver at the points of wear, as denoted by said term as long known and understood by trade and purchasing public, and by former as quality mark denoting additional value in silverware, and which (2) are truthfully advertised and described by them; to the substantial injury of substantial competition in commerce:

*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.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John Darsey* for the Commission.

*Brill, Bergenfeld & Brill*, of New York City, for respondent.

COMPLAINT

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, having reason to believe that the National Silver Co., a corporation, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent National Silver Co. is a corporation organized and existing under and by virtue of the laws of the State

of New York and at its office and principal place of business at 61-65 West Twenty-third Street, in the city of New York, State of New York, for several years last past has been engaged in the business of selling and distributing silverware to jobbers, wholesale and retail dealers, chain stores, hardware stores, department stores, and house furnishing stores. Said respondent causes said silverware when sold by it to be transported from its principal place of business in the State of New York into and through various other States of the United States to the purchasers thereof.

In the course and conduct of their said business respondent is now and for more than two years last past has been in substantial competition in commerce between and among various States of the United States with various other corporations, individuals, partnerships, and firms engaged in the sale of similar products.

PAR. 2. Through long usage the term "Sectional Overlay," when used in association with silverware, has become known, and is understood by the trade and purchasing public to mean an extra deposit of silver at the points of wear.

In the course and conduct of its aforesaid business respondent has caused to be stamped on each and every piece of a certain pattern of its silverware, said pattern being known as "Martha Washington," the quality mark or words "Sectional Overlay," and which products bearing such stamp the respondent has sold in interstate commerce, when in truth and in fact said products were not such products having an extra deposit of silver at the point of wear so as to be properly represented, designated, or referred to by the quality mark "Sectional Overlay," but were products which did not have such extra deposit of silver at such points of wear. Respondent thereby has falsely represented and does falsely represent to purchasers and prospective purchasers this certain pattern of its products to be such a product as "Sectional Overlay," when in truth and in fact said pattern of silverware so described and branded by respondent is not "Sectional Overlay" and does not have extra deposits of silver at the points of wear as by said quality mark so declared to have.

PAR. 3. Under the foregoing facts and circumstances the stamping and branding by respondent of certain of its products as "Sectional Overlay" as set out in paragraph 2, supra, is false and misleading and has the capacity and tendency to deceive, and does deceive, the ultimate purchasers into buying that which they did not intend to buy; and through and by virtue of such stamping and branding as aforesaid the respondent has placed and is placing in the hands of its wholesaler and retailer purchasers the means of deceiving the ultimate purchasers. The aforesaid practice has the capacity and tendency to divert to respondent the trade of competitors engaged

## Findings

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in selling in interstate commerce products of the same kind and nature as those of respondent, which products are truthfully advertised and described, and to divert to respondent the trade of competitors engaged in selling in interstate commerce products which do have extra deposits of silver at points of wear and truthfully advertised and described. Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 4. The acts and things above alleged to have been done by the respondent are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in 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 powers 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, 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 13th day of August 1935, issued and served its complaint in this proceeding upon respondent, National Silver Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony and evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Abraham Brill, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint, and brief filed by respondent; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:



## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, National Silver Co., is a corporation existing by virtue of the laws of the State of New York, with its principal place of business at 61-65 West 23rd St., in the city of New York. The respondent for twenty years or more last past has been engaged in the business of selling and distributing silverware



to jobbers, wholesale and retail dealers, chain stores, hardware stores, department stores, and house furnishing stores. The respondent causes said silverware when sold by it to be transported from its principal place of business in the State of New York to purchasers thereof located in the various States of the United States. There are among the competitors of respondent various other corporations, individuals, partnerships, and firms likewise engaged in the sale and distribution of silverware.

PAR. 2. Over a long period of time and through long usage the term "sectional overlay" when used in association with silverware has become known and is understood by the trade and the purchasing public to mean an extra deposit of silver at the points of wear. The said term "sectional overlay" is considered in the trade as a quality mark denoting additional value in silverware.

In promoting the sale of its "Martha Washington" pattern of silverware the respondent caused the quality mark or words "sectional overlay" to be stamped on each and every piece of said pattern, when in truth and in fact the ornamental pieces of said sets of silverware did not have an extra deposit of silver at the points of wear so as to be properly represented, designated or referred to by the quality mark "sectional overlay." Respondent sold and delivered said sets of silverware so misbranded and so marked to purchasers thereof located in States of the United States other than the State of New York. Respondent thereby falsely represented and does falsely represent to purchasers and prospective purchasers of its silverware so branded and marked that it did and does contain extra deposits of silver at the points of wear when in truth and in fact such was not and is not the case.

PAR. 3. The stamping and branding by respondent of its certain brands of silverware as "sectional overlay" when such is not the fact is false and misleading and has the capacity and tendency to deceive and has deceived and does deceive the ultimate purchasers into buying that which they did not intend to buy; and through and by virtue of such stamping and branding, as aforesaid, the respondent places in the hands of its wholesaler and retailer purchasers the means of deceiving the ultimate purchasers. The aforesaid practice has the capacity and tendency to divert to respondent the trade of competitors engaged in selling, in interstate commerce, products of the same kind and nature as those of respondent, which products are truthfully advertised, represented, and described, and to divert to respondent the trade of competitors engaged in selling, in interstate commerce, products which do have extra deposits of silver at the points of wear and which are truthfully advertised and described.

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Thereby substantial injury is done by respondent to substantial competition in interstate commerce.

## CONCLUSION

The practices of 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 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, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by counsel for the Commission and counsel for 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, National Silver Co., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, and sale of their silverware in interstate commerce, forthwith cease and desist from:

Representing through the use of the term "sectional overlay" or any term, word, or phrase of like import or meaning, in advertisements or printed matter, or in stamping or branding of its said silverware, or in any other manner whatsoever, that said silverware has extra deposits of silver at the points of wear, when such is not the case.

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

## Syllabus

IN THE MATTER OF  
DISPENSARY SUPPLY COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2559. Complaint, Sept. 24, 1935—Decision, June 25, 1936*

Where a corporation engaged in the sale of "Dr. McCaskey's Prescription Tablets" to wholesale and retail dealers for ultimate resale to the members of the public, and also to members of the purchasing public in the various States—

- (a) Represented that said proprietary preparation constituted a cure or remedy or competent and adequate treatment for obesity and that it would reduce excess fat, through such statements as "Do not let overweight rob you of popularity. You can so easily have a slim, attractive figure \* \* \* you will reduce if you faithfully follow my treatment," "REDUCE EXCESS FAT with the prescription of a specialist on weight control. Seeking health with drastic baths and exhausting exercises is no longer necessary," etc., facts being that said preparation did not constitute an adequate or competent remedy for the treatment of obesity and would not reduce fat at all;
- (b) Represented that said preparation was harmless or safe to take, through such statements as "Reduce quickly, safely," etc., "\* \* \* Reduce as your doctor would advise you \* \* \*," "Reduce safely, surely, \* \* \*," "There is no thyroid, no harsh drugs—nothing that could possibly harm you," "Nothing that could harm a baby," facts being said preparation, by virtue of certain ingredients therein and effect thereof on the body in course of time, was neither safe nor harmless;
- (c) Represented that users of said preparation would reduce five pounds a week, through such statements as "How would you like to reduce five pounds during the next week? You can, if you are overweight—surely, safely, and without discomfort. \* \* \*," facts being said preparation would not reduce fat at rate of five pounds per week or at all;
- (d) Represented that users thereof would obtain results similar to those obtained by "Dr. McCaskey" in his practice as a physician, or to those obtained by a physician in his practice as such, through such statements as "Dr. McCaskey's treatment enables you to do this safely" (i. e., reduce without tiring exercises or starvation diet), "You can easily and comfortably control your weight with Dr. McCaskey's Prescription Tablets," "Reduce as your doctor would advise you with a proven treatment of a prominent American physician, an authority on weight control," facts being users thereof do not get same results as Dr. McCaskey in his private practice as a physician or same results that any physician gets in his private practice as such;
- (e) Represented that, through use of said preparation, a person could reduce any part of the body desired, through such statements as "REDUCE

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WHERE YOU WANT TO REDUCE. Take weight off your abdomen, hips \* \* \*—Wherever you want to reduce. Dr. McCaskey's treatment enables you to do this safely—\* \* \*," etc., facts being users thereof cannot reduce any part of the body desired;

With tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said preparation constituted a remedy and adequate and competent and safe treatment for obesity, that might be used by any and all purchasers thereof without danger of harmful results, and that users thereof would reduce five pounds weekly and any part of the body desired, and secure the same results as said doctor in his private practice, and to induce members of such public to buy such preparations because of such erroneous beliefs thus engendered, and to divert business unfairly to it from its competitors; to their substantial injury and prejudice: *Held*, That such acts and 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.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. Astor Hogg* for the Commission.

*Mr. Carl H. Fowler* and *Mr. Frank C. McKinney*, of New York City, for respondent.

## COMPLAINT

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 having reason to believe that Dispensary Supply Co., Inc., a corporation, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dispensary Supply Co., Inc., is and at all times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business, located in the city of New York, in said State. It is now and for more than 1 year last past has been engaged in the business of causing to be manufactured and selling a certain medical preparation for the treatment of obesity known and described as "Dr. McCaskey's Prescription Tablets"; respondent sells said preparation to wholesale and retail druggists located in various States of the United States for ultimate resale to the purchasing public and also sells said preparation direct to the purchasing public residing in the various States of the United States, and pursuant to such sales, shipment is made from its place of business in the State of New York into and through various States of the United States other than the State of point of origin of such shipment, and in the District of Columbia.

There are in the United States other corporations, persons, and firms engaged in the sale and distribution of similar competing products, who, pursuant to such sales, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and with such other corporations, persons, and firms, the respondent is and at all times hereinafter mentioned, has been in active and substantial competition.

PAR. 2. Respondent represents, as hereinafter set out, that said medical preparation is a remedy and competent and adequate treatment for obesity and that it will reduce excess fat; that a person can reduce by the use of said preparation any particular part of the body desired; that the preparation contains no drugs and that it is safe and harmless; that a person can reduce 5 pounds within a week by the use of said preparation; that users of said preparation can reduce without diet or exercise; that users of said preparation will obtain results similar to those obtained by Dr. McCaskey in his practice as a physician.

In aid of the sale of said preparation and to create a demand therefor respondent has made the following statements and representations through advertisements inserted in various publications and newspapers by advertising literature, testimonials, and otherwise:

Reduce quickly, safely with a proven treatment of a prominent New York physician.

Do not let overweight rob you of popularity. You can so easily have a slim, attractive figure \* \* \* you will reduce if you faithfully follow my treatments."

REDUCE WHERE YOU WANT TO REDUCE. Take weight off your abdomen, hips, waist, ankles—wherever you want to reduce. Dr. McCaskey's treatment enables you to do this safely—without tiring exercises or starvation diet. There is no thyroid, no harsh drugs—nothing that could possibly harm you.

\* \* \* I used Dr. McCaskey's Prescription Tablets, and after following directions in booklet carefully I lost six pounds during the first week \* \* \*.

My husband started Dr. McCaskey's treatment a month ago, weighing 325 pounds. He has lost thirty pounds \* \* \*.

I am well pleased with results from the ten-day Dr. McCaskey treatment. I have already lost eight pounds \* \* \*.

I've had better results with Dr. McCaskey's Prescription than anything I ever took \* \* \*. I weighed 210 pounds and have taken off 13 pounds in two weeks \* \* \*.

Whether you are overweight or only fighting the approach of fat, you can easily and comfortably control your weight with Dr. McCaskey's Prescription Tablets.

#### REDUCE EXCESS FAT

With the prescription of a specialist on weight control. Seeking health with drastic baths and exhausting exercises is no longer necessary. Reduce as your

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doctor would advise you—with a proven treatment of a prominent American physician—an authority on weight control.

Dr. McCaskey is one of the pioneer advocates of dehydration \* \* \*. Dehydrating the system not only cleanses and purifies the body, it is a preventative of colds, lumbago, hay fever, and many other ailments caused by a toxic condition. Eliminate toxic poisons and your general health is bound to improve. Dr. McCaskey's Prescription Tablets contain no thyroid, no harmful drugs— \* \* \*.

The Base of these tablets is a simple alkaline salt that dehydrates and purifies the water remaining, which, in turn, promotes better general health.

## REDUCE

Safely, Surely, with a proven prescription of a prominent New York physician.

How would you like to reduce five pounds during the next week? You can, if you are overweight—surely, safely and without discomfort. Take Dr. McCaskey's Prescription Tablets and follow the method explained in each package and watch pounds fade away.

Have lost five pounds a week since I have been taking Dr. McCaskey's treatment, and am now down to normal weight \* \* \*.

Dr. McCaskey's Prescription \* \* \* contains \* \* \* nothing that could harm a baby.

Dr. McCaskey warns especially against starvation diets \* \* \* with Dr. Bailey at Bellevue Hospital he says "I kept one woman without food or water a full week. This woman actually GAINED while starving."

Phone your druggist or Department Store for Dr. McCaskey's Prescription Tablets now. Then measure and weigh yourself carefully before you start. Do this weekly and watch how you pick up pep and energy as you drop excessive weight.

PAR. 3. In truth and in fact the preparation advertised, sold, and distributed by respondent as hereinbefore stated, is not a remedy or competent or adequate treatment for obesity and neither will it reduce excess fat; it will not reduce any particular part of the body desired; the preparation contains drugs; it is not a safe remedy and certain ingredients contained therein are such that long continued use thereof, except under the direction of a physician, may endanger and injure the user's health; a person cannot reduce five pounds or any number of pounds within a week by the use of said preparation; weight of a person cannot be reduced without diet or exercise and users of said preparation do not obtain results similar to those obtained by Dr. McCaskey in his practice as a physician. In fact, all of the statements and representations set out in paragraph 2 hereof are grossly inaccurate, incorrect, false, and misleading.

PAR. 4. The representations of respondent as aforesaid, have the capacity and tendency to confuse, mislead, and deceive members of the purchasing public into the belief that said medical preparation is a remedy and competent and adequate for the ailments of the human body for which said preparation is recommended and advertised by respondent as aforesaid and induces the public to buy and

use the same because of such erroneous belief so engendered; it diverts trade to respondent from legitimate competitors who truly advertise similar preparations and who are engaged in the sale in interstate commerce of preparations intended for and used for the ailments of the human body, for which respondent represents its preparation to be a remedy and adequate treatment as aforesaid.

PAR. 5. The above acts and practices of respondent are to the injury and prejudice of the public and to competitors of respondent in interstate commerce within the meaning and intent 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."

#### REPORT, FINDINGS AS TO 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 September 24, 1935, issued and served its complaint in this proceeding upon respondent, Dispensary Supply Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Frank C. McKinney, attorney for respondent, and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dispensary Supply Co., 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 in the city of New York, in the State of New York. Respondent began doing business as a corporation in the month of June 1934. From the month of June 1934 until the month of Novem-

## Findings

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ber 1934, respondent was engaged in the sale in interstate commerce of a certain proprietary preparation designated by it as "Dr. McCaskey's Prescription Tablets" to wholesale and retail dealers for ultimate resale to members of the public, and also to members of the purchasing public located in the various States of the United States other than the States of New York and Connecticut. Respondent caused its said preparation, when sold by it, to be transported in commerce from its place of business in New York City and from the place of manufacture of such preparation in New London, Conn., to, into, and through said other States to the purchasers to whom the said preparation was sold by respondent. While respondent did not sell its preparation during the year 1935, according to the testimony of its president it expects to resume the sale of its preparation in the future.

PAR. 2. During the time above mentioned and referred to, other corporations, firms, and individuals located in the various States of the United States have been engaged in the manufacture and in the sale of preparations and products advertised and used for the treatment of obesity, and other corporations, firms, and individuals have been engaged in the manufacture and sale of preparations of the same general character and having the same general therapeutic effects that respondent's preparation has, which preparations they have sold and still sell to wholesale and retail dealers and to members of the public located in the various States of the United States. The respondent during the aforesaid time was and still is, in competition in commerce in the sale of its preparation with said other corporations, firms, and individuals herein referred to.

PAR. 3. The respondent herein, in soliciting the sale of and selling "Dr. McCaskey's Prescription Tablets," has made use of advertisements in newspapers and magazines circulated in and among the various States of the United States to members of the public, which said advertisements state that said preparation is a cure or remedy for obesity and that it will reduce excess fat; that by the use of said preparation a person can reduce any particular part of the body desired; that the preparation is safe and harmless; that by the use of said preparation a person can reduce five pounds within a week; that users of said preparation will obtain results similar to those obtained by Dr. McCaskey in his practice as a physician. Among such statements so used in referring to said preparation are the following:

Reduce quickly, safely with a proven treatment of a prominent New York physician.

Do not let overweight rob you of popularity. You can so easily have a slim, attractive figure \* \* \* you will reduce if you faithfully follow my treatments.



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## Findings

**REDUCE WHERE YOU WANT TO REDUCE.** Take weight off your abdomen, hips, waist, ankles—wherever you want to reduce. Dr. McCaskey's treatment enables you to do this safely—without tiring exercises or starvation diet. There is no thyroid, no harsh drugs—nothing that could possibly harm you.

Whether you are overweight or only fighting the approach of fat, you can easily and comfortably control your weight with Dr. McCaskey's Prescription Tablets.

**REDUCE EXCESS FAT**

With the prescription of a specialist on weight control. Seeking health with drastic baths and exhausting exercises is no longer necessary. Reduce as your doctor would advise you—with a proven treatment of a prominent American physician—an authority on weight control.

The Base of these tablets is a simple alkaline salt that dehydrates and purifies the water remaining, which, in turn, promotes better general health.

**REDUCE**

Safely, Surely, with a proved prescription of a prominent New York physician.

How would you like to reduce 5 pounds during the next week? You can, if you are overweight—surely, safely and without discomfort. Take Dr. McCaskey's Prescription Tablets and follow the method explained in each package and watch pounds fade away.

Dr. McCaskey's Prescription \* \* \* contains \* \* \* nothing that could harm a baby.

Phone your druggist or Department Store for Dr. McCaskey's Prescription Tablets now. Then measure and weigh yourself carefully before you start. Do this weekly and watch how you pick up pep and energy as you drop excessive weight.

**PAR. 4.** The formula for each tablet of Dr. McCaskey's Prescription Tablets is as follows:

Potassium Chloride—2 grains  
Potato Starch—1 grain  
Lactose—1 grain  
Phenolphthalein— $\frac{1}{8}$  grain  
Cane Sugar—1 grain

This preparation is manufactured for respondent by Tracy Chemical Co., of New London, Conn. The preparation consists of tablets which are placed in a small cardboard container which is sold to the purchasing public at \$1.00 per box. Also enclosed in the container of tablets is a circular containing, among other things, the directions recommended to the user of the preparation. In and by said directions, the user is directed to take two tablets three times a day.

Two doctors of medicine, one of whom was also a pharmacologist, testified to the general effect that a preparation of the constituency as given above and taken in the dosage recommended by respondent does not constitute a treatment or remedy for obesity and will not of itself reduce excess fat. Their testimony was to the effect that there is only one active ingredient in the tablet—phenolphthalein—and that

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if any weight reduction took place as a result of taking said preparation it would be due to this drug; that the action of this drug is cathartic and usually produces a stool, but no great water loss, and only in cases which would be considered hyper-susceptible to the drug would it produce a loose or water stool and effect any appreciable amount of water loss, and if such losses were effected they would be generally detrimental to the patient's health; that water loss as a reduction in obesity cases is quickly made up and not of any permanent value; that the only ingredient in the formula that is of any therapeutic value is the phenolphthalein and it is a laxative in small doses and a cathartic in large doses. These witnesses further testified that if this preparation is taken in the dosage prescribed, the patient would get one grain of phenolphthalein a day, in which event it would have the action of a laxative; that phenolphthalein is cumulative, and its action persists; that a single dose of one grain often has a continued effect for 3 or 4 days because of the peculiar behavior of the substance in the human body and it is absorbed in the large intestine and excreted through the liver and bile into the small intestine and there it produces its irritant effect and as it goes down it may be reabsorbed again from the large intestine and go through the same process again. If one continues taking the prescribed dosage over a long period of time, the effect would be cumulative and may cause a drastic cathartic effect. This ingredient may be harmful in respondent's prescribed doses to susceptible individuals, and in some cases it causes irritation of the intestines as well as the kidneys, and in some case causes albumin in the urine. If a user of this preparation should take it according to directions for as much as two months, it would likely be harmful from the standpoint of excess irritation of the bowel as well as of the kidneys and such user might get skin eruptions.

Said witnesses testified that phenolphthalein is not a remedy for obesity. A certain amount of loss of water through catharsis may be obtained, but it is temporary in its nature. Obesity is an abnormal deposit of fat in the body due, in the great majority of cases—probably 90 percent—to excess of eating and under-exercising. If the amount of intake of food is in excess of that used by the body, one gets a deposit of fat. In some cases excess fat of individuals is brought about by disturbances of certain glands. This preparation is not a remedy or a treatment for obesity of any kind. The statement that by the use of said preparation one can reduce any part of the body desired is not physiological and incorrect. It is impossible to reduce by the use of said preparation any part of the body desired.

The testimony of the medical witnesses above detailed was not contradicted by the testimony of any other witness.

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PAR. 5. The Commission finds that the preparation "Dr. McCaskey's Prescription Tablets," is not an adequate, or competent remedy for the treatment of obesity; that users of said preparation cannot reduce any part of the body desired; that the preparation is not a safe and harmless one; that the preparation will not reduce fat at the rate of five pounds per week or at all and users thereof do not get the same results as does Dr. McCaskey in his private practice as a physician or the same results that any physician gets in his private practice as a physician.

PAR. 6. In and throughout the several States of the United States are many persons who are seeking some dependable means whereby they may quickly and permanently rid their bodies of excessive fat or portions of the flesh which they now bear and of which they desire to be rid. Said statements and representations made by respondent in said advertisements have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said Dr. McCaskey's Prescription Tablets is a remedy and adequate and competent treatment for obesity, and a safe remedy that may be used by any and all purchasers thereof without danger of harmful results; that the users of said "Prescription" will reduce at the rate of five pounds per week; that users thereof can reduce any part of the body desired; and that users thereof get the same results as does Dr. McCaskey in his private practice as a physician. Such representations have the capacity and tendency to induce members of the purchasing public to purchase said preparation because of the erroneous beliefs engendered as above set forth, and respondent's acts and practices as hereinbefore set forth have the capacity and tendency to unfairly divert business to respondent from its competitors to the substantial injury and prejudice of said competitors.

**CONCLUSION**

The aforesaid acts and 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."

**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, testimony and evidence taken before Edward M. Averill, an examiner

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of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and briefs filed herein, 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 ordered*, That respondent, Dispensary Supply Co., Inc., its officers, directors, agents, representatives, servants, and employees in connection with the offering for sale, sale or distribution in interstate commerce of "Dr. McCaskey's Prescription Tablets" or of said preparation or of any similar preparation containing substantially the same ingredients under the same or under any other name or names, cease and desist, directly or indirectly, from:

(1) Representing that said preparation constitutes a cure or remedy or a competent and adequate treatment for obesity, or that it will reduce excess fat;

(2) Representing that said preparation is harmless or is safe to take;

(3) Representing that users of said preparation will reduce five pounds within a week or any number of pounds within any stated period of time;

(4) Representing that users of said preparation will obtain results similar to those obtained by Dr. McCaskey in his practice as a physician, or results similar to those obtained by any physician in his practice as a physician;

(5) Representing that by the use of said preparation a person can reduce any part of the body desired.

*It is further ordered*, That respondent, Dispensary Supply Co., Inc., within 30 days after 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 this order has been complied with and conformed to.

## Syllabus

IN THE MATTER OF  
GROVE DISTILLERS & WINE COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2421. Complaint, May 31, 1935—Decision, June 26, 1936*

Where a corporation, engaged in the rectifying and sale at wholesale to jobbers and retailers, principally, of whiskies, brandies, rum, gin, cordials, and other spirituous beverages under basic permit from the Federal Alcohol Administration, and never applicant for a distiller's permit nor authorized by the government to produce distilled spirits from the grain, and which never distilled or owned a still, but purchased all of its distilled spirits requirements in bulk from distillers and rectified and blended or bottled such spirits for resale under its own brand names and, in some cases, under names and brands of customer wholesalers, jobbers, or retailers, and with equipment consisting of four bottling tanks and some rectifying receptacles, but with no distilling apparatus whatever—

Made use of a corporate name which included word "Distillers", and displayed said name on labels of its said products, and featured the same on its stationery and advertising in the course and conduct of its aforesaid business in competition with actual distillers and with other rectifiers who do not, through the use of such words as "Distilling", "Distiller", or "Distilleries" as a part of their corporate or trade names, misrepresent their status to the trade by reason of the definite significance long attached to word "Distillers" when used in connection with liquor industry and products thereof as meaning, to wholesalers and retailers therein and to the ultimate purchasing public, manufacturers of such liquors by a process of original distillation from raw materials;

With effect of (1) misleading and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, gins, and other alcoholic beverages sold by it were made through process of original distillation from raw materials as aforesaid; of (2) inducing dealers and purchasing public, in response to preference of a substantial portion thereof for purchase of spirituous liquors prepared and bottled by its actual distillers to buy said whiskies, etc., bottled and sold by it, and thereby diverting trade to it from competitors who do not thus or otherwise misrepresent themselves as manufacturers by original distillation from raw materials of their whiskies and other alcoholic beverages; to the substantial injury of substantial competition in interstate commerce; and (3) furnishing its customers, through such potentially deceptive name, with means of representing it to their own retailer and jobber vendees and the ultimate consuming public, as a distiller, and its whiskies and other beverages as made or distilled by it from mash, wort or wash by one continuous process:

*Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

## Complaint

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

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Jacob Barash*, of New York City, and *Mr. Aaron Last*, of Jersey City, N. J., for respondent.

## COMPLAINT

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, having reason to believe that Grove Distillers & Wine Co., Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in the city of Jersey City, in said State. It is now, and for more than 1 year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rum, and other spirituous beverages, and in the wholesaling of gins and wines, and selling all of such products at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, some located within the State of New Jersey and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, rums, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, rums, brandies, other spirituous beverages and wines, and in the sale thereof in commerce between and among the various States of the United States

and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and selling at wholesale whiskies, gins, rums, brandies, other spirituous beverages and wines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and the products thereof has had, and still has, a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturers of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, rums, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, rums, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, rums, and other spirituous beverages sold by them, and who truthfully use the words "distillery," "distilleries," "distillers", or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals, engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, rums, brandies, and other spirituous beverages,

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who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of liquor wholesalers who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, rums, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, rums, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort or wash, of whiskies, gins, rums, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

## 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 May 31, 1935, issued, and on June 3, 1935, served its complaint in this proceeding upon respondent, Grove Distillers & Wine Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by



PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, heretofore duly designated by it, and in defense of the allegations of the complaint by Jacob Barash, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Grove Distillers & Wine Co., Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 347 Grove St., Jersey City, in said State. It is now, and since its organization has been, engaged in the business of rectifying and selling at wholesale, principally to jobbers and retailers, whiskies, brandies, rum, gin, cordials, and other spirituous beverages under a basic permit from the Federal Alcohol Administration dated November 23, 1935, and designated as "Permit No. R-230." This permit was based upon its application dated October 17, 1935, and was issued "subject to compliance with all State and Federal laws."

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol). Since its organization in December 1933 respondent has continuously been engaged in the aforesaid business. Respondent never applied for a distiller's permit, was never authorized by the Government to produce any distilled spirits from the grain, never distilled and never owned a still, but has purchased and now purchases all of its distilled spirits requirements in bulk from distillers and rectifies and then blends or bottles such spirits for resale in bottles under its own brand names and, in some cases, under the names and brands of its customers who are wholesalers, jobbers, or retailers. Its equipment consists of four bottling tanks and eight rectifying receptacles and tanks in a one-story and basement building and it has no distilling apparatus whatever. The words "Bottled by Grove Distillers & Wine Co., Inc.," and "F. A. C. A. R-230" appear on 10 of the 17 labels of respondent admitted in evidence. The spirituous

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liquors so bottled and labeled by respondent are sold under different brand names, among which is the "Grove" brand whiskey, a blend. On this and some of the other labels the words "Grove Distillers & Wine Co., Inc.," are in heavy type and quite prominent on that account. While the rectifier's license number appears upon the "Grove" label, and it is indicated thereon that the whiskey was blended by Grove Distillers & Wine Co., there is nothing there to negative the implication that respondent also was the distiller of this brand.

Respondent's corporate name is printed on its letterheads in large clear type, but at some time prior to the hearings it began stamping with a rubber stamp upon its stationery the words "Rectifiers of Spirits."

During the latter part of 1935 respondent was rectifying only about one-third of the products which it sold, merely bottling and selling the remainder of its bulk purchases.

When sold, respondent ships its bottled liquors so labeled which it has rectified or blended or simply bottled, to its jobber and dealer customers from its principal place of business aforesaid into and through various States of the United States to the purchasers thereof, located in States of the United States other than the State of New Jersey, in competition with distillers and rectifiers likewise engaged in the regular course of business in the sale of whiskies, brandies, rum, gin, cordials, and other spirituous beverages in commerce among the several States and the evidence shows that respondent's bottled liquors are offered for resale and sold by its said customers, both to retailers and the consuming public in States and territories co-extensive with the territories in which its competitors likewise offer spirituous beverages for sale to jobbers, retailers, and the consuming public. Respondent's sales and solicitations for sales are made principally within, but are not confined to, the State of New Jersey, sales and shipments being made in the regular course of its business to customers in the States of New York and Massachusetts. For example, during the months of November and December 1934, respondent sold 243 gallons; in March 1935, 30.6 gallons; in April 1935, 2.16 gallons; in October 1935, 126.25 gallons; in November 1935, 70 gallons; and in December 1935, 135 gallons of alcoholic beverages in interstate commerce. The Commission finds that respondent is in competition in interstate commerce with actual distillers and also with other rectifiers who do not, by the use of such words as "distilling," "distiller," or "distilleries," as a part of their corporate or trade names, misrepresent their status to the trade.

PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and the products thereof, has had and still has, a definite significance and meaning to the minds

of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturers of such liquors by a process of original distillation from raw materials.

The record contains the testimony of approximately 50 members of the public whose names were obtained from the classified section of telephone directories, including dentists, engineers, real estate men, public accountants, bond brokers, physicians, inspectors, and promoters. This testimony shows that the word "distillers," when used in connection with the distilled spirits or whiskey industry, signifies to them the manufacture of spirits from raw materials. Practically without exception, each of these members of the public, not only expressed a definite preference to buy packaged goods bottled by a distiller, but gave reasons which appeared to them to justify such preference.

The Commission therefore finds that a substantial portion of the purchasing public prefer to purchase spirituous liquors which have been prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, respondent's use of the word "distillers" as a part of its corporate name conspicuously printed on its stationery, advertising, and on the labels attached to the bottles in which it sells and ships its said liquors, has the capacity and tendency to, and does, mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent are by it manufactured through the process of original distillation from raw materials as aforesaid and such use of the word "distillers" has the capacity and tendency to, and does, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not, by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by original distillation from raw materials of the whiskies, gins, and other alcoholic beverages by them sold, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 4. Activities in connection with the manufacture and sale of alcoholic beverages are divided among several classes of manufacturers, processors, and dealers. The initial process of manufacturing is in the hands of distillers. In the case of whiskey, these distillers manufacture their products by the distillation of fermented grain mash, which produces at lower temperatures of distillation the product called whiskey. This whiskey contains certain esters or flavoring elements, and also some ingredients which it is necessary to eliminate before the whiskey is entirely potable. After the distilla-

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tion process has been completed, the whiskey is placed in wooden barrels, charred on the inside, and stored in bonded warehouses, which are separate and distinct from the distillery, being located in a different and separate building. The whiskey thus distilled is usually held for an aging process, which removes certain undesirable elements from the product by absorption or other elimination, by means of the charred wood on the inside of the container. After it is considered fit for market, it may be sold by the distiller in bulk to rectifiers, or the rectifiers may acquire the bulk whiskey by buying bonded warehouse certificates. After the Government tax has been paid on the product it may be transferred to tanks in rectifying establishments, and there the whiskey may be bottled and labeled. Distillers are permitted to bottle "Straight Whiskey" in the warehouse and to sell the bottled goods to wholesalers. Distillers may have rectifying plants, separate from the distillery and warehouse, operated under a rectifier license. It is then ready for sale in wholesale and retail channels of trade and may be sold by rectifiers to wholesalers and retailers or it may be sold by rectifiers only to wholesalers, and the wholesalers may in turn make sales to retailers. These retailers include package goods stores and proprietors of drinking places, where the liquor is sold by the glass to consumers.

Each distiller operates under a specific Federal license carrying the symbol "D" with a number, indicating the designation of his license to do a distilling business. The rectifier operates under a license designated by the symbol "R" with a number, which indicates the designation of his license to do business as a rectifier. The wholesaler does business under a wholesaler's license with the symbol "L. L." and a number, indicating the designation of his license. The retail dealer is licensed under the symbol "L." While the distiller may also take out a rectifier's license and a wholesaler's license, and a rectifier may take out a wholesaler's license, no class of manufacturers or dealers is permitted to do business in the other class without qualifying in the class in which that business is ordinarily conducted. Besides the Federal regulations, there are elaborate State regulations requiring additional State licenses.

Many distillers do business under the name of distillers. Some have the words "distiller" or "distilleries" or "distilling" in their corporate names and others advertise themselves as distillers or are known as distillers. The words "distillers," "distillery," "distilling," or "distilleries" in the whiskey trade for a long period of time have definitely signified the true distilling process of manufacturing whiskey from fermented mash. Distillers who are also rectifiers bottle their goods and come into competition with dealers doing business such as is conducted by respondent. They also come into

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competition with rectifiers in the sale of straight whiskies, bottled in warehouses. A distiller who also operates a rectifying plant, having both kinds of permits, may use either the "R" symbol or the "D" symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit. If spirits other than those of the distiller's distillation have been blended, rectified, and bottled in the distiller's rectifying plant, the label thereon will read "Blended and Bottled by ----- Distilling Company," or simply "Bottled by ----- Distilling Company," so that it is not possible to determine merely from the presence of the phrase "Blended and Bottled By," or the phrase "Bottled By" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller. There are many rectifiers, wholesalers, and jobbers selling in the same territories as respondent who do not have the words "distillers" or "distilleries" in their corporate names and do not use that designation in connection with their sales activities.

The words "distiller," "distillers," "distilling," and "distilleries," used in the corporate names of concerns which are rectifiers and wholesalers, in fact confer a distinct advantage to the concerns using them or one of them in the sale of their products to dealers and in the sale by dealers to consumers. The whole record in this case supports this statement, with scarcely an exception.

It appears from this record that in the sale of its products, the use by respondent of the word "distillers" in its corporate name, gives it an unfair competitive advantage over a rectifier who does not use the word "distiller" or any other word connoting a distilling process in its corporate name or otherwise. Some of the labels of respondent unqualifiedly imply that respondent is a distiller. The aforesaid use by respondent of the word "Distillers" is of a potentially deceptive character, since respondent does not own, operate, or control any place or places where spirituous beverages are manufactured by a process of original and continuous distillation from mash, wort or wash, or other raw materials. By such potentially deceptive name respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and jobbers and the ultimate consuming public that it is a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of original distillation from raw materials. Such representations are untrue.

PAR. 5. The aforesaid representations by respondent have the capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies, gins, and other alcoholic beverages sold by respond-

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ent have been manufactured or distilled by it from mash, wort or wash by one continuous process; and such representations have the capacity and tendency to, and do, induce dealers and the purchasing public, acting in such beliefs to purchase the whiskies, gins, and other alcoholic beverages so labeled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names, or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

## CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, 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, testimony and evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by PGad B. Morehouse, counsel for the Commission, and by Jacob Barash, counsel for respondent, oral arguments having been waived, 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 ordered*, That the respondent, Grove Distillers & Wine Co., Inc., its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, brandies, rum, gin, cordials, and other spirituous beverages, do forthwith cease and desist from—

Representing, through the use of its corporate name on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships its said products or in any other way by word or words of like import, (a) that it is a distiller of whiskies, brandies, rum, gin, cordials, and other spirituous beverages; or (b) that the said whiskies, brandies, rum, gin, cordials, and other spirituous beverages

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were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies, brandies, rum, gin, cordials, and other spirituous beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

*It is further ordered,* That the said respondent within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports 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

## LAWRENCE F. MILAN, TRADING AS CATONSVILLE DISTILLING &amp; DISTRIBUTING COMPANY

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

*Docket 2461. Complaint, June 27, 1935—Decision, June 29, 1936*

Where an individual engaged in the purchasing of bulk whiskey and in procuring the bottling thereof for him by various dealers and also in the bottling thereof himself, for a period, and in purchase, resale and shipment of whiskies, gins, and other spirituous beverages to wholesalers and retailers in the several States and in the District of Columbia, in substantial competition with (1) individuals and concerns engaged in manufacture by distillation of such beverages and in sale thereof among the various States and in said District, and (2) those engaged in purchasing, rectifying, blending, bottling, and selling same, and (3) those engaged as wholesalers in purchasing and reselling such products, as above set forth—

Included word "Distilling" in his trade-name and made use thereof on stationery and labels attached to bottles in which he sold and shipped his products, and thereby and in various other ways, represented to customers that he was a distiller and that the whiskies, etc., therein contained were by him made through process of distillation from mash, wort, or wash, and furnished such customers with means of thus misrepresenting him to their retailer vendees and to ultimate consuming public;

Facts being he neither owned, operated, nor controlled any place or places where such beverages were made by such process of distillation, as definitely implied and understood by wholesalers and retailers and the ultimate purchasing public from word "Distilling," as meaning manufacture of such liquors by process of original and continuous distillation from such mash, wort, or wash, through continuous closed pipes and vessels until manufacture thereof is completed;

With effect of misleading and deceiving dealers and purchasing public into belief that he was a distiller and that the whiskies, etc., sold by him were made and distilled by him as aforesaid, and of inducing such dealers and purchasing public, a substantial portion of which prefers to buy such liquors prepared and bottled by distillers, to purchase such whiskies, etc., and thereby divert trade to him from competitors, among whom there are those who (1) manufacture and distill, as aforesaid, products sold by them and truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles of their products, (2) those engaged in purchasing, rectifying, blending, bottling, and selling their products, and (3) those engaged as wholesalers in purchasing and reselling the same, and who do not use aforesaid words as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels of their bottles, nor through their corporate or trade names or otherwise misrepresent themselves as manufacturers by distillation from



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mash, wort, or wash of the products dealt in by them; to the substantial injury of substantial competition in interstate commerce:

*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.

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

*Mr. PGad B. Morehouse* and *Mr. DeWitt T. Puckett* for the Commission.

## COMPLAINT

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, having reason to believe that Lawrence F. Milan, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading under the laws of the State of Maryland, under the name and style of Catonsville Distilling & Distributing Co., with principal office and place of business in the city of Catonsville in said State. He is now, and for more than 1 year last past has been, engaged as a wholesale liquor dealer, purchasing and reselling whiskies, gins, and other spirituous beverages in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his said business he causes his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of his business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; in the course and conduct of his business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in

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commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of his business as aforesaid respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with firms, corporations, and partnerships engaged in business as wholesalers of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. For a long period of time the word "Distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of his business as aforesaid, by the use of the word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sells and ships his said products, and in various other ways, respondent represents to his customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by him manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous beverages by him so labeled, sold, and transported. Respondent does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of

purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products. There are also among such competitors firms, corporations, partnerships, and individuals engaged in business as wholesalers of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by him from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages sold by the respondent, thereby diverting trade to respondent from his competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

#### 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 June 27, 1935, issued, and on June 28, 1935, served its complaint in this proceeding upon respondent Catonsville Distilling & Distributing Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent failing to make answer thereto, testimony and evidence in support

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of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and no testimony in defense of the allegations of the complaint was offered. The testimony and evidence in support of the complaint were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, briefs and oral argument having been waived by the respondent and the respondent having under oath admitted that the material allegations set forth in the complaint were true and the Commission having duly considered all of the foregoing and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual trading under the laws of the State of Maryland, under the name and style of Catonsville Distilling & Distributing Co. with principal office and place of business at 115 Prospect Ave., in the city of Catonsville, in said State. Between the dates of December 9, 1933, and May 14, 1935, he was engaged as a wholesale liquor dealer, purchasing, reselling and shipping from his place of business in the State of Maryland to customers in several States of the United States and in the District of Columbia, whiskies, gins, and other spirituous beverages. His purchasers are wholesalers and retailers located in the State of Maryland, in several other States and in the District of Columbia.

In the course and conduct of his business, he caused his said products when sold to be transported from his place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of his business as aforesaid, respondent was in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; in the course and conduct of his business as aforesaid, respondent was in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various

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States of the United States and in the District of Columbia; and in the course and conduct of his business as aforesaid respondent was in substantial competition with other individuals and with firms, corporations, and partnerships engaged in business as wholesalers of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. For a long period of time and while this respondent was so engaged in business as aforesaid, the word "distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of his business as aforesaid respondent bought bulk whiskey, having it bottled for him by various dealers, and for a period of time he bottled it for himself. He did no rectifying, blending, distilling, or brewing; and while in business averaged about 5,000 gallons in sales a month, to retailers such as taverns and wholesalers. His premises and place of business cover a lot of about the size of a city block, a residence, and a shed. At one time he had some stills but they were taken out without ever having been operated and he never received any distiller's permit from the Federal Government. His equipment consisted of no storage tanks, some bottling tanks, bottling machines, filters, and the ordinary bottling equipment. He employed at one time as many as 25 persons, including 12 salesmen who traveled over Maryland, Pennsylvania, and into the District of Columbia, and advertised his wares through the medium of magazines. On May 14, 1935, respondent caused to be formed a corporation known as the Catonsville Distilling & Distributing Corp., which has not yet engaged in the liquor business but it is contemplated that it will so engage at some future date.

In the course and conduct of his business as aforesaid, the Commission finds that by the use of the word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sold and shipped his said products, and in various other ways, respondent represented to his customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent was

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a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by him manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies, gins, and other spirituous beverages by him so labeled, sold, and transported. Respondent does not now and never did own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There were among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufactured and distilled from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully used the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sold and shipped such products. There were also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who did not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sold and shipped their said products. There were also among such competitors firms, corporations, partnerships, and individuals engaged in business as wholesalers of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages who did not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, was calculated to and had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that respondent was a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent were manufactured and distilled by him from mash, wort, or wash, as aforesaid, and was calculated to and had the capacity and tendency to and did induce dealers and the purchasing public acting in such beliefs to purchase the whiskies, gins, and other spirituous beverages sold by the respondent, thereby diverting trade to respondent from his competitors who did not by their corporate or trade names or in any other manner misrepresent that they were manufacturers

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by distillation from mash, wort, or wash, of such products, and thereby respondent did substantial injury to substantial competition in interstate commerce.

No assurance is in sight that respondent, if not prohibited, would not resume and continue its former acts and practices as hereinbefore set out.

## CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, were to the prejudice of the public and respondent's competitors, and were 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, testimony and evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated, in support of the charges of said complaint, no testimony having been offered in opposition thereto and respondent having admitted that the material allegations of said complaint are true and waived all further proceedings, including briefs and oral arguments, 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 ordered*, That Lawrence F. Milan, trading as Catonsville Distilling & Distributing Co., his agents, salesmen, and employees, in connection with the offering for sale or sale by him in interstate commerce of whiskies, gins, and other spirituous beverages do forthwith cease and desist from:

Representing, through the use of the word "distilling" in his trade name, on his stationery, advertising, or on the labels attached to the bottles in which he sells and ships said products, or in any other way by word or words of like import, (a) that he is a distiller of whiskies, cordials, or any other spirituous beverages; or (b) that the said whiskies, cordials, or other spirituous beverages were by him manufactured through the process of distillation; or (c) that he owns, operates, or controls a place or places where any such products are by him manufactured by a process of original and continu-

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ous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

*It is further ordered,* That the said respondent within 30 days from and after the date of the service upon him of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which he is complying and has complied with the order to cease and desist hereinabove set forth.



## Syllabus

## IN THE MATTER OF

E. F. AGEE, TRADING AS COMMERCIAL EXTENSION  
UNIVERSITY, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2729. Complaint, Feb. 21, 1936—Decision, June 29, 1936*

Where an individual, engaged in the sale, by correspondence, of a secretarial course and of a business administration course, through agents supervised by regional managers and instructed by him in the type of sales talk to be given to prospective students and in the manner of presenting and executing written applications for enrollment, and conducting said business from rooms in which his employees, never exceeding eighteen in number, were engaged in correcting lessons, and preparing and mailing correspondence courses to students and prospective students, and to his agents, and to other persons, etc., and which were not used for class room instruction or library facilities or residence of students or for any other purpose except as hereinabove set forth, and with some six thousand students or more, chiefly minors, contact with which was through such agents and by correspondence—

- (a) Made use of words "Extension University" or "Extension College" in trade names used by him in conduct of his said business, and represented to prospective students and students, and to their parents or guardians, that he or his business was a university or college, or that the business was a branch thereof, and otherwise affiliated therewith, and that he conducted a large residence school, to the operations of which the correspondence courses were merely incidental;

Facts being, he did not operate a college or university or educational institution organized for teaching and study in the higher branches of learning and in which the education imparted is universal, embracing many branches and which possesses power to confer degrees indicating proficiency in the branches thereof, as generally accepted by public from terms "University" or "College," and had never conducted residence classes of instruction, and his said business was not an extension of such an institution;

- (b) Informed prospective students and their parents or guardians that former had been specially selected for an offer of enrollment in said courses because of their high scholastic standing, and that aforesaid agents were duly appointed "Registrars" of said individual, doing business as above set forth, and empowered to select persons for offers of enrollment and to offer prospects selected a specially low price for advertising purposes, and that low price offered consisted only of costs of material, and normal charge for tuition would not be made for said specially selected students and that regular price for identical course was much higher than such alleged exceptional price, and, in some cases, that it was two or three times as high;

Facts being none of said agents were specially designated registrars and all had identical powers and none was authorized to make any such selection for advertising or any other reason, and price quoted was one and the same to all, and there was no selection on account of high scholastic standing or for any other reasons, and course was never offered at cost

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of materials for advertising or any other reason, and was not more expensive than represented to the prospects; and

- (c) Falsely represented to students, etc., that he had limited his offer of courses of instruction to a limited number of persons in a given locality, city, county, or State, and that upon the completion of a course of instruction given by him he would procure a position for the purchaser thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with result that students, their parents or guardians, were caused to enter into contracts for instruction with him in such erroneous belief, and a substantial number of the consuming public, as a direct consequence of the mistaken and erroneous beliefs thus induced, purchased a substantial volume of his said courses and trade was thus unfairly diverted to him from others engaged in sale of correspondence courses and truthfully advertising and representing the nature of their respective businesses, and substantial injury was done to substantial competition in commerce, in course of which many institutions of learning, engaged in home study and class room extension activities, and in giving courses of instruction similar to those sold by said individual, deal with their students and truthfully represent the character of their organizations and the price and conditions of sale of their courses and their relationships with other institutions of learning and do not untruthfully represent that they will procure a position for the purchaser:

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

Before *Mr. John J. Keenan*, trial examiner.

*Mr. T. H. Kennedy* for the Commission.

*Fried & Mars*, of Omaha, Nebr., for respondent.

## COMPLAINT

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, having reason to believe that E. F. Agee has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, E. F. Agee, is now and for more than several months last past has been engaged at Omaha, Nebr., with offices in the Hillcrest Building in said city and said State under the trade name of "Commercial Extension University," "Commercial Extension of Omaha," and "Commercial Extension College" in the business of selling courses of instruction known as a secretarial course consisting of lessons in shorthand, typewriting, business Eng-

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lish, and business correspondence and a business administration course consisting of lessons in bookkeeping, typewriting, correspondence, salesmanship, and business administration. Sales are contracted for through agents who canvass prospects and lessons are furnished students, payments on contracts are made, solutions of lessons by students are transmitted, and consummation of the said contracts are made by correspondence through the United States mail. Prospective students and students when first contacted by respondent, when signing contracts for the above described courses and while undergoing instruction by respondent, reside at their usual places of residence in the various States of the United States. The number of such students has in the past and now exceeds 6,000.

When students are enrolled by contracts satisfactory to respondent, the lessons comprising said course are caused to be transported in commerce by respondent from his place of business at Omaha, Nebr., to the several students located at their residences in States of the United States other than the State of Nebraska.

PAR. 2. Respondent, E. F. Agee, was formerly a copartner of one J. E. Cherry, now deceased, and on September 14, 1934, and for more than one year immediately prior to said date respondent and said Cherry, now deceased, conducted a school for the teaching by correspondence of certain commercial courses, including a secretarial course, and a business administration course, said courses were sold and distributed by them in commerce between and among the various States of the United States; respondent and said Cherry, now deceased, caused said courses when so sold to be shipped from their place of business in the city of Omaha, Nebr., to purchasers thereof located in States other than the State of Nebraska. Respondent herein is the successor in interest of the said business of said former copartnership and the business as described in paragraph 1 hereof is a continuation of the business carried on by respondent and the said Cherry, now deceased, described herein. The respondent has succeeded to all the rights and benefits of the business of said former copartnership, and is now liable for all of the obligations thereof.

PAR. 3. In all of his said business herein described respondent is in substantial competition with other persons, firms, partnerships, associations, and corporations who are likewise engaged in the sale of kindred courses of instruction in commerce.

PAR. 4. Respondent solicits his business through agents designated by him as "Registrars," who personally call upon young men, young women, and their parents and guardians throughout the United States and induce many of them to enroll as students and to purchase, receive, and agree to pay for courses of instruction given by respondent.

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Respondent, in his transactions with the public and with students and prospective students, uses the trade names "Commercial Extension University" and "Commercial Extension College." The use of the said trade names, including the words "university" and "college," serves as a representation to prospective students, their parents or guardians, and to students who enroll, that said "Commercial Extension University" or said "Commercial Extension College" is, respectively, a university or a college. In truth and in fact respondent does not operate a university or a college through either of the businesses operated under the trade names "Commercial Extension University" or "Commercial Extension College" or in any manner whatever.

PAR. 5. In the course and conduct of his business herein described, respondent informs prospective students that they have been specially selected for an offer of enrollment in the courses given by respondent because of said prospects' high scholastic standing and respondent's agents inform said prospects that said agents have been appointed "Registrars" of respondent and empowered to select said prospects and to offer said prospects an exceptionally low price for advertising purposes, that said alleged exceptional price is only the cost of materials and that tuition will be given free to said prospects if the prospects become students of respondent, that the regular price for the identical course offered said prospects is much higher than said alleged exceptional price, and generally said regular price is represented by respondent to be two or three times as expensive as the alleged exceptional price, when in truth and in fact, prospective students are not specially selected for enrollment because of their high scholastic standing or for any other reason and the alleged exceptional price offered the prospects is the only price quoted any prospect and the alleged exceptional price for the course is, in fact, the regular price and the representation that any regular price is much more expensive than the quoted price is untrue.

PAR. 6. In the course and conduct of his business as herein described respondent has represented to prospective purchasers and to purchasers of his correspondence courses that the business operated by the respondent is the Omaha branch of the University of Nebraska and has represented that respondent is otherwise affiliated with the University of Nebraska, when in truth and in fact respondent is not now nor has his business hereinabove described ever been affiliated with or a part of the University of Nebraska or of any other university or college.

PAR. 7. In the course and conduct of his business as herein described the respondent has represented to prospective purchasers and purchasers of his correspondence courses that respondent has limited the

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offer of said courses to a limited number of persons in a given locality, city, county, or State, when in truth and in fact no such limitation has ever been placed on the number of persons to whom respondent has offered his said correspondence courses.

PAR. 8. In the course and conduct of his business as herein described respondent has represented and continues to represent to prospective purchasers of his correspondence courses that on completion of respondent's course of instruction by a student the respondent will procure a position for the purchaser of said course, when in truth and in fact said representation was and is untrue.

PAR. 9. In the course and conduct of his business as herein described respondent has represented and continues to represent to prospective purchasers and to purchasers of his correspondence courses that respondent conducts a large residence school and that correspondence courses offered by respondent are merely incidental to the regular operations of the residence school, when in truth and in fact said representations have been, and are, untrue.

PAR. 10. There are among the competitors of respondent mentioned in paragraph 3 hereof engaged in the sale of courses of instruction kindred to those sold by respondent as herein alleged, those who truthfully represent the character of their organization, the price and conditions of offer for sale and sale of their courses, the relationship of their organization to other institutions of learning, who refrain from untruthfully representing that they are related to other institutions of learning and who refrain from untruthfully representing that they will procure a position for a purchaser of their course of instruction or completion of said course of instruction by the purchaser thereof.

PAR. 11. Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set out, in offering for sale and selling his correspondence courses of instruction, was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of respondent, a substantial number of the consuming public has purchased a substantial volume of respondent's courses of instruction with the result that trade has been unfairly diverted to the respondent from other individuals, firms, and corporations likewise engaged in the business of selling similar correspondence courses of instruction who truthfully advertise and represent the nature of their respective businesses. As a result thereof, substantial injury has been, and is now being done by respondent to substantial competition in commerce among and between the various States of the United States.

PAR. 12. The acts and practices of respondent are all to the prejudice of the public and of competitors of 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."

#### 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 21, 1936, issued and served its complaint in this proceeding upon the respondent, E. F. Agee, an individual, trading as "Commercial Extension University," "Commercial Extension of Omaha," and "Commercial Extension College," charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Thomas H. Kennedy, attorney for the Commission before John J. Keenan, an examiner of the Commission, theretofore duly designated by it. At said hearing the respondent, through his attorney, made a statement for the record in which he agreed, subject to the approval of the Federal Trade Commission, that the facts contained in said statement might be taken as the facts in the proceeding and in lieu of further testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon the said statement of facts and testimony to make its report stating its findings as to the facts (including inferences which it might draw from said facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter the proceeding came on regularly for final hearing before the Commission on the said complaint, the answer, the testimony adduced at said hearing contained the statement of respondent hereinabove referred to, and the Commission having duly considered the same and being fully advised in the premises, and having approved the statement of facts made by the respondent, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

Many months before the issuance of the complaint herein, to wit, on September 14, 1934, respondent entered into a stipulation with the Federal Trade Commission in which he admitted engaging in many

acts and practices which were the same as those set forth in said complaint.

## FINDINGS AS TO THE FACTS

The respondent, E. F. Agee, has been for several months last past and is now engaged in the business of the sale and distribution of courses of instruction to students who reside at their various normal places of residence throughout the United States. The students purchase the courses from the respondent, study the material sent to them by the respondent, complete their solutions of the problems presented at their residences and return the solutions to the respondent. Respondent corrects the solutions and forwards the corrected solutions to the students. Respondent has conducted his said business in the Hillcrest Building, in the city of Omaha, Nebr., at all times herein referred to, where he has rented rooms wherein to conduct his business. These rooms are occupied by the respondent and certain of his employees, never exceeding 18 in number. All occupants of these said rooms are engaged in correcting lessons, preparing and mailing correspondence courses to students and prospective students of respondent, to agents of the respondent located at points in the United States other than the State of Nebraska, and to other persons, firms, and corporations with whom the respondent has business dealings.

No part of the respondent's said rented premises is used for classroom instruction, library facilities, residence of respondent's students, or for any other purpose except as hereinabove described. At no time herein referred to has respondent conducted any other school or business organization or facility at any place other than at Omaha, Nebr., as hereinabove described.

It has not been customary for respondent during any time herein referred to to receive students at his place of business in Omaha, Nebr., but on the contrary all contact with respondent's students has normally been through either respondent's sales agents or by correspondence using the United States mail.

The great majority of students and prospective students of respondent are minors.

During all the time herein referred to respondent has operated his said business under the name and style of "Commercial Extension of Omaha" or "Commercial Extension College," and from July 1932 until September 16, 1935, respondent operated his said business under the name and style of "Commercial Extension University."

Respondent's courses of instruction consist of a secretarial course combining lessons of instruction in shorthand, typewriting, business English, business correspondence and secretarial studies, and a busi-

## Findings

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ness administration course combining lessons in bookkeeping, type-writing, business English, business correspondence and salesmanship.

Sales have been contracted for in the great majority of cases by means of agents who circulate in the field and who personally canvass prospects. These agents operate from various bases established throughout the United States, some of them operating from the office of the respondent at Omaha, Nebr., and others from their respective residences elsewhere. These agents are instructed by the respondent in their method of approach to prospective students, in the type of sales talk to be given prospective students, and the manner of presenting and executing written applications for enrollment. When a student has been enrolled by respondent's agents, the agent accepts from the student a down-payment in money, which is, after the agent has deducted his commission, forwarded with the application of enrollment of the student to the respondent at Omaha, Nebr. The agents of the respondent have at all times herein referred to informed prospective students that they are "registrars" of the respondent, this with the knowledge and consent of the respondent.

The sales agents of respondent are under the supervision of regional supervisors or managers, also agents of the respondent. The regional supervisors or managers are charged with the instruction and discipline of the various sales agents under their direction. Respondent contacts said regional supervisors or managers constantly with reference to the results achieved by the agents under their respective direction, and when complaints are registered with respondent as to the activities of the sales agent, respondent contacts the regional supervisor or manager having jurisdiction over the agent against whom the complaint has been registered, and requires said regional supervisor or manager to correct the activities of the said sales agent. It is customary for the respondent to call the regional supervisors or managers to Omaha periodically for the purpose of instruction in sales methods and conference on the problems of respondent's business. It is not customary for the agents of the respondent other than regional supervisors or managers to visit the respondent's office at Omaha.

At all times herein referred to the students of the respondent exceed six thousand.

The gross income of the respondent for the year last past from his business described herein was approximately one hundred thousand dollars. Approximately seventy-five percent of respondent's said income was derived from the sale of his secretarial courses and approximately twenty-five percent was derived from the sale of his business administration courses.

When students are enrolled by a contract satisfactory to respondent, the lessons comprising the courses under which they are enrolled are



caused to be transported in commerce by the respondent from his place of business at Omaha, Nebr., to the students located at their residences in States of the United States other than the State of Nebraska.

In all of his business described herein respondent has been and is in substantial competition with other persons, firms, partnerships, associations, and corporations who are engaged in the sale of kindred courses of instruction in commerce.

Respondent in the conduct of his business has used the trade names "Commercial Extension University" and now uses the trade name of "Commercial Extension College" and has represented to prospective students, students, their parents or guardians, that respondent is a university, and now represents to prospective students, students, their parents or guardians, that respondent is a college, and that respondent conducts a large residence school, and that the correspondence courses offered by respondent are merely incidental to the regular operations of said residence school. Respondent never has and does not now operate a college or university, or educational institution organized for teaching and study in the higher branches of learning and in which the education imparted is universal, embracing many branches such as the arts, sciences, and all manner of learning, and possessing power to confer degrees which indicate proficiency in the branches taught, and such as the terms "University" or "College" are commonly understood and generally accepted by the public to include and insure, nor has he ever conducted residence classes of instruction, nor is respondent's business in fact an extension of a university or college. The representation that respondent is a university, college, or an extension of a university or a college has been made in such a way to prospective students, students, their parents or guardians, that said prospective students, students, their parents or guardians, have been thereby induced to enter into contracts with respondent for courses of instruction in the belief that respondent's said representations are true.

All of the courses of instruction offered by respondent are usually offered by high schools throughout the United States.

Respondent informs prospective students, their parents or guardians, that they have been specially selected for an offer of enrollment in the courses given by respondent because of their high scholastic standing. Respondent's agents also inform said prospective students, their parents or guardians, that they are duly appointed "registrars" of respondent and empowered to select persons for offers of enrollment, and to offer certain selected prospects an exceptionally low price for advertising purposes; that the low price offered consists only of the costs of materials and that the normal charge of tuition

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will not be made for said specially selected students. The so-called "registrars," agents of respondent, represent to the prospect that the regular price for the identical course offered is much higher than the alleged exceptional price, and it is often represented that the regular price is two or three times as high as the alleged exceptional price. None of the respondent's agents are specially designated "registrars" and all agents of the respondent have identical powers as described herein. Said agents have never been authorized to specially select any students for advertising purposes or for any other reason, and the price quoted all students is one and the same. Any representation made by respondent that prospects have been selected on account of high scholastic standing or for any other reason is untrue. The regular price for the course is not more expensive than that represented to such prospects. Courses are never offered to any prospective students by respondent at cost of materials to the respondent for advertising purposes or any other reason, and the total cost of materials to the respondent of the so-called secretarial course does not exceed \$10, and this identical course is retailed to respondent's students at not less than \$49.50, and never at more than \$60. Said representations induce students, their parents or guardians, to enter into contracts with respondent for courses of instruction in the regular course of respondent's business.

Respondent has represented to students, prospective students, their parents or guardians that respondent is a branch of a university or college and is otherwise affiliated with a university or college, that he has limited his offer of courses of instruction to a limited number of persons in a given locality, city, county, or State and that on the completion of a course of instruction given by respondent, respondent will procure a position for the purchasers of said course. Each said representation is untrue and has caused students, their parents or guardians, to enter into contracts for instruction with respondent in the belief that respondent's said representations are true.

Many of the misrepresentations herein set forth have been made by respondent's agents, and respondent has acknowledged responsibility for all of the said misrepresentations herein set forth, whether made by him or by his agents.

There are many institutions of learning located in the United States engaged in extension activities both by home study and classroom methods of instruction, rendering courses of instruction similar to those sold by respondent, which truthfully represent the character of their organizations, the price and conditions of offer for sale and sale of their courses, and the relationship of their organization with other institutions of learning which do not misrepresent their said relationship to other institutions of learning, and which refrain from

## Order

untruthfully representing that they will procure a position for the purchaser of their courses of instruction. Said institutions of learning in their dealings with their students are engaged in commerce among and between the various States of the United States.

Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set out, in offering for sale and selling his correspondence courses of instruction, was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of respondent, a substantial number of the consuming public has purchased a substantial volume of respondent's courses of instruction with the result that trade has been unfairly diverted to the respondent from other individuals, firms, and corporations likewise engaged in the business of selling similar correspondence courses of instruction who truthfully advertise and represent the nature of their respective businesses. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition in commerce among and between the various States of the United States.

## CONCLUSION

The aforesaid acts and 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 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 E. F. Agee, an individual trading as "Commercial Extension University," "Commercial Extension of Omaha," and "Commercial Extension College," and upon testimony and evidence taken before John J. Keenan, an examiner for the Commission, duly designated by it, and upon an agreed statement of facts, 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 ordered*, That the respondent, E. F. Agee, individually and trading as "Commercial Extension University," "Commercial Extension of Omaha," or "Commercial Extension College," and his agents, representatives, servants, and employees, in connection with the offering for sale or sale of his courses of instruction, in interstate commerce, cease and desist from:

Representing, directly or indirectly, through use of the trade names "Commercial Extension University," or "Commercial Extension College," or any other trade name, or through any other means:

(a) That the business conducted by the respondent is a college or university or an extension college or extension university, or an extension of a college or an extension of a university, or

(b) That students or prospective students of respondent have been specially selected for an offer of enrollment in respondent's courses, or

(c) That respondent's representatives have been appointed "registrars" and have special authority to select particular prospects for offers of enrollment, or

(d) That students or prospective students of respondent are offered an exceptionally low price for advertising purposes, or for any other purpose; that said exceptionally low price consists of only the cost of materials, and that tuition will be given free to said prospects if said prospects become students of respondent; that the regular price for the identical course offered said prospects is much higher than said alleged exceptional price and that generally said regular price is substantially more expensive than said alleged exceptional price, or

(e) That the business conducted by respondent is a branch of a university or a college, or otherwise is affiliated with a university or college, or

(f) That respondent has limited the offer of his courses of instruction to a limited number of persons in a given locality, city, county, or State, or

(g) That respondent will procure a position for those students who complete respondent's courses of instruction, or

(h) That respondent operates a large residence school and that correspondence courses offered by respondent are merely incidental to the regular operations of said residence school.

*It is ordered*, That the respondent above named, within 60 days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with.

## Complaint

## DR. J. E. CANNADAY

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

*Docket 2811. Complaint, May 19, 1936—Decision, June 29, 1936*

Where an individual engaged in the sale of a medicinal preparation and treatment for relief and cure of eczema—

Represented, through advertisements in newspapers and periodicals of general circulation, that said preparation and treatment would effect a cure of said ailment in all cases and give permanent relief therefrom and heal same permanently, and would stop the itching attending same, and issued and distributed testimonials to effect that persons giving such testimonials had been suffering from said ailments and had been relieved or cured or completely restored to health by use of such said preparation and treatment, and represented that he had cured numerous persons in various States through use thereof;

Facts being that it would not accomplish such results in all cases, many of the persons thus testifying had not been cured or completely restored to health, and he was without personal knowledge as to the disease, ailment or disorder from which such persons were or had been actually suffering, and as to extent, if any, to which users had benefited or been cured by his said preparation and treatment;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and with result that a number of such public, by reason of such mistaken and erroneous beliefs thus induced, purchased a substantial amount thereof and trade was thus unfairly diverted to him from individuals and concerns likewise engaged in the sale of medicinal preparations and treatments for eczema, who truthfully advertised same; to the substantial injury of competition in commerce:

*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. George Foulkes* for the Commission.

*Mr. Clinton Robb*, of Washington, D. C., for respondent.

## COMPLAINT

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, having reason to believe that Dr. J. E. Cannaday, an individual, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission

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that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dr. J. E. Cannaday, is an individual with his principal office and place of business located at 316 So. Ohio Ave. in the city of Sedalia, State of Missouri. Respondent is now, and for more than 20 years last past has been, engaged in the business of selling a medicinal preparation and treatment for the relief and cure of eczema, which respondent distributes to purchasers, many of whom reside in States other than the State of Missouri, and when orders are received therefor, they are filled by respondent by shipping said medicinal preparation and treatment to purchasers, from the said city of Sedalia, Mo., into and through other States of the United States and in the District of Columbia, and there is now, and has been during the time hereinbefore mentioned, a constant current of trade and commerce in said medicinal preparation and treatment so distributed and sold by respondent, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business, said respondent was and is in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of medicinal preparations and treatments for the relief or cure of eczema between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of said business, and for the purpose of inducing individuals to purchase said medicinal preparation and treatment, respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States in all of which advertisements respondent has represented that his medicinal preparation and treatment will either cure eczema, heal eczema permanently, or stop the itching attending the ailment of eczema. Among the representations made through such media are the following:

## ECZEMA

Also called Tetters, Salt Rheum, Pruritis, Milk Crust, Water Poison, Weeping Skin, etc.

## FREE TRIAL

Can be cured. Write me today and I will send you a free trial of my mild, soothing, guaranteed treatment that will prove it. Stops the itching and heals permanently. Send no money—just write me—a postal will do. Address

DR. CANNADAY, Eczema Specialist, 172 Park Sq., Sedalia, Mo.

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## Complaint

\* \* \* FREE TRIAL

Get rid of it! Don't give up—Try a week's free test of a mild, soothing, guaranteed treatment, which for 30 years has been giving Eczema sufferers their "First Real Night's Rest." Write today—a postal will do.

Address DR. CANNADAY, Eczema Specialist, 527 Park Sq., Sedalia, Mo.

## ECZEMA IS A SIGN

\* \* \*

## FREE TRIAL

Eczema is a danger sign of trouble inside, as we see in measles, small-pox, scarlet fever, etc. For best results it **SHOULD** be treated 3 ways at once; by the diet, by the blood, and lastly, treat the skin. Salves, "shots," lights, food tests, etc., are experimental. They don't remove the cause. Try a week's **FREE TRIAL** test, of the best outside treatment found in 30 years of experience, of treating this one disease. It is clean, mild, soothing, guaranteed. You, too, may find your "first real night's rest." Write today— a postal **WILL DO**.  
Address

J. E. CANNADAY, M. D.—Eczema Specialist, 627 Park Square, Sedalia, Mo.

All of said statements, together with many similar statements appearing in respondent's advertising literature purport to be descriptive of the remedial and curative quality of respondent's product. In all of its advertising literature, respondent represents, through statements and representations herein set out and other statements of similar import and effect that, (1) his medicinal preparation and treatment will effect a cure of eczema in all cases; (2) his medicinal preparation and treatment will effect permanent relief from eczema in all cases; (3) his preparation and treatment will heal eczema permanently in all cases; and (4) his preparation and treatment will stop the itching attending the ailment of eczema in all cases.

PAR. 3. Respondent has further, in the course of conduct of his business, issued and distributed in interstate commerce, circulars and other literature containing testimonials in which statements are made by various persons to the effect that they were, or had been suffering from eczema and had been relieved or cured or completely restored to health by the use of respondent's preparation and treatment, when in truth and in fact, many of said persons had not been cured or completely restored to health. Respondent has represented that he has cured numerous persons living in various States of the United States by the use of this preparation and treatment while in truth and in fact, respondent was and is without personal knowledge as to the disease, ailment, or disorder from which said persons were or had been

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actually suffering, and as to the extent, if any, to which said users have benefited or have been cured by the use of respondent's preparation and treatment.

PAR. 4. The representations made by respondent, with respect to the nature and effect of his medicinal preparation and treatment when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment advertised and represented by him as a cure in all cases will not cure eczema in all cases; nor will said preparation and treatment give permanent relief from eczema in all cases; nor will said product, when applied and administered according to respondent's directions, heal eczema permanently in all cases. In truth and in fact respondent's preparation and treatment is not effective in certain cases of eczema and will not in many cases of eczema stop the itching attending said ailment.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by respondent in designating and describing the remedial and curative quality of his medicinal preparation and treatment, as hereinabove set forth, in his advertising in newspapers, magazines, booklets, pamphlets, testimonials, and other advertising literature, in offering for sale and selling his medicinal preparation and treatment was, and is, calculated to, and had, and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchased a substantial volume of respondent's medicinal preparation and treatment with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations and treatments intended and sold for the purpose of treating eczema, and who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

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## 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 May 19, 1936, issued, and on May 21, 1936, served its complaint in this proceeding upon the respondent, Dr. J. E. Cannaday, an individual, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, respondent answered, admitting all the material allegations of the complaint to be true, and waiving all further and intervening procedure.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Since about 1916 the respondent, Dr. J. E. Cannaday, has been engaged, as an individual, in the business of selling a medicinal preparation and treatment for the relief and cure of eczema. Respondent's office and principal place of business is located at 316 South Ohio Ave., in the city of Sedalia, State of Missouri. Respondent distributes his medicinal preparation and treatment to purchasers, many of whom reside in States other than the State of Missouri, and when orders are received for the preparation and treatment, they are filled by respondent by shipping the preparation and treatment to purchasers from the city of Sedalia, Mo., into and through other States of the United States and in the District of Columbia, and there is now, and has been during the last 20 years, a constant current of trade and commerce in respondent's medicinal preparation and treatment so distributed and sold by respondent between and among the various States of the United States.

During all the time the respondent has been engaged in the foregoing business respondent has been, and is, in substantial competition with other individuals, firms, partnerships, and corporations engaged in similar business to that of respondent, to wit: the sale and distribution of medicinal preparations and treatments for the relief and cure of eczema, in interstate commerce.

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PAR. 2. In soliciting the sale of his preparation and treatment, respondent has inserted advertisements in newspapers and periodicals of general circulation, in which advertisements certain representations were made. Among the representations made through such media are the following:

## ECZEMA

Also called Tetter, Salt Rheum, Pruritis, Milk Crust, Water Poison, Weeping Skin, etc.

## FREE TRIAL

Can be cured. Write me today and I will send you a free trial of my mild, soothing, guaranteed treatment that will prove it. Stops the itching and heals permanently. Send no money—just write me—a postal will do.  
Address

DR. CANNADAY, Eczema Specialist, 172 Park Sq., Sedalia, Mo.

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\* \* \* FREE TRIAL

Get rid of it! Don't give up—Try a week's free test of a mild, soothing, guaranteed treatment, which for 30 years has been giving Eczema sufferers their "First Real Night's Rest." Write today—a postal will do.

Address DR. CANNADAY, Eczema Specialist, 527 Park Sq., Sedalia, Mo.

## ECZEMA IS A SIGN

\* \* \*

## FREE TRIAL

Eczema is a danger sign of trouble inside, as we see in measles, small-pox, scarlet fever, etc. For best results it SHOULD be treated 3 ways at once: by the diet, by the blood, and lastly, treat the skin. Salves, "shots," lights, food tests, etc. are experimental. They don't remove the cause. Try a week's FREE TRIAL test, of the best outside treatment found in 30 years of experience, of treating this one disease. It is clean, mild, soothing, guaranteed. You, too, may find your "first real night's rest." Write today—a postal WILL DO.  
Address

J. E. CANNADAY, M. D.—Eczema Specialist, 627 Park Square, Sedalia, Mo.

The above statements, together with many other similar statements appearing in respondent's advertising literature, purport to be descriptive of the remedial and curative quality of respondent's product. In all of his advertising literature, respondent represents, through statements and representations herein set out, and through statements of similar import and effect, that (1) his medicinal preparation and treatment will effect a cure of eczema in all cases; (2) his medicinal preparation and treatment will effect permanent relief from eczema in all cases; (3) his preparation and treatment will heal

eczema permanently in all cases; and (4) his preparation and treatment will stop the itching attending the ailment of eczema in all cases.

PAR. 3. Respondent has further, in the course of conduct of his business, issued and distributed in interstate commerce, circulars and other literature containing testimonials in which statements are made by various persons to the effect that they were, or had been suffering from eczema and had been relieved or cured or completely restored to health by the use of respondent's preparation and treatment, when in truth and in fact, many of said persons had not been cured or completely restored to health. Respondent has represented that he has cured numerous persons living in various States of the United States by the use of this preparation and treatment while in truth and in fact, respondent was and is without personal knowledge as to the disease, ailment, or disorder from which said persons were or had been actually suffering, and as to the extent, if any, to which said users have benefited or have been cured by the use of respondent's preparation and treatment.

PAR. 4. The representations made by respondent, with respect to the nature and effect of his medicinal preparation and treatment when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment advertised and represented by him as a cure in all cases will not cure eczema in all cases; nor will said preparation and treatment give permanent relief from eczema in all cases; nor will said product, when applied and administered according to respondent's directions, heal eczema permanently in all cases. In truth and in fact respondent's preparation and treatment is not effective in certain cases of eczema and will not in many cases of eczema, stop the itching attending said ailment.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by respondent in designating and describing the remedial and curative quality of his medicinal preparation and treatment, as hereinabove set forth, in his advertising in newspapers, magazines, booklets, pamphlets, testimonials, and other advertising literature, in offering for sale and selling his medicinal preparation and treatment was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchased a substantial volume of respondent's medicinal preparation and treatment with the result that trade

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has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations and treatments intended and sold for the purpose of treating eczema, and who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

## 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 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 Commission upon the complaint issued on May 19, 1936, and served on May 21, 1936, the answer of respondent filed on June 13, 1936, admitting all the material allegations to be true, and waiving further proceedings, 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 time within which answer may be filed by said respondent be and the same is hereby extended from June 10, 1936, to June 13, 1936;

*It is further ordered*, That respondent, Dr. J. E. Cannaday, an individual, his agents, servants, representatives, and employees, in connection with the sale, or offering for sale, in interstate commerce of a medicinal preparation and treatment for the relief or cure of eczema, forthwith cease and desist from:

Representing, directly or by inference, through testimonials, contracts, advertisements, or through any other means whatever,

1. That his medicinal preparation and treatment will effect a cure of eczema in all cases;

2. That his medicinal preparation and treatment will effect permanent relief from eczema in all cases;

3. That his medicinal preparation and treatment will heal eczema permanently in all cases;

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## Order

4. That his medicinal preparation and treatment will stop the itching attending the ailment of eczema in all cases.

*It is further ordered,* That the respondent, Dr. J. E. Cannaday, shall within 30 days from the date of service upon him of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which he is complying and has complied with the order herein set forth.

IN THE MATTER OF  
DENNISON BROTHERS, INC.

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

*Docket 2676. Complaint, Feb. 14, 1936<sup>1</sup>—Decision, June 30, 1936*

Where a corporation engaged in the sale of groceries, drugs, sundries and toilet articles direct to the consumer, through personal solicitation and contact by its agents and representatives, and which donated more than ten per cent of its profits to an orphans' home under a contract calling for such a percentage, but procured by it solely to enable it to represent to potential customers and the public at large that a substantial percentage of the profits realized by it in the sale of its products were for the use and benefit of a charitable institution, and to secure and influence customers to purchase its merchandise, not superior to that vended by competitors at like prices, and to increase its volume of sales and secure patronage otherwise unobtainable—

- (a) Represented to members of the public, through its agents and solicitors, that it manufactured the merchandise offered by it, and circulated price lists and general advertising matter depicting a purported photographic simile of a large factory building, across facade of which appeared its name and words "Where Quality Originates", and represented in said advertising material that it sold its "products direct from factory to the consumer, thereby saving you the middleman's profit", facts being the building depicted was not owned, nor entirely occupied, by it, but only a portion of one of the several floors thereof, and commodities sold by it were actually made by others and purchased by it from those who made and vended same, in the common marts of trade, and notwithstanding preference of a substantial number of the purchasing public for dealing directly with manufacturer as effecting a pecuniary saving through eliminating from article's retail cost so-called middleman's profit, and as securing purchase of merchandise of a grade or quality superior to that of articles bought at a comparable price from retailer;
- (b) Designated as "Butt R Milk Soap" a commodity advertised and offered and distributed by it, facts being said product contained an infinitesimal amount of buttermilk, if any, and not enough to entitle it properly thus to designate or describe or represent the same, and notwithstanding preference of a substantial number of members of the purchasing public for purchase of soap of which buttermilk is a principal or substantial ingredient, as thus indicated; and
- (c) Sold and offered as "Russian Mineral Oil" a commodity thus labeled and identified, with intent and effect of causing a substantial number of members of the purchasing public to believe that said oil was "heavy oil", as commonly known to trade, and an oil of high viscosity, and represented on labels affixed to containers thereof that its contents complied "with U. S. P. Specifications No. 10 for liquid petroleum", facts being it was neither a heavy oil, nor of high viscosity, and did not comply or conform

<sup>1</sup> Amended.

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with such specifications of the United States Pharmacopoeia Board, and notwithstanding preference of a substantial number of members of the purchasing public for heavy oil and oil of a high viscosity and a definite specific gravity;

With effect of misleading and deceiving a substantial number of members of such public into false belief that through buying said products from it they were assisting it in furtherance of a beneficent cause, dictated by its generosity, solely, and that said products, respectively, contained buttermilk as principal ingredient, or had qualities or properties hereinbefore indicated, and of diverting trade from competitors, among whom there are a substantial number who do not, to secure patronage, represent to potential customers that a large percentage of their prospective profits are to be used for and donated to charitable institutions, and those who, as manufacturers or non-manufacturers, as case may be, do not falsely represent themselves as manufacturers of articles dealt in by them, and who do not, through labeling a product with name of a minor ingredient, falsely represent such ingredient as actually constituting a principal property thereof, or through labeling or otherwise falsely represent their mineral oils as heavy, or of high viscosity and which comply and conform with aforesaid specification:

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

*Mr. Alden S. Bradley* for the Commission.

*Mr. Simon S. Gittleman*, of Verona, N. J., for respondent.

## AMENDED COMPLAINT

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, having reason to believe that Dennison Bros., Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dennison Bros., Inc., is a corporation organized under and by virtue of the laws of the State of New York in the year 1932, with its principal office and place of business at 437 11th Ave., New York, N. Y. Respondent is now, and has been for some years, engaged in the business of selling groceries, drugs, sundries, and toilet articles directly to the consumers thereof through the medium of personal solicitation and contact on the part of agents of said respondent, which agents are located in the various States of the United States. In the course and conduct of its business as aforesaid the respondent has shipped and caused to be shipped from

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its principal office in New York, or other distributing points, the merchandise sold by it to purchasers thereof located in various States of the United States other than the State of New York or other than the place of origin of such shipment. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in the hereinabove described merchandise, distributed and sold by the respondent, among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations, firms, and individuals likewise engaged in the business of distributing and selling or in the business of manufacturing, distributing, and selling groceries, drugs, sundries, and toilet articles directly to consumers, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent represents, and causes to be represented, to the general public, customers and potential customers, that a large percentage of the profits to be realized by it in the sale of its products as aforesaid are for the use and benefit of a charitable institution, to wit: Bethlehem Orphan and Half-Orphan Home, said representation being designed and calculated to play upon the sympathies of potential customers and thus influence them to purchase the merchandise offered for sale.

The quality of the merchandise offered for sale by the respondent is of an inferior nature as compared with the quality and nature of goods of like kind offered by competitors of the respondent at the same prices, and the respondent utilizes the representation aforesaid that a large percentage of its profits is for a charitable purpose in order to increase the volume of its sales and to secure patronage which otherwise would not come to it.

In truth and in fact, no substantial part of the profits of the respondent nor any substantial sum whatever is contributed by the respondent out of its income to the Bethlehem Orphan and Half-Orphan Home or any other charitable institution as represented.

PAR. 4. The respondent, through its agents and solicitors, directly and indirectly, represents or causes to be represented, that it is the manufacturer of the merchandise offered for sale by it, and circulates, in commerce as aforesaid among the general public, price lists and other advertising literature wherein appears the picturization of a large factory building with the name of the respondent prominently displayed across the facade thereof, together with the words,



## Dennison—Where Quality Originates

The respondent further distributes in commerce, as herein set out, coupons containing the following words:

Dennison Bros., Inc. sell their products direct from factory to the consumer, thereby saving you the middleman's profit

In truth and in fact, the building pictured as aforesaid is not owned, nor is the same entirely occupied by said respondent. The respondent uses only a portion of one of the several floors of said building and does not manufacture any of the products sold by it. The products so distributed and sold by the respondents are purchased from the manufacturers or millers who manufacture such products and the purchases thereof are made in the common marts of trade.

There are among the members of the purchasing public a substantial number thereof who prefer to purchase merchandise directly from the manufacturer thereof, believing that they thereby eliminate from the retail cost of the articles so purchased the so-called middleman's profit and that they secure superior quality in purchasing direct from the manufacturer.

PAR. 5. In the course and conduct of its business, the respondent advertises, and offers for sale, a product which it labels and identifies as "Butt R Milk Soap." The use of the descriptive name above indicated serves as a representation that a substantial ingredient of said soap is buttermilk.

In truth and in fact, the soap labeled and sold under the name "Butt R Milk Soap" contains only an insignificant amount of buttermilk, if any at all, and much less than the amount necessary as an ingredient thereof to entitle the respondent to properly designate, describe, or represent the same to be buttermilk soap. There are among the members of the purchasing public a substantial portion thereof who have a preference for, and who desire to, purchase soap having buttermilk as a substantial or principal ingredient thereof.

PAR. 6. The respondent, in the course and conduct of its business as aforesaid, has offered for sale and sold, a certain commodity labeled and identified as "Russian Mineral Oil." The identification and labeling above set out causes, and is intended to cause, members of the purchasing public to form the belief or impression that such oil is what is commonly known to the trade as a "heavy" oil and an oil of high viscosity. Respondent further represents, on the label affixed to the container of such oil that the contents of such container comply "with U. S. P. Specifications No. 10 for liquid petroleum."

In truth and in fact, the oil so labeled and sold by the respondent is not what is commonly known to the trade as a "heavy" oil, is not

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of a high viscosity and does not comply with Specification No. 10 of the United States Pharmacopoeia Board.

A substantial portion of the purchasing public who buy Russian mineral oil have expressed a preference for a "heavy" oil of a high viscosity and a definite specific gravity.

PAR. 7. There are among the competitors of the respondent many individuals, partnerships, and corporations who, in the course and conduct of their respective businesses, do not play upon the sympathies of potential customers by representations that a large percentage of the profits to be made in the sale of merchandise offered for sale are to be used for and donated to charitable institutions, said representations being made for the purpose of effecting sales of their merchandise, when said representations are not true in fact. There are among the competitors of the respondent many who do not represent to the purchasing public that they are the manufacturers of the articles distributed and sold by them when they are not in fact manufacturers of said articles. There are also among the competitors of respondent many who do not, by labeling a commodity with the name of a minor ingredient thereof, represent that such ingredient actually constitutes a principal ingredient of said commodity and who do not represent by descriptive labeling, or in any way whatever, that the mineral oils sold by them are "heavy" oils, of high viscosity or comply with Specification No. 10 of the United States Pharmacopoeia Board for liquid petroleum; when in truth and in fact, said oils are not "heavy" oils, are not of high viscosity and do not comply with Specification No. 10 of the United States Pharmacopoeia Board.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in designating or describing the nature and extent of its business, the disposition of a portion of its profits or the products distributed and sold by it, as hereinabove set out, in its advertising literature and through its representatives and agents, in offering for sale and selling its merchandise was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations and statements are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts, advertisements, and misrepresentations of respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of the merchandise sold by the respondent with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar merchandise or in the business of manufacturing, distributing, and selling similar merchandise and who truthfully represent the na-

ture and extent of their business and the quality and character of their products. As a result thereof, substantial injury has been, and is now being, done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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.

#### 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 the 14th day of February 1936, issued and served its complaint in this proceeding upon respondent Dennison Brothers, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into by and between W. T. Kelley, chief counsel for the Commission and S. S. Gittleman, attorney for the respondent, and said stipulation was duly recorded and filed in the offices of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto and the stipulation as to the facts; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dennison Brothers, Inc., is a corporation existing under and by virtue of the laws of the State of New York, and has its principal office and place of business at 437 11th Ave., New York, N. Y. It now is, and has been for some years engaged in the business of selling groceries, drugs, sundries, and toilet articles directly to the consumers of the same through the medium of personal solicitation and contact on the part of agents and representatives of the respondent, which agents and representatives are located in the various States of the United States.

In the conduct of its business, respondent sells and causes to be sold, and ships and transports the commodities vended by it, into and

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through the various States of the United States other than the State of New York, and thus maintains a constant current of trade in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. Respondent, in the conduct of its business, is now, and has been, in substantial competition with other persons, firms, and corporations likewise engaged in the sale and distribution in interstate commerce of commodities of a like nature, kind, and design, to those vended by the respondent.

PAR. 3. Respondent, in the conduct of its business aforesaid, represents, and causes to be represented, to potential customers, and to the public at large, that a substantial percentage of the profits to be realized by it in the sale of its products, as aforesaid, are for the use and benefit of a charitable institution, to wit, Bethlehem Orphan and Half-Orphan Home, which said representation is used by the respondent for the purpose and with the intention of securing customers, and influencing customers to purchase the merchandise vended by the respondent.

The merchandise vended by the respondent is not of a superior quality to the merchandise vended by competitors of the respondent at like prices, and the representation by the respondent that a large percentage of its profits inures to a charitable use is used by the respondent solely for the purpose of increasing the volume of sales, and securing patronage which otherwise would not be obtainable.

The respondent has actually, during the term of the contract with Bethlehem Orphan and Half-Orphan Home, donated more than 10 percent of its profits, although the contract calls for but 10 percent. Such contract was procured by the respondent solely for the purpose of enabling it to make the representations referred to above.

PAR. 4. Respondent, through its agents and solicitors, directly and indirectly represents, and causes to be represented to members of the purchasing public, that it manufactures the merchandise offered for sale by it, and circulates in interstate commerce as aforesaid, price lists and general advertising matter wherein appears a purported photographic simile of a large factory building, across the facade of which appear the words,

## Dennison—Where Quality Originates

The respondent further represents in its advertising material as above set forth the following:

Dennison Bros., Inc., sell their products direct from factory to the consumer, thereby saving you the middleman's profit

The building depicted as aforesaid is not owned, nor entirely occupied by the respondent. In fact, the respondent uses only a portion

of one of the several floors of such building, and the commodities vended by the respondent are actually manufactured by others, and are purchased by the respondent from those who manufacture them, and vend the same in the common marts of trade.

A substantial number of the members of the purchasing public prefer to purchase merchandise directly from the manufacturer of the same, believing that they thereby effect a pecuniary saving by eliminating from the retail cost of the articles so purchased, the so-called middleman's profit, and also that they secure merchandise of a superior grade or quality when purchasing the same from the manufacturer thereof, to those articles to be purchased at a comparable price from retail dealers.

PAR. 5. In the conduct of the business of the respondent, it has advertised, and now advertises, offers for sale, and transports in interstate commerce as above defined, a particular commodity known as "Butt R Milk Soap." The use of such name in connection with the vending of such commodity is calculated by the respondent to be indicative of the fact that a substantial ingredient of the same is buttermilk. In truth and in fact, such commodity contains an infinitesimal amount of buttermilk, if any at all, and does not contain a quantity sufficient to entitle the respondent properly to designate, describe, or represent the same to be "Butt R Milk Soap."

A substantial number of the members of the purchasing public have an actual preference and desire for the purchase of soap having buttermilk as a substantial or principal ingredient thereof.

PAR. 6. In the conduct of its business aforesaid, respondent has sold and offered for sale, a certain commodity labeled and identified as "Russian Mineral Oil." Such identification and labeling causes, and is intended to cause a substantial number of members of the purchasing public to believe that such oil is what is commonly known to the trade as "heavy oil" and an oil of high viscosity. The respondent further represents on the label affixed to the container of the oil above described, that the contents thereof comply "with U. S. P. Specifications No. 10 for liquid petroleum." In truth and in fact, the oil so labeled and sold by the respondent is not what is commonly known to the trade as a "heavy" oil, is not of a high viscosity, and does not comply nor conform with specification No. 10 of the United States Pharmacopoeia Board.

A substantial number of the members of the purchasing public have an actual preference for "heavy" oil, and oil of a high viscosity and a definite specific gravity.

PAR. 7. A substantial number of competitors of the respondent who are individuals, partnerships, and corporations do not in the course and conduct of their respective businesses, solely for the purpose of

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producing patronage, represent to potential customers that a large percentage of the profits to be made in the sale of merchandise vended by them is to be used for and donated to charitable institutions. Likewise, there are among the competitors of the respondent, those who do not represent to members of the purchasing public that they are the manufacturers of the articles distributed and sold by them, when in fact they are not. Likewise, among the competitors of the respondent are many who truthfully represent to the purchasing public that they, in fact, manufacture the articles and commodities distributed and sold by them.

A substantial number of the competitors of the respondent do not, by labeling a commodity with the name of a minor ingredient of the same, falsely represent that such ingredient actually constitutes a principal property of such commodity, and who do not by labeling and otherwise, falsely represent that certain mineral oils vended by them are "heavy" oils, or oils of high viscosity, and oils which comply and conform with Specification No. 10 of the United States Pharmacopoeia Board.

PAR. 8. The acts and practices of respondent, as above related, had a tendency and capacity to, and in fact did, mislead and deceive a substantial number of the members of the purchasing public into the false belief that—

1. By effecting purchases of the articles and commodities vended by the respondent, the purchasers of the same were assisting the respondent in the furtherance of a beneficent cause, the furtherance of which was dictated solely by the generosity of the respondent;

2. That the commodity vended by the respondent under a label, designation, and trade name of "Butt R Milk Soap" contained as its principal ingredient buttermilk;

3. That the commodity vended by the respondent and labeled and identified by it as "Russian Mineral Oil" was an oil of high viscosity and of a definite specific gravity, was what is known to the trade as "heavy" oil, and conformed with Specification No. 10 of the United States Pharmacopoeia Board.

Such acts and practices had a capacity and tendency to, and did, not only mislead a substantial number of the members of the purchasing public, but diverted trade from a substantial number of competitors of the respondent, who did not, in vending articles of like character, nature, and design, make, or cause to be made the false representations last above referred to.

## CONCLUSION

The aforesaid acts of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice

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## Order

of the public and of respondent's competitors, and 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 respondent, and signed stipulation as to the facts; 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 ordered*, That the respondent Dennison Brothers, Inc., a corporation, its officers, agents, representatives, and employees in the sale and offering for sale of groceries, drugs, sundries, and toilet articles in interstate commerce, do forthwith cease and desist from:

1. Representing or causing to be represented to the public by advertising, by photographs, by price lists, or in any other manner that respondent manufactures the commodities vended by it;

2. Labeling or designating a particular soap as "Butt R Milk Soap" when buttermilk is a minor and insignificant ingredient thereof;

3. Representing or causing to be represented to the purchasing public, through the use of labels or other identification upon containers of oils, that a product is "Russian Mineral Oil" or is some other type of oil commonly known and accepted by the purchasing public as "heavy oil," or that such oil complies with the U. S. Pharmacopoeia Specification No. 10 for liquid petroleum, when such are not the facts.

*It is further ordered*, That the respondent, Dennison Brothers, Inc., a corporation, shall within 60 days after the date of the service of this order upon it, file with the Federal Trade 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.

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IN THE MATTER OF  
OLD GOLD DISTILLERS, INC.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

*Docket 2375. Complaint, Apr. 23, 1935—Order, July 2, 1936*

Consent order requiring respondent, its agents, etc., in connection with offer and sale of whiskies, brandies, etc., in interstate commerce, to cease and desist from—

Use of word "Distillers" in its corporate name, etc., or representing that it is a distiller of brandies, etc., or that its said whiskies, etc., were made by it through process of distillation or that it owns, operates, etc., a place where such beverages are made by such process, unless and until it shall own, operate, etc., such a place, where they are made, through process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels till manufacture thereof is completed; and from

Using words "Importer", "Importers", or "Imported" on its letterheads, etc., in soliciting sale of its said products or otherwise representing that it is an importer of whiskies, etc., unless and until it shall actually become engaged in the business of importing such products into the United States from other countries; and

Ordered further that complaint be dismissed as to count two, charging violation of National Industrial Recovery Act.

*Mr. PGad B. Morehouse* for the Commission.

*Weinrob & Feldman*, of Chicago, Ill., for respondent.

## COMPLAINT

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, having reason to believe that Old Gold Distillers, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

*Count One*

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its



office and principal place of business in the city of Chicago, in said State. It is now and since its organization in 1934 has been engaged in the business of purchasing whiskies, brandies, wines, rums, and gins, and other spirituous beverages, both domestic and imported, and in the sale thereof in regular course of trade and commerce between and among the various States of the United States and the District of Columbia. In the usual course and conduct of its business it causes said products when resold by it to be transported from its place of business in the city of Chicago aforesaid, into and through various other States of the United States to the purchasers thereof, consisting of wholesalers, retailers, and the purchasing public, some of whom are located within the State of Illinois and some of whom are located in various other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rums, gins, and other spirituous beverages, and in the sale thereof in constant trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is and has been since its organization, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and reselling at wholesale and retail, whiskies, brandies, wines, rums, gins, and other spirituous beverages, in a constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distillers" when used in connection with the liquor industry and with the products of such industry has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, individuals, partnerships, or corporations who manufacture such liquors by the process of distillation; and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships its said products and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate

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consuming public that the said whiskies, brandies, rums, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller, does not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported, and does not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the words "importer," "importers" or "imported" on its letterheads and in other advertising matter used to solicit the sale of and selling its products as aforesaid, respondent has represented and does represent that it is an importer of said whiskies, brandies, wines, rums, gins, and other spirituous beverages, and that there has been no profit, expense, or charge of a "middleman" between the exporter of said products and respondent, which said expense, profit, or charge is passed on to respondent's vendees and through them to the ultimate purchaser thereof. As a matter of fact, such imported liquors as are purchased and resold by respondent are purchased from others who have imported the same, and who have resold said imported products to respondents at a profit, charge, or expense of a "middle man" which has been passed on by respondent to its vendees and through its vendees to the ultimate purchaser thereof, and has been included in the sale price of such products, and respondent is not an importer of the said liquors.

PAR. 5. There are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rums, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," "distilling" as a part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing and reselling at wholesale and retail and to the purchasing public, whiskies, brandies, rums, gins, and other spirituous beverages who do not use the words "distilleries," "distillery," "distillers," or "distilling" as a part of their corporate names nor on their stationery nor on the labels attached to the bottles in which they sell and ship their said products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of importing whiskies, brandies, wines, rums, gins, and other spirituous beverages who truthfully use the words "importer," "importers," or "imported" on

their stationery, other advertising matter, and on the labels attached to the bottles in which they resell and transport said products. There are others among such competitors who do not in any manner misrepresent that they are the actual importers of whiskies, brandies, wines, rums, gins, and other spirituous beverages which have been imported.

PAR. 6. The representation by respondent as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rums, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it and has a capacity to and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rums, gins, and other spirituous beverages purchased and resold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate names or in any other manner misrepresent that they are manufacturers by distillation of whiskies, brandies, rums, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. The representation by respondent as set forth in paragraph 4 hereof is calculated to, has a tendency and operates to mislead and deceive dealers and the purchasing public into the belief that they are purchasing such of respondent's beverages as contain on the labels thereof the words "importer," "importers," or "imported" from the actual importers thereof, and also into the belief that they are thus saving the expense, profit, or charge of a "middleman"; and is calculated to and has a capacity and tendency to and does induce dealers and the purchasing public, acting in either or both of such beliefs, to purchase the whiskies, brandies, wines, rums, gins, and other spirituous beverages thus advertised, labelled, and sold by respondent, thereby diverting trade to respondent from its competitors who truthfully use the words "importer," "importers," or "imported," on beverages which have been imported; and thereby diverting trade also from those others of its competitors who do not in any manner misrepresent that they are the actual importers of such whiskies, brandies, wines, rums, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 8. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within

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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.

*Count Two*

PARAGRAPH. 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its office and principal place of business in the city of Chicago, in said State. It is now and since its organization in 1934 has been engaged in the business of purchasing whiskies, brandies, wines, rums, and gins, and other spirituous beverages, both domestic and imported, and in the sale thereof in regular course of trade and commerce between and among the various States of the United States and the District of Columbia. In the usual course and conduct of its business it causes said products when resold by it to be transported from its place of business in the city of Chicago aforesaid, into and through various other States of the United States to the purchasers thereof, consisting of wholesalers, retailers, and the purchasing public, some of whom are located within the State of Illinois and some of whom are located in various other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rums, gins, and other spirituous beverages, and in the sale thereof in constant trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and reselling at wholesale and retail, whiskies, brandies, wines, rums, gins, and other spirituous beverages, in a constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 2 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though

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the several averments of said paragraph 2 of said count one were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 3 of said count one were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count one were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count one were repeated verbatim.

PAR. 6. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 6 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 6 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 6 of said count one were repeated verbatim.

PAR. 7. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 7 of count one of this complaint, to the same extent as though the allegations thereof were set out at length herein and said paragraph 7 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph

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of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 7 of said count one were repeated verbatim.

PAR. 8. Under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195 C. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture certain of the powers vested in the President of the United States by the act aforesaid.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to section 3 (d) of the act and Executive orders under the act, upon his own motion presented a Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations and findings of the said Secretary of Agriculture, and order that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid, the following provision of article V of said Code became and still is one of the standards of

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fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said industry and this respondent:

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

SECTION 1. *False Advertising.*—To publish or disseminate in any manner any false advertisement of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression.

PAR. 9. The use by respondent of the word "distillers" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various other ways; and the use by respondent of the words "importer," "importers," or "imported" on the labels attached to the bottles in which it sells and ships certain of its products, and used in various other ways, constitutes false advertising within the meaning of the aforesaid provision of said article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits and selling spirits, and that the spirituous beverages so sold and transported by it have been bottled at a distillery by the original distillers thereof, and that some of said products have been imported by respondent, all contrary to the provisions of section 1, article V, of the Code aforesaid.

PAR. 10. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraphs 6 and 7 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the written waiver of the respondent, 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 respondent that an order shall issue herein for it to cease and desist from methods of competition charged in the complaint, and the Commission being fully advised in the premises, having thereupon concluded that 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."

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*It is now ordered,* That the respondent, Old Gold Distillers, Inc., its agents, salesmen, and employees, in connection with all whiskies, brandies, rums, gins, and other spirituous beverages by it in interstate commerce hereafter sold or offered for sale, do cease and desist from:

(1) The use of the word "Distillers" in its corporate name, on its stationery, or on the labels attached to the bottles in which it sells and ships its said products or in any other way by word or words of like import representing, (a) that it is a distiller of brandies, rums, gins, and other spirituous beverages; or (b) that the said whiskies, brandies, rums, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies, brandies, rums, gins, and other spirituous beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and from:

(2) Using the words "Importer," "Importers," or "Imported" on its letter heads and other advertising matter used to solicit the sale of and sell its products as aforesaid or in any other manner representing that it is an importer of whiskies, brandies, rums, wines, gins, and other spirituous beverages, unless and until it shall actually become engaged in the business of importing said products into the United States from other countries.

(3) *It is further ordered,* That the aforesaid complaint be and the same is, hereby dismissed as to count two thereof.

*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 or reports 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.

## MEMORANDUM

The Commission as of the same date issued similar orders, excepting the importer representation feature, in the cases of Liberty Distilleries, Inc., Docket 2388, in which complaint issued as of May 14, 1935, and Rex Distilling Co., Docket 2396, in which complaint issued as of May 17, 1935, *Mr. PGad B. Morehouse* representing the Commission, and *Mr. Alfred L. Bennett*, of Washington, D. C., representing respondent Liberty Distilleries, Inc.



## Complaint

IN THE MATTER OF  
MORGEN DISTILLING CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC.  
3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

*Docket 2371. Complaint, Apr. 22, 1935—Decision, July 6, 1936*

Where a corporation engaged in the purchasing, rectifying, blending, and bottling of whiskies, brandies, rums, and other spirituous beverages, and in the sale thereof in competition with actual distillers and with other rectifiers, and neither owning, operating, nor controlling any place or places where spirituous beverages are made by a process of original and continuous distillation from mash, wort, or wash or other raw materials, and never applicant for a distiller's permit nor authorized by the Government to produce, nor producer of, any distilled spirits, which it purchased in bulk as required and bottled under its own brand names and under those of its wholesaler, jobber, or retailer customers—

Conspicuously printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its liquors, word "Distilling" as part of corporate name, with effect of misleading and deceiving dealers and purchasing public, substantial portion of which prefers purchase of liquor prepared and bottled by the actual distiller, into belief that it was a distiller, plant and operations of which, ordinarily, are more extensive and costly than the rectifier's, and that the whiskies and other alcoholic beverages sold by it were by it made through process of original distillation from raw materials, as aforesaid, and as long understood from term, and of inducing them, in such beliefs, to purchase such whiskies, etc., bottled and sold by it, and with tendency thereby to divert trade to it from competitors who do not, through their corporate or trade names or in any other manner, misrepresent themselves as manufacturers by original distillation from raw materials, as aforesaid, to the substantial injury of substantial competition, and with effect of representing to customers through such potentially deceptive name and of furnishing them with the means of representing to their retailer and jobber vendees and ultimate consuming public, that it was a distiller, and that the whiskies and other alcoholic beverages thus labeled were by it made through process of original distillation as aforesaid:

*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.

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

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Nathaniel Seaman*, of New York City, for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

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mission, to define its power and duties, and for other purposes," the Federal Trade Commission having reason to believe that Morgen Distilling Corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

*Count 1*

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in Jersey City, in the said State. It is now and since its organization in 1934 has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in constant course of trade and commerce, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes the said products when sold to be transported from its place of business in Jersey City, aforesaid, into and through various other States of the United States to the purchasers thereof consisting of wholesalers and retailers, some located within the State of New Jersey and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid respondent is and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distilling" when used in connection with the liquor industry and with the products of such industry has had and still has a definite significance and meaning to

the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of distillation; and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilling" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, brandies, rums, and other spirituous beverages therein contained were by it manufactured through the process of distillation, when, as a matter of fact, the respondent is not a distiller, does not distill the said whiskies or other spirituous liquors by it so bottled, labeled, sold, and transported and does not own, operate, or control a place or places where such beverages are manufactured by the process of distillation.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous liquors as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill whiskies, brandies, rums, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages who do not use the words "distilleries," "distillery," "distilling," or "distillers" as a part of their corporate names nor on their stationery nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondent as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, brandies, rums, and other spirituous beverages sold by the respondent are manufactured and distilled by it and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, brandies, rums, and other spirituous beverages rectified, blended, and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate name or in any other manner misrepresent that they

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are manufacturers by distillation of whiskies, brandies, rums, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

*Count 2*

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its office and principal place of business in Jersey City, in the said State. It it now and since its organization in 1934 has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in constant course of trade and commerce, between and among the various States of the United States, and in the District of Columbia. In the course and conduct of its said business, it causes the said products when sold to be transported from its place of business in Jersey City, aforesaid; into and through various other States of the United States to the purchasers thereof consisting of wholesalers and retailers some located within the State of New Jersey and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now and at all times since its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is and has been since its organization in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 2 of count one of this complaint to the same extent

as though the allegations thereof were set out at length herein and said paragraph 2 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 2 of said count one were repeated verbatim.

PAR. 3. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 3 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 3 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 3 of said count one were repeated verbatim.

PAR. 4. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 4 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 4 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 4 of said count one were repeated verbatim.

PAR. 5. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in paragraph 5 of count one of this complaint to the same extent as though the allegations thereof were set out at length herein and said paragraph 5 of count one of this complaint is incorporated herein by reference and adopted as the allegations of this paragraph of this count and is hereby charged as fully and as completely as though the several averments of said paragraph 5 of said count one were repeated verbatim.

PAR. 6. Under and pursuant to Title I of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195 C. 90), the President of the United States, by Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, delegated to H. A. Wallace as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid act.

Under and pursuant to the delegation of such powers, the said Secretary of Agriculture pursuant to section 3 (d) of the act and Executive orders under the act, upon his own motion presented a

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Code of Fair Competition for the Distilled Spirits Rectifying Industry after due notice and opportunity for hearing in connection therewith had been afforded interested parties, including respondent, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder, to the President of the United States who approved the same on the 9th day of December 1933, thereby constituting the said code a Code of Fair Competition within the meaning of the said National Industrial Recovery Act, for the regulation of the aforesaid industry.

In his written report to the President, the said Secretary of Agriculture made, among others, the following findings with respect to the said code in the following words, to wit:

That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

By his approval of the said code on December 9, 1933, the President of the United States, pursuant to the authority vested in him by Title I of the National Industrial Recovery Act aforesaid, made and issued his certain written Executive order, wherein he adopted and approved the report, recommendations, and findings of the said Secretary of Agriculture, and ordered that the said Code of Fair Competition be, and the same thereby was approved, and by virtue of the National Industrial Recovery Act aforesaid the following provision of Article V of said Code became and still is one of the standards of fair competition for the Distilled Spirits Rectifying Industry and is binding upon every member of said Industry and this respondent,

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry;

**SECTION 1. False Advertising.**—To publish or disseminate in any manner any false advertisements of any rectified product. Any advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission or inference it tends to create a misleading impression.

**PAR. 7.** The use by respondent of the word "distilling" in its corporate name, printed upon its stationery and on the labels attached to the bottles in which it sells and ships such products and in various

other ways, constitutes false advertising within the meaning of the aforesaid provision of said Article V and tends to and does create the misleading impression that respondent is engaged in the business of distilling spirits, and that the spirituous beverages by it so sold and transported have been bottled at a distillery by the original distillers thereof, all contrary to the provisions of section 1, article V, of the code aforesaid.

PAR. 8. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in paragraph 5 of count one hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

#### 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 22, 1935, issued, and on April 23, 1935, served its complaint in this proceeding upon respondent, Morgen Distilling Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, heretofore duly designated by it. Respondent was represented by its attorney, Nathaniel Seaman, and offered no testimony in opposition to the complaint. The aforesaid testimony and evidence introduced in support of the allegations of said complaint were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence and brief in support of the complaint, brief in defense thereto and oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Morgen Distilling Corporation is a rectifier, organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 109 Hudson St., Jersey City, N. J. From the date of its organization, shortly after the repeal of Prohibition, up to July 1, 1935, it was engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, rums, and other spirituous beverages and in the sale thereof in constant course and commerce between and among the various States of the United States and in the District of Columbia, operating and conducting said business under a basic permit from the Federal Alcohol Control Administration, designated as "Permit No. R-317," issued "subject to compliance with all State and Federal laws."

The respondent's plant is of considerable size and contains three storage tanks for the receiving of bulk liquors which it buys from distilleries, these tanks having aggregate capacity of 2,650 gallons. Respondent also had three processing tanks with aggregate capacity of 2,570 gallons, bottling machinery and the other equipment ordinarily incident to the distilled spirits rectifying industry.

The liquor which respondent bought was stored in the aforesaid storage tanks and when released by officers of the United States Government it was rectified or bottled straight. Respondent had no stills and no distilling of any kind was carried on by respondent. Respondent never applied for a distiller's permit, was never authorized by the Government to produce, nor did it produce any distilled spirits from the grain and never owned a still, but always purchased its distilled spirits requirements in bulk and thereafter placed them in bottles under its own brand names or under the names and brands of its customers who were wholesalers, jobbers, or retailers.

The bottles in which the alcoholic beverages are so sold have attached thereto labels which contain the word "distilling" as a part of respondent's corporate name, for instance, the respondent sold a "King Peter" brand, 100 per cent straight whiskey, bearing the legend "Prepared by Morgen Distilling Corp." In numerous instances the respondent bottled and labeled the liquor for its customers, putting special labels thereon bearing the name of the customer instead of its own name. On other labels appear the words "Bottled By", or "Blended By Morgen Distilling Corp." It sent out advertising mailing cards to the trade bearing the name of "Morgen Distilling Corp." in bold type without further qualifica-



tion, but on one of its price lists such corporate name was qualified by the words "Blenders and Rectifiers" in considerably smaller type. The impression that respondent is a distiller, to be gained from the foregoing use of its name, is not negatived by the said qualification, because the fact is that a rectifier may also be a distiller and many of them are. When sold, respondent shipped said liquors which it had rectified or blended, or simply bottled, to its customers in the various States of the United States, including Louisiana, Connecticut, Florida, New York, and the District of Columbia, to the purchasers thereof in competition with distillers and rectifiers likewise engaged in the regular course of business in the sale of whiskies, brandies, rums, and other spirituous beverages in commerce among the several States, where it was offered for sale and sold by the said customers, both to retailers and the consuming public in States and territories co-extensive with the territories in which its said competitors likewise offered their spirituous beverages for sale. The Commission finds that respondent, during the period it was actively engaged in business as aforesaid, was in competition in interstate commerce with actual distillers and also with other rectifiers who did not, by the use of such words as "distilling," "distiller," or "distilleries" as part of their trade or corporate names, misrepresent their status to the trade.

On July 1, 1935, respondent's aforesaid permit expired and it failed to renew it. Its corporate existence is still preserved, its assets have not been liquidated or disposed of, and its plant has not been dismantled but is ready for operation at any time upon a new permit being obtained.

**PAR. 2.** For a long period of time the word "distilling," when used in connection with the liquor industry and the products thereof, has had and still has, a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturing of such liquors by a process of original distillation from raw materials.

The record contains the testimony of approximately fifty members of the public whose names were obtained from the classified section of telephone directories, including dentists, engineers, real estate men, public accountants, bond brokers, physicians, inspectors, and promoters. This testimony shows that the word "Distilling," when used in connection with the distilled spirits or whiskey industry, signifies to them the manufacture of spirits from raw materials. Practically without exception, each of these members of the public not only expressed a definite preference to buy packaged goods bottled

by a distiller, but gave reasons which appeared to them to justify such preference.

The Commission therefore finds that a substantial portion of the purchasing public prefer to purchase spirituous liquors which have been prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, respondent's use of the word "distilling" as a part of its corporate name conspicuously printed on its stationery, advertising, and on the labels attached to the bottles in which it sold and shipped its said liquors, had the capacity and tendency to, and did, mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent were by it manufactured through the process of original distillation from raw materials as aforesaid and such use of the word "Distilling" had the capacity and tendency to, and did, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages bottled and sold by the respondent, thereby tending to divert trade to respondent from its competitors who did not, by their corporate or trade names, or in any other manner, misrepresent that they were manufacturers by original distillation from raw materials of the whiskies, gins, and other alcoholic beverages by them sold, and thereby respondent did substantial injury to substantial competition in interstate commerce.

PAR. 4. Activities in connection with the manufacture and sale of alcoholic beverages are divided among several classes of manufacturers, processors, and dealers. The initial process of manufacturing is in the hands of distillers. In the case of whiskey, these distillers manufacture their products by the distillation of fermented grain mash, which produces at lower temperatures of distillation the product called whiskey. This whiskey contains certain esters or flavoring elements, and also some ingredients which it is necessary to eliminate before the whiskey is entirely potable. After the distillation process has been completed, the whiskey is placed in wooden barrels, charred on the inside, and stored in bonded warehouses, which are separate and distinct from the distillery, being located in a different and separate building. The whiskey thus distilled is usually held for an aging process, which removes certain undesirable elements from the product by absorption or other elimination, by means of the charred wood on the inside of the container. After it is considered fit for market, it may be sold by the distiller in bulk to rectifiers, or the rectifiers may acquire the bulk whiskey by buying bonded warehouse certificates. After the Government tax has been paid on the product it may be transferred to tanks in rectifying

establishments, and there the whiskey may be bottled and labeled. Distillers are permitted to bottle "Straight Whiskey" in the warehouse and to sell the bottled goods to wholesalers. Distillers may have rectifying plants, separate from the distillery and warehouse, operated under a rectifier license. It is then ready for sale in wholesale and retail channels of trade and may be sold by rectifiers to wholesalers and retailers or it may be sold by rectifiers only to wholesalers, and the wholesalers may in turn make sales to retailers. These retailers include package goods stores and proprietors of drinking places, where the liquor is sold by the glass to consumers.

Each distiller operates under a specific Federal license carrying the symbol "D" with a number, indicating the designation of his license to do a distilling business. The rectifier operates under a license designated by the symbol "R" with a number, which indicates the designation of his license to do business as a rectifier. The wholesaler does business under a wholesaler's license with the symbol "L. L." and a number indicating the designation of his license. The retail dealer is licensed under the symbol "L." While the distiller may also take out a rectifier's license and a wholesaler's license, and a rectifier may take out a wholesaler's license, no class of manufacturers or dealers is permitted to do business in the other class without qualifying in the class in which that business is ordinarily conducted. Besides the Federal regulations, there are elaborate State regulations requiring additional State licenses.

Many distillers do business under the name of distillers. Some have the words "distiller" or "distilleries" or "distilling" in their corporate names and others advertise themselves as distillers or are known as distillers. The words "distillers," "distillery," "distilling," or "distilleries" in the whiskey trade for a long period of time have definitely signified the true distilling process of manufacturing whiskey from fermented mash. Distillers who are also rectifiers bottle their goods and come into competition with dealers doing business such as is conducted by respondent. They also come into competition with rectifiers in the sale of straight whiskies bottled in warehouses. A distiller who also operates a rectifying plant, having both kinds of permits, may use either the "R" symbol or the "D" symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit. If spirits other than those of the distiller's distillation have been blended, rectified, and bottled in the distiller's rectifying plant, the label thereon will read "Blended and Bottled by -----  
----- Distilling Company," or simply "Bottled by  
----- Distilling Company," so that it is

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not possible to determine merely from the presence of the phrase "Blended and Bottled By," or the phrase "Bottled By" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller. There are many rectifiers, wholesalers, and jobbers selling in the same territories as respondent who do not have the words "distilling" or "distilleries" in their corporate names and do not use that designation in connection with their sales activities.

Knowledge of the foregoing details is not widespread among the retail trade and is very limited to the general public. Of course, the trade is more familiar with the exact situation than the buying public, but even the liquor tradesmen, particularly during the first year after repeal, did not know who were distillers and who were rectifiers, and were consequently quite susceptible to deception in that respect.

Rectifying of alcoholic products, as hereinabove indicated, including the rectifying of whiskey, like the distilling of alcoholic products, is done under strict Government supervision and under Government license. Ordinarily it requires a less extensive plant and a smaller investment. In the distilling process the distillery must be entirely separate and distinct from all other buildings. In connection with the distillery there must be provided a bonded warehouse in an entirely separate building. Bonds, as a rule, guaranteeing taxes in the distillery business are much larger than in the rectifying business, and in the rectifying business the processes may be all conducted in one building. The reception or storage tank may be in one building. In practice, very limited space is required by the small rectifiers.

The words "distiller," "distillers," "distilling," and "distilleries," used in the corporate names of concerns which are rectifiers and wholesalers, in fact confer a distinct advantage to the concerns using them or one of them in the sale of their products to dealers and in the sale by dealers to consumers. The whole record in this case supports this statement, with scarcely an exception.

It appears from this record that in the sale of its products, the use by respondent of the word "Distilling" in its corporate name, gave it an unfair competitive advantage over a rectifier who did not use the word "Distilling" or any other word connoting a distilling process in its corporate name or otherwise. Some of the labels of respondent unqualifiedly implied that respondent was a distiller. The aforesaid use by respondent of the word "Distilling" was of a potentially deceptive character, since respondent does not now and never did own, operate or control any place or places where spirituous bever-

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ages are manufactured by a process of original and continuous distillation from mash, wort or wash, or other raw materials. By such potentially deceptive name respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and jobbers and the ultimate consuming public that it was a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of original distillation from raw materials. Such representations are untrue.

PAR. 5. The aforesaid representations by respondent had the capacity and tendency to, and did, mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins and other alcoholic beverages sold by respondent were manufactured or distilled by it from mash, wort or wash by one continuous process; and such representations had the capacity and tendency to, and did, induce dealers and the purchasing public, acting in such beliefs to purchase the whiskies, gins, and other alcoholic beverages so labeled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names, or in any other manner misrepresent that they are distillers, and thereby respondent did substantial injury to substantial competition in interstate commerce.

No assurance is in sight that respondent, if not prohibited, would not resume and continue its former acts and practices as hereinbefore set out.

## CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, were to the prejudice of the public, and respondent's competitors, and were 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, testimony and evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint, no testimony having been offered in opposition thereto, brief filed herein by PGad B. Morehouse, counsel for the Commission, and respondent's brief and oral arguments of both counsel having been waived, and the Commission

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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 ordered*, That Morgen Distilling Corporation, its agents, salesmen, and employees in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages do forthwith cease and desist from:

Representing, through the use of the word "Distilling" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, cordials, or any other spirituous beverages; or (b) that the said whiskies, cordials, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

*It is further ordered*, That the aforesaid complaint be, and the same is hereby, dismissed as to count two thereof.

*It is further ordered*, That the said respondent within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports 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  
ESBECO DISTILLING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2428. Complaint, June 6, 1935—Decision, July 6, 1936*

Where a corporation engaged in the purchase of whiskies, brandies, and gins from distillers, and in rectifying, bottling, and selling same to wholesalers and retailers in the several States, and doing no distilling prior to its one year lease of two distilleries, nor theretofore operator, nor owner, of any still other than one purchased for production of gin by redistillation of purchased alcohol, nor applicant for permit to produce distilled spirits, which it purchased in bulk from distillers—

Displayed on labels of alcoholic beverages sold by it prior thereto, its corporate name and word "Distilling," as included therein, in larger type than phrase "Bottled by" or "Blended and Bottled by," which, as case might be, followed in type of considerably smaller size, and conspicuously displayed said name in its advertising and on its business letterheads, and there represented itself as "Producers of Fine Whiskies," as well as "Rectifiers and Wholesale Liquor Dealers," and sold its bottled liquors, thus labeled, and rectified, blended, or bottled by it, to its jobber and dealer customers in competition with distillers and rectifiers who do not, through use of such words as "Distilling," "Distiller," or "Distilleries" as a part of their corporate or trade names, misrepresent their status to the wholesale and retail trade, and to ultimate purchasing public, to which word "Distilling" has long definitely signified manufacture of liquor by process of original distillation from raw materials, and on the part of a substantial portion of which public there is a preference for the purchase of liquor prepared and bottled by the actual distillers thereof;

With effect of misleading and deceiving dealers and purchasing public into belief that it was a distiller, plant and operations of which, ordinarily, are more extensive and costly than the rectifier's, and that the whiskies, etc., sold by it were made by it through process of original distillation as aforesaid, and of inducing them in such belief to purchase such whiskies, etc., and thereby divert trade to it from its competitors who do not, through their corporate or trade names or in any other manner, misrepresent themselves as manufacturers by original distillation, as above set forth, of their beverages, to the substantial injury of substantial competition in commerce, and with effect, through such potentially deceptive name, of representing to its customers and furnishing them with a means of representing to their retailer and jobber vendees and the ultimate consuming public, that it was a distiller and that said whiskies, etc., thus containered and labeled, were made by it through process of original distillation:

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

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

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Fred A. Caskey*, of Washington, D. C., and *Mr. Lawrence A. Jacobson*, of Chicago, Ill., for respondent.

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## COMPLAINT

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, having reason to believe that Esbeco Distilling Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Delaware and doing business under the laws of the State of Connecticut, with its principal office in the city of Wilmington, State of Delaware, and principal place of business in the city of Stamford, State of Connecticut. It is now, and for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Connecticut and some located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distilling" when used in connection with the liquor industry and the products thereof has



had and still has a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them, and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort or wash, as aforesaid, and is calculated to and has the ca-

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capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

## 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 June 6, 1935, issued, and on June 8, 1935, served its complaint in this proceeding upon respondent, Esbeco Distilling Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission, heretofore duly designated by it, and in defense of the allegations of the complaint by Lawrence A. Jacobson, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Esbeco Distilling Corporation is a rectifier, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 25 Jefferson Street in the city of Stamford, State of Connecticut. It was organized originally March 24, 1933, under the name of Esbeco Beverage Co., but on November 22, 1934, by an amendment to its corporate charter, changed to its present name. It has a capital stock of \$5,000 divided into shares of \$1 each. It is now, and since its organization has been, engaged in the business of purchasing whiskies, brandies, and gins from distilleries in Kentucky and other States and, after rectifying and bottling them, selling them to wholesalers and retailers located in the several States of the United States, including Connecticut, New York, New Jersey, Kentucky, and North Carolina, in the approximate volumes of 4,000 or 5,000 gallons a month as of about January 1935. Its business is a growing one. Respondent sells liquors only in the form of straight whiskies or blends of straight whiskies and it buys its gin already bottled and labels it afterwards. Its gin trade is comparatively small. It now conducts, and has conducted, this business under a basic permit from the Federal Alcohol Administration designated as "Permit No. R-37," issued "subject to compliance with all State and Federal laws."

Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol). Since its organization in April 1933, respondent has continuously been engaged in the aforesaid business.

Respondent had not up to the time of the hearings in this proceeding, to-wit, December 4, 1935, used any still or stills. A short time before that date it had acquired one, but had not used it. This still was an ordinary gin still with a capacity of about 300 gallons per year to be used for the redistillation of alcohol, purchased but not produced by respondent, over juniper berries and other aromatics for the production of gin. No distilling had been done in respondent's establishment up to the time of the hearings. Respondent had three processing tanks and three bottling tanks with complete bottling facilities and the other equipment ordinarily incident to the distilled spirits rectifying industry.

After proceedings in this case were commenced and shortly prior to the time of the hearings, respondent had entered into negotiations for the lease by it of two distilleries, one in Kentucky and another

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in Maryland, whereby respondent for a period of one year will control and operate said distilleries at least one day a month and under which leases respondent is required to take 200 barrels per month of said distilled spirits. This amounts to a substantial part, if not practically all, of respondent's present distilled spirits requirements.

It is a common practice in the liquor industry for a distillery to be leased for a certain number of days' run per month in this manner. When this is done the lessee actually controls and operates said distillery during those days; the name of the owner of the distillery, which is required by law to be posted conspicuously at the front of the premises, comes down and the name of the lessee goes up. During the period of said lease the distillery is operated under the full control and at the direction of the lessee under the lessee's distiller's bond, approved by the Alcohol Tax Unit, and upon the lessee's full responsibility, and the specific whiskey distilled upon that day or days belongs to the lessee and is stored in barrels bearing the lessee's name. Also, before the lease can commence operations, a basic distiller's permit has to be obtained from the Federal Alcohol Administration. Pursuant to this understanding respondent has obtained in due course two distiller's basic permits, one "D-702" dated February 27, 1936, and another "D-703" dated March 5, 1936, covering respectively operations in the aforesaid two distilleries. The leases in question are for one year, but may be renewed or abandoned. Respondent is now bottling distilled spirits produced in the aforesaid manner under such leases and said actual operation of leased runs of said distilleries was commenced subsequent to the closing of the taking of testimony in this case.

Other than as hereinabove indicated, respondent never applied for a distiller's permit, was never authorized by the Government to produce any distilled spirits from the grain, never distilled and never owned a still, but has purchased all of its distilled spirits requirements in bulk from distillers and rectified and then blended or bottled such spirits for resale in bottles under its own brand names, and in about nine-tenths of the cases, under the names and brands of its customers who are wholesalers, jobbers, or retailers.

The alcoholic beverages so sold by respondent are sold in bottles, the labels on which contain the words "Distilling" as a part of its corporate name. The name "Esbeco Distilling Corporation," in larger type, is preceded by the phrase "Bottled by" or "Blended and Bottled by," as the case may be, such phrases appearing in type of a considerably smaller size, but which type is perfectly legible upon examination. On the respondent's business letterheads respondent corporation is represented as "Producers of Fine Whiskies," as well as "Rectifiers and Wholesale Liquor Dealers."

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When sold, respondent ships its bottled liquors so labeled which it has rectified or blended or simply bottled, to its jobber and dealer customers from its principal place of business aforesaid into and through various States of the United States to the purchasers thereof, located in States of the United States other than the State of New Jersey, in competition with distillers and rectifiers likewise engaged in the regular course of business in the sale of whiskies, brandies, rum, gin, cordials, and other spirituous beverages in commerce among the several States and the evidence shows that respondent's bottled liquors are offered for resale and sold by its said customers, both to retailers and the consuming public in States and territories co-extensive with the territories in which its competitors likewise offer spirituous beverages for sale to jobbers, retailers, and the consuming public. The Commission finds that respondent is in competition in interstate commerce with actual distillers and also with other rectifiers who do not, by the use of such words as "distilling," "distiller" or "distilleries," as a part of their corporate or trade names, misrepresent their status to the trade.

PAR. 2. For a long period of time the word "distilling" when used in connection with the liquor industry and the products thereof, has had and still has, a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit: the manufacturing of such liquors by a process of original distillation from raw materials.

The record contains the testimony of approximately 50 members of the public whose names were obtained from the classified section of telephone directories, including dentists, engineers, real estate men, public accountants, bond brokers, physicians, inspectors, and promoters. This testimony shows that the word "Distilling," when used in connection with the distilled spirits or whiskey industry, signifies to them the manufacture of spirits from raw materials. Practically without exception, each of these members of the public, not only expressed a definite preference to buy packaged goods bottled by a distiller, but gave reasons which appeared to them to justify such preference.

The Commission therefore finds that a substantial portion of the purchasing public prefer to purchase spirituous liquors which have been prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, and prior to the time when under its distillery leases as aforesaid the respondent began to produce its own distilled spirits requirements in a distillery by it for that purpose controlled, respondent's use of the word "distilling" as a part of its corporate name conspicuously printed on its stationery, advertising, and on the labels attached to the bottles

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in which it sold and shipped its said liquors, had the capacity and tendency to, and did, mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent were by it manufactured through the process of original distillation from raw materials as aforesaid and such use of the word "Distilling" had the capacity and tendency to, and did, induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who did not then and do not now, by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by original distillation from raw materials of the whiskies, gins, and other alcoholic beverages by them sold, and thereby respondent did substantial injury to substantial competition in interstate commerce.

PAR. 4. Activities in connection with the manufacture and sale of alcoholic beverages are divided among several classes of manufacturers, processors, and dealers. The initial process of manufacturing is in the hands of distillers. In the case of whiskey, these distillers manufacture their products by the distillation of fermented grain mash, which produces at lower temperatures of distillation the product called whiskey. This whiskey contains certain esters or flavoring elements, and also some ingredients which it is necessary to eliminate before the whiskey is entirely potable. After the distillation process has been completed, the whiskey is placed in wooden barrels, charred on the inside, and stored in bonded warehouses, which are separate and distinct from the distillery, being located in a different and separate building. The whiskey thus distilled is usually held for an aging process, which removes certain undesirable elements from the product by absorption or other elimination, by means of the charred wood on the inside of the container. After it is considered fit for market, it may be sold by the distiller in bulk to rectifiers, or the rectifiers may acquire the bulk whiskey by buying bonded warehouse certificates. After the Government tax has been paid on the product it may be transferred to tanks in rectifying establishments, and there the whiskey may be bottled and labeled. Distillers are permitted to bottle "Straight Whiskey" in the warehouse and to sell the bottled goods to wholesalers. Distillers may have rectifying plants, separate from the distillery and warehouse, operated under a rectifier license. It is then ready for sale in wholesale and retail channels of trade and may be sold by rectifiers to wholesalers and retailers or it may be sold by rectifiers only to wholesalers, and the wholesalers may in turn make sales to retailers. These retailers include package goods stores and proprie-

tors of drinking places, where the liquor is sold by the glass to consumers.

Each distiller operates under a specific Federal license carrying the symbol "D" with a number, indicating the designation of his license to do a distilling business. The rectifier operates under a license designated by the symbol "R" with a number, which indicates the designation of his license to do business as a rectifier. The wholesaler does business under a wholesaler's license with the symbol "L. L." and a number, indicating the designation of his license. The retail dealer is licensed under the symbol "L." While the distiller may also take out a rectifier's license and a wholesaler's license, and a rectifier may take out a wholesaler's license, no class of manufacturers or dealers is permitted to do business in the other class without qualifying in the class in which that business is ordinarily conducted. Besides the Federal regulations, there are elaborate State regulations requiring additional State licenses.

Many distillers do business under the name of distillers. Some have the words "distiller," or "distilleries," or "distilling" in their corporate names and others advertise themselves as distillers or are known as distillers. The words "distillers," "distillery," "distilling," or "distilleries" in the whiskey trade for a long period of time have definitely signified the true distilling process of manufacturing whiskey from fermented mash. Distillers who are also rectifiers bottle their goods and come into competition with dealers doing business such as is conducted by respondent. They also come into competition with rectifiers in the sale of straight whiskies, bottled in warehouses. A distiller who also operates a rectifying plant, having both kinds of permits, may use either the "R" symbol or the "D" symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit. If spirits other than those of the distiller's distillation have been blended, rectified, and bottled in the distiller's rectifying plant, the label thereon will read "Blended and Bottled by----- Distilling Company", or simply "Bottled by----- Distilling Company", so that it is not possible to determine merely from the presence of the phrase "Blended and Bottled By", or the phrase "Bottled By" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller. There are many rectifiers, wholesalers, and jobbers selling in the same territories as respondent who do not have the words "distilling" or "distilleries" in their corporate names and do not use that designation in connection with their sales activities.

Rectifying of alcoholic products, as hereinabove indicated, including the rectifying of whiskey, like the distilling of alcoholic prod-

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ucts, is done under strict Government supervision and under Government license. Ordinarily it requires a less extensive plant and a smaller investment. In the distilling process the distillery must be entirely separate and distinct from all other buildings. In connection with the distillery there must be provided a bonded warehouse in an entirely separate building. Bonds, as a rule, guaranteeing taxes in the distillery business are much larger than in the rectifying business, and in the rectifying business the processes may be all conducted in one building. The reception or storage tank may be in one building. In practice, very limited space is required by the small rectifiers.

The words "distiller," "distillers," "distilling," and "distilleries," used in the corporate names of concerns which are rectifiers and wholesalers, in fact confer a distinct advantage to the concerns using them or one of them in the sale of their products to dealers and in the sale by dealers to consumers. The whole record in this case supports this statement, with scarcely an exception.

It appears from this record that in the sale of its products, the use by respondent of the word "Distilling" in its corporate name, gave it an unfair competitive advantage over a rectifier not using the word "Distilling" or any other word connoting a distilling process in its corporate name or otherwise. Some of the labels of respondent unqualifiedly implied that respondent was a distiller. The aforesaid use by respondent of the word "Distilling" was of a potentially deceptive character, since prior to 1936 respondent did not own, operate, or control any place or places where spirituous beverages were manufactured by a process of original and continuous distillation from mash, wort or wash, or other raw materials. By such potentially deceptive name respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and jobbers and the ultimate consuming public that it was a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of original distillation from raw materials. Such representations were untrue.

PAR. 5. The aforesaid representations by respondent had the capacity and tendency to, and did, mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins, and other alcoholic beverages sold by respondent were manufactured or distilled by it from mash, wort, or wash by one continuous process; and such representations had the capacity and tendency to, and did, induce dealers and the purchasing public, acting in such beliefs to purchase the whiskies, gins, and other alcoholic beverages so labeled and sold by the respondent, thereby



diverting trade to respondent from its competitors who did not then, and do not now, by their corporate or trade names, or in any other manner misrepresent that they are distillers, and thereby respondent did substantial injury to substantial competition in interstate commerce. The Commission finds that this respondent has been using unfair methods of competition in commerce. The fact that subsequent to the closing of testimony in this case respondent began to produce a substantial part of its distilled spirits requirements under one day a month leased run of two distilleries for a period of one year and under distillers permits constitutes no assurance that unless prohibited from so doing, respondent may not, upon or before the expiration of said leases, resume the foregoing acts and practices.

#### CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, were to the prejudice of the public, and respondent's competitors, and were unfair methods of competition in interstate commerce, constituting 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, testimony and evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it in support of the charges of said complaint, no testimony having been offered in opposition thereto, brief filed herein by PGad B. Morehouse, counsel for the Commission, and by Lawrence A. Jacobson, counsel for respondent, oral arguments of both counsel having been waived, 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 ordered*, That Esbeco Distilling Corporation, its agents, salesmen, and employees in connection with the offering for sale or sale by it in interstate commerce of whiskies, gins, and other spirituous beverages do forthwith cease and desist from:

Representing, through the use of the word "Distilling" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a dis-

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tiller of whiskies, cordials, or any other spirituous beverages; or (b) that the said whiskies, cordials, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

*It is further ordered,* That the said respondent within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports 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  
DR. S. B. HEININGER

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

*Docket 2683. Complaint, Jan. 10, 1936—Decision, July 6, 1936*

Where an individual engaged in the manufacture of sets of false teeth from impressions made by the laity of their own teeth and gums with material sent them by him for such purpose, and in the sale and shipment by mail to purchasers of such dental plates, in competition with numerous prosthetic dentists and with laboratories engaged in the manufacture and distribution of dentures; in advertising his said products in rural newspapers and in periodicals of interstate circulation reaching, in the main, readers in rural communities and small towns, and through other advertising media—

- (a) Represented that purchasers could make as correct impressions of their own teeth and gums as members of the dental profession, through such statements as "I have thousands of satisfied customers all over the country," etc., "I have been making dental plates that really fit for many years by mail," "My system has been so perfected that I have not the slightest doubt I am able to make you a satisfactory set of teeth";
- (b) Represented that from impressions sent to him as aforesaid he could make sets of artificial teeth which would give full power of mastication and look and feel better than wearer's own teeth, through such statements as "Enable you to chew your food properly and improve your health," "My plates look and feel even better than your own teeth," "Will \* \* \* give to the wearer full power of mastication," and "Your teeth will look as natural as your own. Nature could hardly do more"; and
- (c) Represented that his aforesaid artificial teeth fit as well and are as comfortable as those made in the usual way, through such statements as "I am pioneer in this country in making teeth in this fashion and my methods have been so satisfactory that I believe I am able to give you better fitting and more comfortable teeth than you can get any other way," "In spite of lower income you can be wearing the finest there is in dental plates," "You cannot buy better plates anywhere;"

The facts being that technical difficulties are such that it is ordinarily impossible for a dentist or dental laboratory, from an impression taken by a layman of his own teeth and gums, to make a denture that will give full power of mastication, look and feel better than the wearer's own teeth, or fit as well and be as comfortable as those made in the usual way by members of the dental profession;

With capacity and tendency to lead purchasers and prospective purchasers into accepting aforesaid representations as true, and with effect of inducing them to purchase his said dentures in such erroneous belief, to their consequent injury, and of unfairly diverting trade to said individual from competitors, among whom there are thousands of prosthetic dentists and many dental laboratories who do not misrepresent their products or that they can achieve results such as claimed by him; to the substantial injury of substantial competition in commerce:

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*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.

Before *Mr. Joseph A. Simpson*, trial examiner.

*Mr. Joseph C. Fehr* for the Commission.

*Shipman, Barrett, Henehan & Pinkowski*, of Chicago, Ill., for respondent.

## COMPLAINT

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, having reason to believe that Dr. S. B. Heininger, an individual, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dr. S. B. Heininger, is an individual with his laboratory and principal place of business located at the city of Chicago, in the State of Illinois. He is now, and, for more than 1 year last past, has been engaged in the manufacture of dental plates and in the sale and distribution of dental plates in commerce, between and among various States of the United States; causing said products, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of his business, respondent, Dr. S. B. Heininger, is now and has been at all times hereinafter mentioned in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution, in interstate commerce, of similar products.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent causes and has caused the following statements and representations to be published as advertisements in newspapers, and other advertising matter, circulars, form letters, price lists, and other forms of advertising mediums:

## FALSE TEETH

## AT LOWEST PRICES

## SEE ABOUT MY TEETH BEFORE ORDERING ELSEWHERE

I have been making dental plates by mail for many years. I have thousands of satisfied customers all over the country. My methods insure satisfaction, and SAVE YOU MANY DOLLARS as well. Why pay more than my prices?

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## ALMOST LIKE YOUR OWN TEETH

My dental plates are good-looking and durable. They're made with natural-looking pearly white porcelain teeth. They're guaranteed unbreakable. Fit well. Improve your appearance. Make you look years younger. Enable you to chew your food properly and improve your health. Impression material and directions given free. \* \* \* Don't delay. Write TO-DAY for my prices and complete information.

Dr. Heininger

440 Huron Street, Dept. 39-1, Chicago, Ill.

## FALSE TEETH

## 60 DAYS' TRIAL

Thousands of my satisfied customers all over the country know there is no need to pay big prices. I have been making dental plates that really fit for many years, by mail, and I have saved my customers thousands of dollars. Besides, I guarantee you satisfaction or they do not cost you one cent, and I take your word. Teeth made especially for you personally can be tried for sixty days.

## SEND NO MONEY

My plates look and feel even better than your own teeth. They are very beautiful to look at and are constructed to give life-long service and satisfaction. You can look years younger at once. They are made with natural-looking pearly white genuine porcelain teeth. Well fitting and FREE guaranteed unbreakable. Remember, you do not send one cent with coupon—just your name and address, and we send free impression material and full detailed directions. Be sure to write today for my low prices and complete information. Don't put this off. Do it today. Just mail coupon.

I have been making artificial teeth for ten years and have been devoting my entire time to constructing teeth for people who have not the means or convenience to personally visit a dentist. My system has been so perfected that I have not the slightest doubt I am able to make you a satisfactory set of teeth. I am a pioneer in this country in making teeth in this fashion and my methods have been so satisfactory that I believe I am able to give you better fitting and more comfortable teeth than you can get any other way, and besides I can save you as much as \$50.00.

It is needless for me to tell you that good teeth are a priceless possession. Without them you cannot possibly get the full enjoyment out of life. A toothless mouth or defective teeth place you under a constant feeling of embarrassment among your friends or in public. Your face and mouth become shrunken and wrinkled and you look years beyond your true age. Get a set of my guaranteed teeth and look years younger at once. You will be surprised at the improvement in your appearance. More important than all this is the fact that your health is bound to become jeopardized by the improper mastication of your food.

Those who have been so unfortunate as to lose their natural teeth face a serious problem in life. That problem is to get artificial teeth or dental plates that will restore the functions of mastication; restore the loss of facial contour, and plates that can be worn with ease and comfort, and satisfactorily perform all the functions of mastication and the natural teeth \* \* \*.

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No two people have the same size, shape, and character of the mouth. Therefore, it takes a special kit for each individual to make an accurate impression of his or her gums. Now the first step in my system is to obtain the size and shape of the mouth. This I do by sending you a material to bite into, thereby giving me a combination impression and a bite. However, with this first impression I am unable to make a set of teeth that will fit correctly. So from it I start constructing the plate, and in the meantime, I send you another material conformed to the exact size of the mouth and held in a small metal tray to fit. This will have the original impression of your gums where you left off from the first trial, so that you will not be able to make a mistake. This second trial makes it possible for you to make an accurate impression of your gums in detail (from which I finish the plate) \* \* \*.

I want you to be convinced that I can make you plates that fit; plates that will last a lifetime, plates that improve your appearance, and plates that can be worn with ease and comfort. Let me save you more than \$50.00 on your dental plates.

\* \* \* will restore one's facial expression, give to the wearer full power of mastication \* \* \* In spite of lower income you can be wearing the finest there is in dental plates.

You cannot buy better plates anywhere.

Your teeth will look as natural as your own. Nature could hardly do more.

PAR. 3. In truth and in fact, the technical difficulties of the work are such that it is impossible for a layman to take a correct impression of his own teeth and gums, or for a dentist to make from such impression teeth that will give full power of mastication, restore the natural facial expression, restore the loss of facial contour, look and feel better than the wearer's own teeth, or enable the purchaser to wear them with ease and comfort.

The statements and representations made by the respondent as set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the beliefs that:

(a) Purchasers can make correct impressions of their own teeth and gums;

(b) From such impressions respondent can make artificial teeth which will give full power of mastication, restore the natural facial expression, restore the loss of facial contour, look and feel better than the wearer's own teeth, or enable the purchaser to wear them with ease and comfort.

(c) Purchasers can secure from him artificial teeth comparable in appearance, fit, comfort, or durability with those made in the usual way by members of the dental profession;  
and to purchase respondent's products in such erroneous beliefs.

PAR. 4. There are among the competitors mentioned in paragraph 1 hereof, individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution of dental plates

who truthfully advertise their aforesaid products, and who do not represent:

That purchasers can make correct impressions of their own teeth and gums;

That from such impressions said competitors can make artificial teeth which will give full power of mastication, restore the natural facial expression, restore the loss of facial contour, look and feel better than the wearer's own teeth, or enable the purchaser to wear them with ease and comfort.

That purchasers can secure from them artificial teeth comparable in appearance, fit, comfort or durability with those made in the usual way by members of the dental profession.

By the representations of the respondent set forth in paragraph 2 hereof, trade is diverted by respondent from such competitors and thereby substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraph 3 hereof and to purchase respondent's product in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce and as a consequence thereof substantial injury is done by respondent to substantial competition in interstate commerce.

Said acts and practices of respondent are all to the prejudice of the public and 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.

#### 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 the 10th day of January A. D., 1936, issued and served its complaint in this proceeding upon respondent, Dr. S. B. Heininger, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer thereto, a stipulation as to the facts was entered into by and between the respondent and W. T. Kelley, chief counsel for the Commission, which said stipulation is hereby approved by the Commission, and in and by which stipulation it was agreed that the statement of facts contained therein might be taken

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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 in which stipulation it was provided that the Commission might proceed upon said statement of facts to make its report, its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Dr. S. B. Heininger, is an individual with his laboratory and principal place of business located at 440 West Huron St., in the city of Chicago, in the State of Illinois. He is now and for more than 1 year last past has been engaged in the manufacture of sets of false teeth and in the sale and distribution of said sets of false teeth in commerce between and among the various States of the United States.

Respondent was graduated from the Northwestern University Dental School in 1924 and was soon after licensed to practice dentistry in the State of Illinois. He practiced his profession of dentistry in a dental office which he operated at 2851 Belmont Ave., in the city of Chicago, in the State of Illinois. On or about April 1, 1926, respondent conceived the plan of having the laity take impressions of their own teeth and gums by way of two impression materials made of wax sent by him to purchasers or prospective purchasers and, upon the return to him of such impressions, making dental plates therefrom and selling and shipping the same by mail to the persons for whom such dental plates were made. To carry out this plan, respondent opened and operated a dental laboratory at 440 West Huron St., in the city of Chicago, in the State of Illinois.

On or about February 1, 1935, respondent's laboratory business became so extensive that he finally turned over his private dental practice and office to an associate. Respondent has since devoted all his time to the manufacture of dental plates, more particularly referred to among the dental profession as dentures. In his business as a manufacturer of dentures, respondent has at times employed as many as 17 persons as laboratory and office assistants, and he makes and has made as many as 40 dentures a day, all of which he causes when sold to be shipped from his said place of business in the city of Chicago, in the State of Illinois, to purchasers thereof located in a State or States of the United States other than the State of Illinois.



Respondent is now and has been at all times hereinafter mentioned in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution in interstate commerce of dentures and similar articles. Besides numerous prosthetic dentists, there are among such competitors many dental laboratories likewise engaged in the manufacture and distribution of dentures, among which are: Standard Dental Laboratory, Ehrhardt & Co., and American Dental Co., all three of which are located in the city of Chicago, in the State of Illinois.

PAR. 2. In the course and conduct of his business, as above described, respondent advertises his dentures by means of advertisements published in rural newspapers and magazines such as "The Gentlewoman," "Southern Farmer," "Texas Grower," "Mother's Home Life" and "The Household Guest," and other magazines and periodicals having interstate circulation which, in the main, reach readers in rural communities and small towns, and through other forms of advertising media. Typical of such published advertisements are the following:

**FALSE TEETH  
AT LOWEST PRICES**

**SEE ABOUT MY TEETH BEFORE ORDERING ELSEWHERE**

\* \* \* I have thousands of satisfied customers all over the country. My methods insure satisfaction and **SAVE YOU MANY DOLLARS** as well. Why pay more than my prices?

**ALMOST LIKE YOUR OWN TEETH**

\* \* \* They're guaranteed unbreakable. Fit well. Improve your appearance. Make you look years younger. Enable you to chew your food properly and improve your health. Impression material and directions given free.  
\* \* \* Don't delay. Write **TO-DAY** for my prices and complete information.

Dr. Heininger

440 Huron Street, Dept. 39-1, Chicago, Ill.

**FALSE TEETH**

**60 DAYS' TRIAL**

Thousands of my satisfied customers all over the country know there is no need to pay big prices. I have been making dental plates that really fit for many years, by mail, and I have saved my customers thousands of dollars. Besides, I guarantee you satisfaction or they do not cost you one cent and I take your word. Teeth made especially for you personally can be tried for 60 days.

**SEND NO MONEY**

My plates look and feel even better than your own teeth. They are very beautiful to look at and are constructed to give life-long service and satisfaction. You can look years younger at once. \* \* \* Well fitting and **FREE** guaran-

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teed unbreakable. Remember, you do not send one cent with coupon—just your name and address, and we send free impression material and full detailed directions. \* \* \*

In his circular letter the respondent makes the following representations:

\* \* \* My system has been so perfected that I have not the slightest doubt I am able to make you a satisfactory set of teeth. I am pioneer in this country in making teeth in this fashion and my methods have been so satisfactory that I believe I am able to give you better fitting and more comfortable teeth than you can get any other way and besides I can save you as much as \$50.00.

\* \* \* Get a set of my guaranteed teeth and look years younger at once. You will be surprised at the improvement in your appearance. \* \* \*

No two people have the same size, shape, and character of the mouth. Therefore, it takes a special kit for each individual to make an accurate impression of his or her gums. Now, the first step in my system is to obtain the size and shape of the mouth. This I do by sending you a material to bite into thereby giving me a combination impression and a bite. However, with this first impression I am unable to make a set of teeth that will fit correctly. So from it I start constructing the plate, and in the meantime, I send you another material conformed to the exact size of the mouth and held in a small metal tray to fit. This will have the original impression of your gums where you left off from the first trial, so that you will not be able to make a mistake. This second trial makes it possible for you to make an accurate impression of your gums in detail (from which I finish the plate) \* \* \*.

I want you to be convinced that I can make you plates that fit, plates that will last a lifetime, plates that improve your appearance, and plates that can be worn with ease and comfort. Let me save you more than \$50.00 on your dental plates.

Respondent's price list contains the following statements:

\* \* \* will restore one's facial expression, give to the wearer full power of mastication. \* \* \* In spite of lower income you can be wearing the finest there is in dental plates.

You cannot buy better plates anywhere.

Your teeth will look as natural as your own. Nature could hardly do more.

When the respondent receives replies to his advertisements, he sends to each inquirer a circular letter, price list, directions for taking an impression of the said inquirer's gums, an order blank, a self-addressed envelope, and a piece of wax material. When the wax material containing the impression of the purchaser's or prospective purchaser's own gums and teeth is returned to the respondent with an order for a denture, the respondent reproduces said impression in another plastic, wax-like substance held in metal trays, which is then also sent to the customer in order to secure a more complete impression of said purchaser's or prospective purchaser's gums and teeth. This is the taking of the second impression of a purchaser's or prospective purchaser's gums and teeth, referred to in respondent's advertising literature. A contrivance is also used for determining the length of the purchaser's or prospective purchaser's teeth. When this second im-

pression of a purchaser's or prospective purchaser's own gums and teeth is returned to the respondent together with the contrivance for the lengthening of the teeth, the respondent then makes a set of dentures, which said dentures are then shipped C. O. D. to the customer for whom they have been made.

Respondent's method of selling the dentures which he advertises, as above set forth, is to send said dentures to purchasers or prospective purchasers and to allow such purchasers or prospective purchasers a 60-day trial period, after which they may, if dissatisfied, return the dentures and receive a refund.

PAR. 3. The statements and representations made by the respondent as set forth in paragraph 2 hereof have the capacity and tendency to lead purchasers and prospective purchasers into the belief that:

(a) Purchasers can make as correct impressions of their own teeth and gums as members of the dental profession;

(b) From such impressions respondent can make artificial teeth which will give full power of mastication, and look and feel better than the wearer's own teeth;

(c) Purchasers can secure from him artificial teeth that fit as well and are as comfortable as those made in the usual way by members of the dental profession;

and to purchase respondent's products in such belief.

The technical difficulties of the work of a dentist specializing in the field of prosthetic dentistry and the making of dentures are such that it is ordinarily impossible for a dentist or dental laboratory to make from an impression taken by a layman of his own teeth and gums a denture that will give full power of mastication, that will look and feel better than the wearer's own teeth or that fit as well and are as comfortable as those made in the usual way by members of the dental profession.

PAR. 4. There are and have been among the competitors of respondent thousands of prosthetic dentists, and many dental laboratories making dentures upon order from dentists only, otherwise known as dental plates and false teeth, similar to those made and sold by the respondent, who do not misrepresent their products and who do not represent that said products have the merits and the capacity to achieve results such as the respondent herein claims for his dentures, as above described.

PAR. 5. Each and all of the representations of the respondent, as set forth in paragraph 3 hereof, have had and do have the tendency to mislead and deceive the purchasing public into the erroneous belief that said representations are true and have induced and do induce members of the public to purchase respondent's dentures in the erroneous belief that said representations are true, to the consequent damage

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and injury of the public, and said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

## CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent 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

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 against the respondent herein, Dr. S. B. Heininger, an individual with his principal place of business in the city of Chicago, in the State of Illinois, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. Thereafter the said respondent filed his answer to the charges contained in the said complaint and subsequent thereto on, to wit, the 29th day of June 1936, a stipulation as to the facts was entered into between the chief counsel of the Federal Trade Commission and the respondent herein, subject to the approval of the Federal Trade Commission, in and by which stipulation it was agreed that the statement of facts therein stipulated might be taken as the facts in this proceeding in lieu of testimony, in support of the charges stated in the said complaint or in opposition thereto; and in and by which stipulation it was agreed that the Commission might proceed upon said stipulation of facts to make its report stating its findings as to the facts (including inferences which it might draw from the said stipulation as to the facts) and its conclusion based thereon, and its order disposing of this proceeding without the presentation of argument or the filing of briefs; and the Commission having accepted and approved the said stipulation as to the facts and 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."

*Now, therefore, it is hereby ordered,* That said respondent, Dr. S. B. Heininger, his officers, agents, servants, and employees in the sale and offering for sale by him in interstate commerce and in the District of Columbia of dental plates, false teeth, and similar products, forthwith cease and desist from—

Representing in newspapers and magazines and through circulars, catalogs, labels, or in any other form of printed matter or by radio broadcasting, or in any other way or manner:

(1) That purchasers or prospective purchasers of respondent's artificial teeth can make as correct impressions of their own teeth and gums as members of the dental profession;

(2) That from impressions made by purchasers or prospective purchasers of their own teeth and gums respondent can make artificial teeth that will give full power of mastication;

(3) That artificial teeth sold or offered for sale by respondent and made by him from impressions made by such purchasers and prospective purchasers of their own teeth and gums will look and feel better than the wearer's own teeth;

(4) That purchasers or prospective purchasers can secure from respondent artificial teeth that fit as well and are as comfortable as those made in the usual way by members of the dental profession; and for making any other representations of similar tenor or import.

*And it is hereby further ordered,* That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it shall have complied with this order.

IN THE MATTER OF  
HOLLYWOOD MASK, INC.

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

*Docket 2759. Complaint, Apr. 10, 1936—Decision, July 6, 1936*

Where a corporation engaged in the sale of cosmetic preparations and in mailing or shipping its merchandise to purchasers in various other States, in substantial competition with other similar concerns—

- (a) Represented, through pamphlets, circulars, and other advertisements and through labels attached to containers, that its products possessed ingredients of such character and in such quantity as to serve as food for the skin and muscles, had a beneficial effect in filling out and tightening the lines of broken tissues, served to restore elasticity to the skin, and muscles and to fill out hollows therein, removed wrinkles and revitalized the skin, etc.; and
- (b) Set forth on labels of containers that its "Hollywood Vitamin Hand and Skin Lotion" was "rich in vitamins" and nourished impoverished skins, and that its Hollywood Creme was "Turtle Oil" and "a hormone tissue builder for tired skins," was "soothing" and "rejuvenating," and, left on over night, resulted in a soft, clear, and wrinkle-free skin;

Facts being said representations were grossly exaggerated, false, misleading, and untrue, and said products did not possess properties or contain ingredients that would remove or lessen lines or wrinkles, nourish the skin, penetrate beyond the epidermis so as to reach and beneficially affect muscles and tissues and inner layers of the skin;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true and that results claimed would follow use of said products, and with result that a substantial volume of its said products was purchased due to such representations, and trade was thereby unfairly diverted to it from those truthfully advertising their cosmetic products; to the substantial injury of substantial competition:

*Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. Wm. T. Chantland* for the Commission.

*Mr. Royal C. Johnson*, of Washington, D. C., and *Mr. Milo F. Lewis*, of Chicago, Ill., for respondent.

COMPLAINT

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, having reason to believe that Hollywood Mask, Inc., hereinafter referred to as "respondent," has been, and is now, using unfair methods of competition in commerce as "com-

merce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hollywood Mask, Inc., is an Illinois corporation, which has its principal office and place of business at 105 West Monroe Street in the city of Chicago, State of Illinois. Respondent is now, and has been for some time, engaged in the business of distributing and selling, in commerce as herein set out, a line of cosmetics.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said cosmetics, when sold, to be transported from its office and place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a constant current of trade in commerce in said cosmetics, manufactured, distributed, and sold by it, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling cosmetics and kindred preparations for treatment of the skin, in commerce, among and between the various States of the United States and in the District of Columbia. In the course and operation of said business, and for the purpose of inducing the purchase of said cosmetics, respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and has printed and circulated throughout the various States, to customers and prospective customers, advertising folders and literature. In all of its advertising literature, through statements and representations therein set out, and through statements and representations of similar import and effect displayed on the containers of said cosmetics, the respondent represents that said cosmetic preparations possess properties and ingredients of such character, and in such quantity, as to serve as a food for the human skin, muscles, or tissues; that said preparations have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues; that said preparations serve to restore elasticity to the human skin, muscles, or tissue, and fill out hollows therein; that said preparations eliminate dryness from, remove wrinkles, and revitalize the human skin, muscles, or tissue; and that the use of said preparations will have a beneficial effect in the treatment of the various conditions of

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the human skin, muscles, or tissue, above set out. Certain advertising matter used by the respondent in making said representations is herein set out as illustrative of said representations, but is not all inclusive. Such advertisements are as follows:

In advertisements and on cartons of its product "Hollywood Mask," it stated and represented:

Remove Wrinkles \* \* \* instead of worrying about them \* \* \* Hollywood Mask \* \* \* forms a thin, Transparent non-elastic film over the face which irons out ugly wrinkles and lines, removes blackheads and unsightly blemishes, and leaves the skin beautiful and velvety-smooth \* \* \*.

HOLLYWOOD MASK DEAL \$1.50 Value! The Marvelous Facial that Really Removes Wrinkles! Being a deep, penetrating skin beautifier, it strengthens and revitalizes under skin facial muscles. Lines and wrinkles smooth out. Restores youth to your skin \* \* \*.

On labels attached to the bottles in which its "Hollywood Vitamin Hand and Skin Lotion" was packed, the following appeared:

Rich in VITAMINS, it nourishes impoverished skins, imparting a Satin-like smoothness.

On labels attached to the jars in which its "Hollywood Mask Turtle Oil" was packed, the following appeared:

Smooth Hollywood Mask Turtle Oil Creme (8% turtle oil) into skin from throat line to temples with gentle upward and outward circular motion. Also pat gently around the eyes. Leave over night.

Apply Hollywood Mask Turtle Oil Creme, and leave it on over night, the skin will be soft, clear and wrinkle free.

On labels attached to the jars in which its "Hollywood Mask Tissue Creme" (Turtle Oil) was packed the following appeared:

Hollywood Tissue Creme (Turtle Oil), a hormone tissue builder for tired skins. Soothing, rejuvenating, free from borax, stearic acid, wax or mineral oil \* \* \*.

PAR. 4. The representations made by the respondent with respect to the nature and effect of said cosmetic products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said products do not possess properties or contain ingredients that will remove, lessen, or erase lines or wrinkles of the skin on the human face, or elsewhere on the body. Said cosmetic products do not nourish the skin, or the pores thereof, or penetrate the skin beyond the epidermis, or outer layer thereof, so as to reach the muscles and tissues, and said products do not possess properties or ingredients that beneficially affect the muscles, tissues, or layers of skin beneath the epidermis, and said muscles, tissues, and inner layers of skin are not nourished by said preparation or the ingredients thereof when externally applied.

PAR. 5. There are among respondent's competitors many who distribute and sell similar cosmetic products, designed, intended, and



sold for the purpose of treating the same or similar conditions of the human skin, tissues, and muscles, who do not in any way misrepresent the quality or character of their respective products, or their effectiveness in treating said conditions of the human skin, tissues, and muscles.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its product, or the effectiveness of said product in treating the human skin, tissues and muscles, as hereinabove set out, in its advertising in newspapers, booklets, pamphlets, labels, and other advertising literature, in the course of distributing its product, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondent will be obtained by the purchasers thereof upon the use of said products in the treatment of the various conditions named herein. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and representations of respondent, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's cosmetic products with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling cosmetic products, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondent to substantial competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

#### 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 10, 1936, issued and served its complaint in this proceeding upon respondent, Hollywood Mask, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, the respondent filed an amended and substituted

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answer thereto wherein and whereby it states that it desires to waive hearing on the charges set forth in the complaint, and not to contest the proceeding; that it admits all of the material allegations of the complaint to be true, and that without further evidence or other intervening procedure the Commission may make, issue, and serve upon respondent, findings of fact, and an order to cease and desist from the violations of law charged in the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hollywood Mask, Inc., has been engaged in the sale of cosmetic preparations, selling its merchandise in many States of the United States. When sold, the respondent mails or ships its merchandise from its place of business in Chicago, Ill., to purchasers located in the said State of Illinois and in various other States.

PAR. 2. For more than 2 years last past the respondent has been selling its merchandise in substantial competition with other business concerns selling similar merchandise at wholesale and retail in interstate commerce by circulars circulated throughout the United States, and by various other forms of advertising.

PAR. 3. The respondent, in soliciting the sale of and selling its merchandise in interstate commerce, has represented and does now represent in and by pamphlets, circulars, and other advertisements, circulated generally throughout the United States, and by labels attached to respondent's merchandise:

That said cosmetic preparations possess properties and ingredients of such character, and in such quantity, as to serve as a food for the human skin, muscles or tissues; that said preparations have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out and tightening the lines of broken tissues; that said preparations serve to restore elasticity to the human skin, muscles or tissue, and fill out hollows therein; that said preparations eliminate dryness from, remove wrinkles, and revitalize the human skin, muscles or tissue; and that the use of said preparations will have a beneficial effect in the treatment of the various conditions of the human skin, muscles or tissue, above set out.

That certain advertising matter used by the respondent in making said representations are as follows:

In advertisements and on cartons of its product "Hollywood Mask," it stated and represented:

Remove Wrinkles \* \* \* instead of worrying about them \* \* \* Hollywood Mask \* \* \* forms a thin, Transparent non-elastic film over the face

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which irons out ugly wrinkles and lines, removes blackheads and unsightly blemishes, and leaves the skin beautiful and velvety-smooth \* \* \*.

**HOLLYWOOD MASK DEAL \$1.50 Value!** The Marvelous Facial that Really Removes Wrinkles! Being a deep, penetrating skin beautifier, it strengthens and revitalizes under skin facial muscles. Lines and wrinkles smooth out. Restores youth to your skin \* \* \*.

On labels attached to the bottles in which its "Hollywood Vitamin Hand and Skin Lotion" was packed, the following appeared:

Rich in VITAMINS, it nourishes impoverished skins, imparting a Satin-like smoothness.

On labels attached to the jars in which its "Hollywood Mask Turtle Oil" was packed, the following appeared:

Smooth Hollywood Mask Turtle Oil Creme (8% turtle oil) into skin from throat line to temples with gentle upward and outward circular motion. Also pat gently around the eyes. Leave over night.

Apply Hollywood Mask Turtle Oil Creme, and leave it on over night, the skin will be soft, clear, and wrinkle free.

On labels attached to the jars in which its "Hollywood Mask Tissue Creme" (Turtle Oil) was packed the following appeared:

Hollywood Tissue Creme (Turtle Oil), a hormone tissue builder for tired skins. Soothing, rejuvenating, free from borax, stearic acid, wax or mineral oil \* \* \*.

PAR. 4. The representations made by the respondent with respect to the nature and effect of said cosmetic products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said products do not possess properties or contain ingredients that will remove, lessen or erase lines or wrinkles of the skin on the human face, or elsewhere on the body. Said cosmetic products do not nourish the skin, or the pores thereof, or penetrate the skin beyond the epidermis, or outer layer thereof, so as to reach the muscles and tissues, and said products do not possess properties or ingredients that beneficially affect the muscles, tissues or layers of skin beneath the epidermis, and said muscles, tissues and inner layers of skin are not nourished by said preparation or the ingredients thereof when externally applied.

PAR. 5. Respondent has stated that it believed at the time the complaint herein issued that its representations with respect to the nature and effect of its cosmetic properties were not grossly exaggerated, false, misleading, and untrue.

PAR. 6. There are among respondent's competitors many who distribute and sell similar cosmetic products, designed, intended and sold for the purpose of treating the same or similar conditions of the human skin, tissues, and muscles, who do not in any way misrepresent the quality or character of their respective products, or

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their effectiveness in treating said conditions of the human skin, tissues, and muscles.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its product, or the effectiveness of said product in treating the human skin, tissues and muscles, as hereinabove set out, in its advertising in newspapers, booklets, pamphlets, labels, and other advertising literature, in the course of distributing its product, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondent will be obtained by the purchasers thereof upon the use of said products in the treatment of the various conditions named herein. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondent, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's cosmetic products with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling cosmetic products, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondent to substantial competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

## CONCLUSION

The aforesaid acts and practices of the respondent, Hollywood Mask, Inc., are 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, 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 thereto, wherein and whereby it states that it desires to waive hearing on the charges set forth in the complaint; and not to contest the proceeding; that it admits all of the material allegations of the complaint to be true, and that without further evidence, or other intervening procedure the Commission may make, issue and serve upon respondent, findings of facts, and an order to cease and

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desist from the violations of law charged in the complaint, 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 ordered*, That the respondent, Hollywood Mask, Inc., its officers, representatives, agents, and employees in connection with the advertising, offering for sale, and sale in interstate commerce or in the District of Columbia of cosmetic preparations through the use of pamphlets, circulars, and other advertisements, or by labels attached to respondent's said merchandise or in any other manner, do forthwith cease and desist from:

(1) Representing that any of its cosmetic preparations for external application and use possess properties, or contain ingredients of such character, or in such quantity,

(a) That any or all of said cosmetic preparations serve as a food for the human skin, muscles, or tissues, or have a beneficial effect in feeding, nourishing, building up, toning, firming, filling out, and tightening the lines of broken tissues;

(b) That any or all of said preparations serve to restore elasticity to the human skin, muscles, or tissues, or fill out hollows therein;

(c) That any or all of said preparations eliminate dryness or remove wrinkles from, or revitalize the human skin, muscles, or tissue, or that the use of any or all of said preparations will have any beneficial effect in the treatment of the various conditions, as above set out, of the human skin, muscles, or tissues;

(d) That the use of any or all of said preparations will remove, erase, iron out, or lessen wrinkles or lines of the human skin, remove blackheads or unsightly blemishes;

(e) That any of said preparations will penetrate the skin, beyond the epidermis so as to reach or beneficially affect the muscles or tissues or layers of skin beneath the epidermis;

(f) That any of said preparations are a turtle oil, or possess any special qualifications on that account, or are tissue builders or nourish the skin or pores thereof, or rejuvenate the skin, or are rich in vitamins.

(2) From making any other similar representations of like import or effect.

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

Complaint

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IN THE MATTER OF  
BUNO COMPANY, INC.

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

*Docket 2831. Complaint, June 3, 1936—Decision, July 6, 1936*

Where a corporation engaged in the sale of a medicinal preparation and treatment for the relief or cure of scalp and skin ailments under designation "Buno"—

Falsely represented in radio broadcasts and in newspaper and periodical and other advertising matter circulated through the United States, that said preparation, in all cases, would keep the skin clear and healthy, and give instant relief from sunburn, mosquito, and other insect bites, and that it constituted an effective remedy for dandruff, eczema, perspiration, itching, athlete's foot, falling hair, and psoriasis, and also for pimples and all skin eruptions of whatever nature;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into erroneous belief that all said representations were true, and with result that a number of the consuming public purchased a substantial volume of its said preparation and trade was diverted unfairly from others similarly engaged who truthfully advertise their preparations and treatments; to the substantial injury of competition in commerce:

*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. George Foulkes* for the Commission.

*Stradley, Ronon, Stevens & Denby*, of Philadelphia, Pa., for respondent.

COMPLAINT

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 having reason to believe that Buno Co., Inc., a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Buno Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 507 Green Street, in the city of Philadelphia and State of Pennsylvania. Respondent is now and for more than 1 year last past has been

engaged in the business of selling a medicinal preparation and treatment for the relief or cure of scalp and skin ailments, designated by respondent as "BUNO," which respondent distributes to purchasers, many of whom reside in States other than the State of Pennsylvania, and when orders are received therefor they are filled by respondent by shipping said medicinal preparation to purchasers, from the said city of Philadelphia, Pa., into and through other States of the United States and the District of Columbia, and there is now, and has been during the time hereinabove mentioned, a constant current of trade and commerce in said medicinal preparation or treatment so sold and distributed by respondent, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business said respondent was and is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of medicinal preparations and treatments for the relief or cure of scalp and skin ailments, between and among the various States of the United States and in the District of Columbia.

**PAR. 2.** In the course of the operation of said business, and for the purpose of inducing individuals to purchase said medicinal preparation and treatment, respondent has caused statements, claims, and representations to be made over radio broadcasts and in newspapers, magazines, periodicals, circulars, and various other advertising media, which respondent circulates throughout the United States, in all of which statements, claims, and representations respondent has represented that his medicinal preparation and treatment will cure or effectively relieve certain scalp and skin ailments.

Among the representations made through such media are the following:

**BUNO is an excellent medicated face lotion that will keep the skin clear and healthy;**

**Gives instant relief from sunburn, mosquito and other insect bites;**

**BUNO hair medicine for the hair and scalp. For dry dandruff—For eczema—For perspiration and itching of the body.**

**FOR "ATHLETE'S FOOT" Buno will provide instant relief and will cure the soreness in the feet.**

**BUNO can be used for psoriasis. It will relieve the itching and remove the scabs from any part of the body.**

**If your hair falls out, we guarantee that BUNO will stop it, providing you give your hair the proper treatment.**

**So many men and women are troubled and annoyed with dandruff or the loss of hair. May I suggest Buno—BUNO Skin and Scalp Medicine, the greatest discovery of the day. After five or six appli-**

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cations of this medicated product you will notice a market improvement. Your hair will take on a new gloss, have some sheen, and you will be spared the embarrassment of a white collar or frock from dandruff.

Buno Skin and Scalp Medicine is most beneficial for severe cases of eczema \* \* \*.

PAR. 3. All of said statements, together with many similar statements appearing in respondent's advertising literature and circulars, purport to be descriptive of the remedial or curative quality of respondent's product. In all of its radio broadcasts, advertising, literature, and circulars, respondent represents, through the statements and representations herein set out, and other statements of similar import and effect,

- (1) BUNO will keep the skin clear and healthy in all cases;
- (2) BUNO will give instant relief from sunburn, mosquito and other insect bites in all cases;
- (3) BUNO is an effective remedy in all cases for,
  - a. Dandruff,
  - b. Eczema,
  - c. Perspiration,
  - d. Itching of the body,
  - e. Athlete's foot,
  - f. Falling Hair,
  - g. Psoriasis,
  - h. All skin eruptions from whatever cause,
  - i. Pimples.

PAR. 4. The representations made by respondent with respect to the nature and effect of its medicinal preparation and treatment when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment will not keep the skin clear and healthy in all cases, nor will it give instant relief from sunburn, mosquito, and other insect bites. In truth and in fact, respondent's medicinal preparation and treatment is not an effective remedy, in all cases for dandruff, eczema, perspiration, itching of the body, athlete's foot, falling hair, and psoriasis; nor is said medicinal preparation and treatment an effective remedy in all cases for pimples and all skin eruptions of whatever nature.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating the remedial or curative quality of its medicinal preparation and treatment termed "BUNO" as hereinabove set forth, over radio broadcasts and by its advertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, in offering for sale and selling its



medicinal preparation and treatment, was and is calculated to, and had and now has a tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent as hereinabove detailed, a number of the consuming public purchases a substantial volume of respondent's medicinal preparation and treatment, with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of medicinal preparations and treatments for the scalp and skin and other ailments, and who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and of respondent's competitors as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent 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."

#### 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 June 3, 1936, issued, and on June 5, 1936, served its complaint in this proceeding upon the respondent, Buno Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of the complaint, respondent answered, admitting all the material allegations of the complaint to be true, and waiving all further and intervening procedure.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

## Findings

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## FINDINGS AS TO THE FACTS

PARAGRAPH 1. For more than one year last past the respondent, Buno Company, Inc., a corporation, has been engaged in the business of selling a medicinal preparation and treatment for the relief or cure of scalp and skin ailments, which preparation respondent designated as "BUNO." Respondent's office and principal place of business is located at 507 Green Street, in the city of Philadelphia and State of Pennsylvania. Respondent distributes its medicinal preparation and treatment to purchasers, many of whom reside in States other than the State of Pennsylvania, and when orders are received for the preparation and treatment, they are filled by respondent by shipping the preparation and treatment to purchasers from the State of Pennsylvania into and through other States of the United States and in the District of Columbia and there is now and has been during the time hereinabove mentioned a constant current of trade and commerce in respondent's medicinal preparation and treatment so distributed and sold by respondent between and among the various States of the United States.

During all the time respondent has been engaged in the foregoing business respondent has been, and is, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in similar business to that of respondent, to wit: the sale and distribution of medicinal preparations and treatments for the relief or cure of scalp and skin ailments in interstate commerce.

PAR. 2. For the purpose of inducing individuals to purchase its medicinal preparation and treatment respondent has caused statements, claims, and representations to be made over radio broadcasts and in newspapers, magazines, periodicals, circulars, and various other advertising media, which respondent circulates throughout the United States, in all of which statements, claims, and representations respondent has represented that his medicinal preparation and treatment will cure or effectively relieve certain scalp and skin ailments. Among the representations made through such media are the following:

BUNO is an excellent medicated face lotion that will keep the skin clear and healthy;

Gives instant relief from sunburn, mosquito and other insect bites;

BUNO hair medicine for the hair and scalp. For dry dandruff—For eczema—For perspiration and itching of the body.

FOR 'ATHLETE'S FOOT' Buno will provide instant relief and will cure the soreness in the feet.

BUNO can be used for psoriasis. It will relieve the itching and remove the scabs from any part of the body.

## Findings

If your hair falls out, we guarantee that BUNO will stop it, providing you give your hair the proper treatment.

So many men and women are troubled and annoyed with dandruff or the loss of hair. May I suggest Buno—BUNO Skin and Scalp Medicine, the greatest discovery of the day. After five or six applications of this medicated product you will notice a marked improvement. Your hair will take on a new gloss, have more sheen, and you will be spared the embarrassment of a white collar or frock from dandruff.

Buno Skin and Scalp Medicine is most beneficial for severe cases of eczema \* \* \*.

PAR. 3. All of said statements, together with many similar statements appearing in respondent's advertising literature and circulars, purport to be descriptive of the remedial or curative quality of respondent's product. In all of its radio broadcasts, advertising literature, and circulars respondent represents, through the statements and representations herein set out, and other statements of similar import and effect, that:

- (1) BUNO will keep the skin clear and healthy in all cases.
- (2) BUNO will give instant relief from sunburn, mosquito, and other insect bites, in all cases.
- (3) BUNO is an effective remedy in all cases for
  - a. Dandruff,
  - b. Eczema,
  - c. Perspiration,
  - d. Itching of the body,
  - e. Athlete's foot,
  - f. Falling hair,
  - g. Psoriasis.
  - h. All skin eruptions, from whatever cause,
  - i. Pimples.

PAR. 4. The representations made by respondent with respect to the nature and effect of its medicinal preparation and treatment when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment will not keep the skin clear and healthy in all cases, nor will it give instant relief from sunburn, mosquito and other insect bites, in all cases. In truth and in fact, respondent's medicinal preparation and treatment is not an effective remedy in all cases for dandruff, eczema, perspiration, itching of the body, athlete's foot, falling hair, and psoriasis; nor is said medicinal preparation and treatment an effective remedy in all cases for pimples and all skin eruptions of whatever nature.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating the re-

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medial or curative quality of its medicinal preparation and treatment termed "BUNO," as hereinabove set forth, over radio broadcasts and by its advertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, in offering for sale and selling its medicinal preparation and treatment was and is calculated to, and had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs induced by the advertising and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchases a substantial volume of respondent's medicinal preparation and treatment, with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of medicinal preparations and treatments for the scalp and skin and other ailments, and who truthfully advertise their preparations and treatments. As a result thereof substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

## 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 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 Commission upon the complaint issued June 3, 1936, and served on June 5, 1936, the answer of respondent filed on July 1, 1936, admitting all the material allegations of the complaint to be true, and waiving further procedure, 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 respondent, Buno Company, Inc., a corporation, its agents, servants, representatives and employees, in con-

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nection with the sale or offering for sale in interstate commerce of a medicinal preparation and treatment for the relief or cure of scalp and skin ailments and designated by it as "BUNO", forthwith cease and desist from representing, directly or indirectly, through testimonials, contracts, advertisements, or through any other means, whatever, that respondent's said medicinal preparation, in all cases:

Will keep the skin clear and healthy; give instant relief from sunburn, mosquito and other insect bites; is an effective treatment or cure for dandruff, eczema, perspiration, itching of the body, athlete's foot, falling hair, psoriasis, all skin eruptions of whatever cause; or is an effective treatment or cure for pimples; and making any other representations of like or similar import.

*It is further ordered*, That the respondent, Buno Company, Inc., a corporation, shall within 30 days from the date of service upon it of a copy of this order file with the Commission a report in writing, setting forth the manner and form in which it has complied with the order herein set forth.

IN THE MATTER OF  
FINISHING PRODUCTS COMPANY, INC.

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

*Docket 2430. Complaint, June 7, 1935—Decision, July 7, 1936*

Where a corporation engaged in the manufacture of stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products and in the sale and distribution thereof to various wood finishing and furniture manufacturing concerns throughout the East and Middle Western States—

Gave and offered to give, through its president and vice-president and traveling salesmen, and for several years, gratuities in the form of money to superintendents and finishing foremen of customers and prospective customers, upon whose recommendations its customers and other users relied in the purchase of such products, and who were able to manipulate the same so that where products of equal quality and grade were competitively offered, and even an unequal product, one favored by them could be made to appear superior, without such employers being able to detect or discover such manipulation and without their knowledge, to induce such employee superintendents and foremen to purchase such lacquers, etc., in preference to or to the exclusion of lacquers, etc., made and sold by competitors, and to insure continued use of its said products and to induce such superintendents, etc., not to recommend purchase of those of competitors, or as rewards for having so induced their respective employers to purchase its lacquers, etc., and to cause them so to manipulate such lacquers, etc., that same would be made to appear superior to those of competitors; in pursuance of a policy directed to ethical sale of its products through the regular channels if possible, but, if not, to insuring continued sales through such secret payments;

With result that purchasers of lacquers, stains, fillers, and other furniture finishing products were induced to buy its products instead of those of competitors, who were prevented from competing successfully with it and were caused to suffer loss of business of those purchasers and prospective purchasers of lacquers, etc., whose employees had thus secretly received such monies from it, and trade was diverted to it from them, and with capacity and tendency so to induce, etc.; to the substantial injury of substantial competition in commerce:

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

Before *Mr. W. W. Sheppard* and *Mr. Charles F. Diggs*, trial examiners.

*Mr. John L. Hornor* for the Commission.

*Jones, Hammond, Buschmann & Gardner*, of Indianapolis, Ind., for respondent.

COMPLAINT

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

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Federal Trade Commission, having reason to believe that Finishing Products Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and in violation of Section 5 of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

**PARAGRAPH 1.** Respondent is a corporation, organized and doing business by virtue of the laws of the State of Indiana, having its principal office and factory in the city of Indianapolis, State of Indiana; and is now and for more than five years last past has been engaged in the business of manufacturing stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, and in the sale and distribution thereof to various wood-finishing concerns and furniture manufacturing concerns located throughout the East and Middle-Western States, and causes said products when sold to be transported from its principal place of business in the city of Indianapolis, State of Indiana, to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than five years last past a course of trade and commerce by the said respondent in such stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

**PAR. 2.** In the course and conduct of its said business, respondent from time to time during a period of more than five years last past has been offering to and giving superintendents, foremen, and other employees of the above mentioned wood-finishing concerns and furniture manufacturing concerns to whom respondent sells its said products, without the knowledge or the consent of their respective employers, substantial sums of money and other things of equal value as inducements to influence said employers to purchase from said respondent the said above described commodities, to recommend such purchases to said employers, to recommend to said employers the use of respondent's products, or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondent's products to said employers.

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PAR. 3. The above acts and things done by respondent as aforesaid have tended to induce and have induced the purchase of respondent's products by various wood-finishing concerns and furniture manufacturing concerns, and have tended to divert trade and have diverted trade from competitors of respondent and have thereby injured such competitors of respondent.

PAR. 4. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of the respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute an unfair method 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.

## 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 June 7, 1935, issued and served its complaint in this proceeding upon respondent, Finishing Products Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John L. Hornor, attorney for the Commission, before W. W. Sheppard and Charles F. Diggs, examiners of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by W. W. Hammond, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Finishing Products Company, Inc., is a corporation organized and doing business by virtue of the laws of the State of Indiana, having its principal office and factory in the city of Indianapolis, State of Indiana; and is now and for more



than five years last past has been engaged in the business of manufacturing stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, and in the sale and distribution thereof to various wood-finishing concerns and furniture manufacturing concerns located throughout the East and Middle-Western States, and causes said products when sold to be transported from its principal place of business in the city of Indianapolis, State of Indiana, to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than five years last past a course of trade and commerce by the said respondent in such stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, respondent is, and at all times hereinafter mentioned has been, in competition with other individuals, partnerships, and corporations engaged in the manufacture of stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The respondent, Finishing Products Company, Inc., in the course of its business as described in paragraph 1 hereof, acting by its president, Walter J. Murray, its former vice-president, Frank A. Metzger, and its traveling salesman, David G. Small, for several years prior to 1935 gave, and offered to give gratuities in the form of money to superintendents and finishing foremen employed by furniture manufacturers and other purchasers of lacquers, stains, fillers, and other furniture-finishing products, in large quantities, without the knowledge or consent of the employers or principals of such employees, to induce such employees to recommend to their respective employers or principals the lacquers, stains, fillers, and other furniture-finishing products manufactured and sold by the respondent, the Finishing Products Company, Inc., and to induce their said employers to purchase such lacquers, stains, fillers, and other furniture-finishing products in preference to, or to the exclusion of, lacquers, stains, fillers, and other furniture-finishing products manufactured and sold by competitors of said respondent, or as rewards to said employees for having induced their respective employers to purchase lacquers, stains, fillers, and other furniture-finishing products manufactured and sold by respondent, the Finishing Products Company, Inc., and to cause said employees to so manipulate these lacquers, stains, fillers, and other furniture-finishing products of the respondent, the Finishing Products Company, Inc., that the Finishing Products Company,

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Inc.'s products would be made to appear superior to the products of respondent's competitors. The Finishing Products Company, Inc., has from time to time appropriated funds which were apportioned and disbursed by Walter J. Murray, its president, Frank A. Metzger, its former vice-president, and David G. Small, its former traveling salesman, as aforesaid, for the purpose of having such officers and salesmen deliver such funds to employees of customers for the purposes aforesaid.

PAR. 3. During the years 1930, 1931, 1932, and 1933, the respondent, Finishing Products Company, Inc., in the course of its business as described in paragraphs 1 and 2 hereof, and for the purposes set out in paragraph 2 hereof, offered to give, and did give, monies or gratuities to superintendents and finishing foremen employed by respondent's customers and prospective customers, as follows, to wit:

1. Through the medium of Walter J. Murray, its president, it offered to, and attempted to, secretly pay monies to the finishing foreman of the Phoenix Chair Company, and to a finishing foreman of the Sheboygan Novelty Company, later known as the Fashion Furniture Company;

2. Through the medium of its president, Walter J. Murray, it secretly paid monies to the superintendent of the Cron-Kills Company, Piqua, Ohio, and to the finishing foreman of the Appleton Chair Company, Appleton, Wis.

3. Through the medium of Frank A. Metzger, its vice-president, it secretly paid monies to the finishing foreman of the Phoenix Chair Company, Sheboygan, Wis.; to the finishing foreman of Joerns Bros., Stevens Point, Wis.; to the finishing foreman of Richardson Bros., Sheboygan Falls, Wis.; to the finishing foreman of the Appleton Chair Company, Appleton, Wis.; to the finishing foreman of the Cron-Kills Company, Piqua, Ohio; to the finishing foreman, and to the superintendent of the Northern Furniture Company, Sheboygan, Wis.; and

4. Through the medium of its salesman, David G. Small, it secretly paid monies to the finishing foreman of the Herman Miller Furniture Company, Zeeland, Mich.

PAR. 4. The aforesaid sales policy of respondent, Finishing Products Co., Inc., was dominated and controlled by Walter J. Murray, its president, which sales policy was to attempt to sell its products through the regular channels, and where this could not be done ethically, respondent sought to secretly pay monies to superintendents and finishing foremen of prospective customers in its efforts to sell its products; also, as a part of its policy, and to insure the continued use of respondent's products by customers, respondent sought to

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secretly pay, and did secretly pay monies to superintendents and finishing foremen of its customers to induce them not to recommend the purchase of similar products of its competitors.

PAR. 5. The customers of respondent and other users of such finishing products rely upon the recommendations of their superintendents and finishing foremen in the purchase of such products. Superintendents and finishing foremen are able to manipulate finishing products so that where products of equal quality and grade are offered for sale in competition (and even where a product is not the equal of another product) a product favored by the superintendents and finishing foremen can be made to appear superior to a competing product; the employers of superintendents and finishing foremen are not able to detect or find out such manipulation.

PAR. 6. The aforesaid acts and things done by the respondent have tended to induce, and have induced, purchasers of lacquers, stains, fillers, and other furniture finishing products to purchase the products of respondent in the place and stead of products of respondent's competitors; they have tended to prevent, and have prevented, competitors of respondent from competing successfully with respondent; they have tended to cause, and have caused, respondent's competitors to suffer the loss of the business of those purchasers and prospective purchasers of lacquers, stains, fillers, and other furniture finishing products whose employees have secretly received in the manner hereinbefore mentioned, such monies from the respondent; they have tended to and have diverted trade to respondent from its competitors, and have thereby done substantial injury to substantial competition in interstate commerce.

## CONCLUSION

The aforesaid acts and practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce among the States of the United States 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, testimony and evidence taken before W. W. Sheppard, and Charles F. Diggs, examiners of the Commission heretofore duly designated by it in support of the charges of said complaint and in

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opposition thereto, briefs filed herein by John L. Horner, counsel for the Commission, and by W. W. Hammond, counsel 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 ordered*, That the respondent, Finishing Products Company, Inc., its officers, agents, servants, representatives, and employees, in connection with the sale and offering for sale of lacquers, stains, fillers, and other wood-finishing products in interstate commerce forthwith cease and desist from giving and offering to give, directly or indirectly, to superintendents, and finishing foremen, and other persons employed by furniture manufacturers and other purchasers of lacquers, stains, fillers, and other furniture finishing products, without the knowledge and consent of such employers, sums of money or gratuities of any kind whatsoever to induce such employees to recommend to their respective employers or principals, the lacquers, stains, fillers, and other wood-finishing products manufactured and sold by the respondent, Finishing Products Company, Inc., or to induce their said employers to purchase such lacquers, stains, fillers, and other wood-finishing products in preference to, or to the exclusion of lacquers, stains, fillers, and other wood finishing products manufactured and sold by competitors of said respondent, Finishing Products Company, Inc., or as rewards to said employees for having induced their respective employers to purchase lacquers, fillers, stains, or other wood-finishing products manufactured and sold by the respondent, Finishing Products Company, Inc., or as a reward for protecting the products of the respondent, Finishing Products Company, Inc., from competition by the products of competitors of the respondent, Finishing Products Company, Inc.

*And it is further ordered*, That the respondent, Finishing Products Company, Inc., shall, within 60 days after 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 complied with the order to cease and desist as hereinbefore set forth.

## Syllabus

IN THE MATTER OF  
POTOMAC DISTILLING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2443. Complaint, June 19, 1935.—Decision, July 7, 1936*

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages, including the rectifying of alcoholic spirits through use of a still or stills employed by it in production of gin through redistillation of alcohol, bought by it, over juniper berries and other aromatics, and in selling said whiskies, etc., in substantial competition with (a) other corporations and individuals and concerns engaged in manufacture by distillation of whiskies and other spirituous beverages, and in sale thereof among the various States and in the District of Columbia, and (b) with other corporations, etc., engaged in business of purchasing, rectifying, blending, and bottling whiskies, etc., and in sale thereof in commerce as aforesaid—

Represented to customers, through use of word "Distilling" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its said products, and through the featuring of such name when accompanied by words "Bottled By", and in various other ways, and furnished such customers with means of representing to their vendees and to ultimate consuming public, that it was a distiller and that the whiskies and other spirituous beverages thus contained and labeled were by it made through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture of the liquor was complete, as long definitely understood by wholesale and retail liquor industry and ultimate purchasing public from word "Distilling";

Notwithstanding fact that it was not a distiller and did not distill whiskies, etc., thus bottled, labeled, sold, and transported by it, nor own, operate, nor control any place or places where such beverages were made by process of distillation from mash, wort, or wash, but purchased its distilled spirits requirements from distillers and then rectified, bottled, and sold same in commerce to its wholesale and retail customers;

With effect of misleading and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, etc., sold by it were made and distilled by it from mash, etc., as aforesaid, and of inducing dealers and purchasing public, on the part of a substantial portion of which there is a preference for purchase of spirituous liquors prepared and bottled by distillers, to buy the whiskies and other spirituous beverages bottled and sold by it, and of thereby diverting trade to it from competitors who do not, through their corporate or trade names or otherwise, misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies and other spirituous beverages, and with capacity and tendency so to mislead and deceive, etc.; to the substantial injury of substantial competition:

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*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.

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

*Mr. PGad B. Morehouse* and *Mr. DeWitt T. Puckett* for the Commission.

*Mr. Raphael I. Levin*, of Baltimore, Md., for respondent.

## COMPLAINT

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, having reason to believe that Potomac Distilling Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and selling the same in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, cordials, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with

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individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the whiskies, gins, cordials, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, cordials, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, cordials, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, cordials, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "dis-

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tillers," as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, cordials and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, cordials, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, cordials, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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.

## 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 June 19, 1935, issued, and on June 21, 1935, served its complaint in this proceeding upon respondent Potomac Distilling Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's first answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, no testimony in defense being offered. Said testimony and evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter this



proceeding regularly came on for final hearing before the Commission on the said complaint, the aforesaid testimony and evidence and a substituted answer of respondent filed April 8, 1936, stating that respondent desired to waive hearing on the charges set forth in the complaint, not to contest the proceeding, that it admitted all of the material allegations of the complaint to be true and that without further evidence or other intervening procedure, the Commission might make, issue, and serve upon the respondent findings as to the facts and an order to cease and desist from the violations of law charged in the complaint; the filing of briefs and oral arguments being waived; and the Commission having duly considered the foregoing and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business at 2700 Wilmarco Ave., in the city of Baltimore, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and selling the same in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, cordials, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages and in the sale thereof in commerce be-

tween and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages, or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they came from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ——— Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery, or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by ——— Company". If, in the distillery's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ——— Company". Finally, blown (usually in the bottom) of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit.

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Thus "R-169" designates this respondent. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's or his rectifier's permit.

It is not possible to determine merely from the presence of the phrase "Blended and Bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent purchases its distilled spirit requirements from distillers and then rectifies, bottles, and sells the same in interstate commerce to its wholesale and retail customers.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways respondent represents to its customers and furnishes them with the means of representing to their vendees and to the ultimate consuming public, that respondent is a distiller and that the whiskies, cordials, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, cordials, or other spirituous beverages by it so bottled, labeled, sold and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

There were introduced as Commission's exhibits, four of such labels. Those attached to the bottles in which respondent sells and ships straight whiskey bear the legend:

Bottled By  
POTOMAC DISTILLING CORP.

the respondent's said name being in larger and more conspicuous type than the words "Bottled By". The labels attached to the bottles in which respondent sells and ships its blended whiskey bear the legend:

A POTOMAC PRODUCT  
Blended and Bottled By  
Potomac Distilling Corp.

and on these labels the words "A Potomac Product" are in larger type and more conspicuous than either the phrase "Blended and Bottled By", or the corporate name of respondent.

In the course and conduct of its business as aforesaid respondent has, upon its premises, a still or stills which it uses in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondent, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondent a distiller, as defined by section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. However, existing regulations, and regulations proposed under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), and which regulations are presently expected to become effective as of August 15, 1936, provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may call such resulting product "distilled gin," and require that the labels state who distilled it. This is to enable the rectifier to have the benefit of the distinction between gin produced by such method and "cold" or compound gin prepared by mixing alcohol with essential oils.

The Commission finds, therefore, that under the foregoing circumstances respondent is authorized to continue to use in interstate commerce, the term "Distilling" in its corporate name insofar and only insofar as it is used with exclusive reference to the gin which respondent produces according to the aforesaid process.

PAR. 5. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, cordials, and other spirituous beverages sold by them and who truthfully use the words "distillery", "distilleries", "distillers", or "distilling" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, cordials, and other spirituous beverages who do not use the words "distillery", "distilleries", "distilling", or "distillers", as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

Par. 6. Representation by respondent, as set forth in paragraph 4 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, cordials, and other spirituous beverages sold by the respondent are manufactured and

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distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, cordials, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, cordials, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

## CONCLUSION

The practices of the said respondent, under the conditions and circumstances hereinbefore described, 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 issued on June 19, 1935, and served on June 21, 1935, the answer of respondent admitting the truth of the material allegations of the complaint and waiving all further proceedings herein, and testimony and evidence taken before John W. Bennett, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint, no testimony being offered in opposition thereto, 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 ordered*, That the Potomac Distilling Corporation, its agents, salesmen, and employees, in connection with the offering for sale or sale by it in interstate commerce of whiskies, cordials, and other spirituous beverages, except gins produced by a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics, do cease and desist from:

Representing, through the use of the word "Distilling" in its corporate name, on its stationery, advertising or on the labels attached

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to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, cordials, or any other spirituous beverages; or (b) that the said whiskies, cordials, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

*It is further ordered,* That the said respondent within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports 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.

## Complaint

IN THE MATTER OF

INTERNATIONAL DISTILLING & DISTRIBUTING  
CORPORATIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5  
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2423. Complaint, June 4, 1935—Order, July 8, 1936*

Consent order requiring respondent wholesaler, its agents, etc., in connection with all whiskies, etc., sold or offered by it in interstate commerce, to cease and desist from representing, through use of word "Distilling" in its corporate name on its stationery, etc., that it is a distiller of whiskies, gins, and other spirituous beverages or that such whiskies, etc., were by it made through process of distillation or that it owns, etc., place or places where they are thus made, unless and until it shall own, etc., such places where such whiskies, etc., are by it made through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture thereof is complete.

*Mr. PGad B. Morehouse* for the Commission.

*Cooke & Beneman*, of Washington, D. C., for respondent.

## COMPLAINT

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, having reason to believe that International Distilling & Distributing Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Maryland, having its principal place of business in the city of Washington, District of Columbia. It is now, and for more than one year last past has been, engaged in the business of a wholesaler of liquors, purchasing and reselling whiskies, gins, and other spirituous beverages in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold

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to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the District of Columbia and some located in various States of the United States. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and selling at wholesale whiskies, gins, and other spirituous beverages in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous bever-



ages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of liquor wholesalers who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of 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 come on to be heard by the Federal Trade Commission upon the written waiver of the respondent of taking of testimony, findings as to the facts, filing of briefs, oral argument, and all other intervening procedure, as well as the consent of said respondent that an order shall issue herein for it to cease and desist from methods of competition charged in the complaint, and the Commission being fully advised in the premises, having thereupon concluded that 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, International Distilling & Distributing Corporation, its agents, salesmen, and employees, in connection with all whiskies, gins, and other spirituous beverages by it in interstate commerce hereafter sold or offered for sale, do cease and desist from:

Representing through the use of the word "Distilling" in its corporate name, on its stationery, or on the labels attached to the bottles in which it sells and ships its said products or in any other way by word or words of like import representing, (a) that it is a distiller of whiskies, gins, and other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies, gins, and other spirituous beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

*It is further ordered*, That the said respondent within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports in writing setting forth

## Memoranda

in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

## Memoranda

The Commission as of the same date issued similar consent orders following substantially similar complaints in four other distillery cases, in which Commission was represented by *Mr. P. G. B. Morehouse* and respondents were represented as set forth below:

Sunrise Distilling Corp. Docket 2424. Complaint, June 4, 1935. Rectifier and wholesaler of whiskies, gins, and other spirituous beverages, with office and principal place of business in Chicago. *Mr. Fred A. Caskey*, of Washington, D. C., for respondent.

La Salle Distillery, Inc. Docket 2432. Complaint, June 8, 1935. Rectifier and wholesaler of whiskies, etc., with office and principal place of business in Stamford, Conn. *Mr. E. Gaynor Brennan*, of Stamford, Conn., for respondent.

Old Rose Distilling Co. Docket 2438. Complaint, June 18, 1935. Wholesaler and distributor of whiskies, gins, and other alcoholic beverages, with office and principal place of business in Chicago. *Mr. Charles W. Hills*, of Chicago, Ill., for respondent.

Raritan Distillers Corp. Docket 2442. Complaint, June 18, 1935. Rectifier and wholesaler of whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages, with office and principal place of business in Perth Amboy, N. J. *Mr. John W. Hildrop*, of Washington, D. C., for respondent.<sup>1</sup>

United Distillers Corp. Docket 2449. Complaint, June 20, 1935. Wholesaler and rectifier of whiskies, gins, etc., with office and principal place of business in Providence, R. I. *Mr. Daniel Miles Sweeney*, of Washington, D. C., for respondent.

<sup>1</sup> By Commission order dated July 6, 1937, foregoing order was vacated and set aside, and it was further ordered that prosecution of Commission's complaint be resumed in accordance with its regular procedure.

IN THE MATTER OF  
GUS MARTEL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 2553. Complaint, Sept. 18, 1935—Decision, July 8, 1936*

Where an individual engaged in the sale of correspondence courses of instruction in physical culture and development and health restoration and in training for boxing and fighting, and in the sale, as incident thereto, of books, pamphlets, and other articles, in competition with others similarly engaged; in advertising his courses in newspapers and periodicals and other publications of general circulation and in enrollment blanks, pamphlets, circular letters, and other printed matter—

- (a) Misrepresented his ability and qualifications for teaching the various arts included in said courses, through the making of such statements as that he was the "amateur lightweight, knockout champion of the world," and that he had shown one of two famous prize fighters, one of his secret copyright blows with which said individual had knocked out his opponent in their contest;

Facts being there was no such title, and the blow used by the victor in aforesaid contest was an ordinary one, not peculiar to any system, and one used by all fighters;

- (b) Misrepresented the effectiveness of his said courses and the ability of the ordinary subscriber thereto to assimilate the information contained therein and to benefit therefrom to the extent represented, through making such statements as that he imparted four secret copyright knockout blows which "work every time," etc., and enable anyone using them to "go right in and knock them all out," and that his so-called "double knockout, lightning shift" doubled the pupil's reach, speed, and punching power, with a knockout in either hand, and his course taught a pupil to stand on a handkerchief without being hit and to be "punch proof and fearless," and aforesaid knockout blows could be learned immediately, without fail, by either amateur or professional, so that he could "go right in," etc., without fail, and that pupil, if neither amateur nor professional, could accomplish such results after ten or fifteen days' practice or practice for a few minutes daily for a few weeks;

Facts being blows referred to were not secret but known to fighters generally, and did not work every time, etc., and were not and could not be copyrighted, though literature used in courses was, shift referred to, while making knockout possible, was used by others and the defenses and parries to blows in question were well understood by all informed fighters, acquisition of knowledge of how to stand on a handkerchief, etc., does not enable any but the very clever to accomplish first result claimed, though instruction could not make pupil punch proof, and results claimed were far in excess of any that could ordinarily be expected by purchasers, including length of time required to assimilate knowledge furnished and lead to accomplishment of any such results as represented, which likewise varied with different individuals; and

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(c) Falsely represented that price of instructions as to the "four" copyrighted secret, sure knockout punches was \$15 each or \$50 for the four; Facts being only a limited number of pupils had ever paid such amounts for instructions as to such four blows, the regular or usual price for which was \$1.98;

With capacity and tendency to mislead and deceive the public to its prejudice and injury, and into purchase of such various courses in erroneous belief that in buying same they would acquire a complete boxing and fighting course and knowledge of blows not known to other fighters generally, and would receive other benefits commensurate with such representations, and to cause an unfair diversion of trade to him from competitors who have truthfully described their courses of instruction and the benefits that may reasonably be expected to be obtained from a study thereof:

*Held*, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

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

*Mr. James T. Welch* for the Commission.

*Frank & Frank*, of New York City, for respondent.

## COMPLAINT

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, having reason to believe that Gus Martel, doing business under the trade name and style of Gus Martel, The Fighting Marvel of the Age, hereinafter designated as respondent, is now, and has been, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating the charges in that respect as follows:

PARAGRAPH 1. Respondent, Gus Martel, is an individual who is now, and has been for a period of more than five years, doing business under the trade name and style of Gus Martel, the Fighting Marvel of the Age, at 198 Broadway, New York, N. Y. Respondent is now, and has been, engaged in the business of offering for sale and selling courses of instruction, by correspondence, in the science and art of muscle development, physical culture, and physical health restoration, boxing and fighting training, and similar arts to persons hereinafter referred to as pupils, and in selling to such pupils severally, as incidental and accessory to the instruction in and to the learning, use and practice of such science and art, certain merchandise consisting of books, booklets, pamphlets, and other articles in commerce as herein set out.

PAR. 2. Said respondent, being engaged in the business as afore-said, when a prospective pupil enters into a contract with him enrolls

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said pupil, in consideration of the agreed charge or tuition paid or agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mails or otherwise, a complete course of written, mimeographed, or printed information and instruction in the particular course or courses of said instruction chosen by such pupil, and causes said courses of instructions, when sold, to be transported from his principal office and place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described courses of instruction, including such written, mimeographed, or printed books, booklets, or pamphlets as are incidental and accessory to such courses of instruction, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of offering for sale and selling courses of instruction by correspondence in the science and art of muscle development, physical culture, and physical health restoration, boxing and fighting training, and similar arts in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of his business as detailed in paragraphs 1 and 2 hereof, causes advertisements of his said courses of instruction to be inserted and made accessible to the public and prospective pupils in newspapers, magazines, periodicals, and other publications of general circulation in the United States, and in enrollment blanks, catalogs, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter.

PAR. 5. Respondent, in his advertisements and business literature described in paragraph 4, causes to be set forth many false and misleading statements and representations as follows, to wit:

500 Knockouts All Within 3 rounds.

My secret copyrighted knockout blows.

They work every time.

I'll double your strength, reach and speed.

I will show you how to stand on a handkerchief without being hit.

I'll make you punchproof and fearless.

Have 33 Knockouts to my credit in 33 fights, all within 4 rounds.

Have 20 knockouts all within 59 seconds each.

And Gus has thousands of others.

Boxing—Fighting—Training—How to eat and gain strength at one-half the cost.

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My dear Prospective Champion:

Yes you can be a feared fighting machine, a man who packs real dynamite in either hand. And you can get this under my famous system. **YOU DON'T NEED WEEKS AND MONTHS OF LONG PRACTICE AND TRAINING.** You don't have to study a **LONG WINDED COURSE** in boxing that takes **YEARS** of training **TO LEARN.**

All you need are a few minutes a day for a few weeks. In these few minutes you study my **SYSTEM** and **THE FOUR SECRET KNOCKOUT PUNCHES.** These four copyrighted **SECRET-SURE KNOCKOUT PUNCHES** and all I charged my pupils was \$15.00 each, or \$50.00 for the four and will be sent you **FREE** with this new offer. \* \* \* **KNOCKOUT RECORD HOLDER OF THE WORLD.** \* \* \* and if you are an amateur or professional fighter you can go right in and knock them all out, the day after you get my punches, because my **SYSTEM** and **PUNCHES** are *immediately learned.* \* \* \* These blows **NEVER FAIL** \* \* \* if they don't do everything I claim, and if you are not an amateur or professional fighter and if you can't knock out any man after 10 or 15 days practice \* \* \* then they will **COST YOU NOTHING.** \* \* \* It's a **GUARANTEE!** \* \* \* **THESE PHENOMINAL PUNCHES THAT ALWAYS WORK.**

My double **KNOCKOUT LIGHTENING SHIFT** that I am revealing to my pupils for the first time doubles your reach, speed and punching power with a knockout in either hand. \* \* \* And after you are so trained **YOU WILL FIND IT IS SO EASY AND SIMPLE** that \* \* \* **ONE AND ONLY ONE AND THIS ONE DOES IT ALL.** \* \* \* you will get 100% results from the instructions sent you. \* \* \* My service **COSTS YOU NOTHING.**

Here's what I will do; **SIGN AND MAIL TO ME THE ENCLOSED SLIP AND ATTACH THE SMALL SUM CALLED FOR THEREON,** Namely only \$1.98. This is **ALL YOU HAVE TO PAY!** \* \* \* **AVOID BEING HIT BY ANY AND ALL LEADS KNOWN TO THE FIGHTING WORLD!** \* \* \* this includes all the information and instructions that until now, my regular charge has been \$50.00 and more to obtain. \* \* \* I am determined to put my system and secret punches within the reach of any boy who wants to learn and the price I ask simply helps to cover some of my expenses. \* \* \* but teach you how to knock them out. \* \* \*

**GUS MARTEL UNDEFEATED AMATEUR LIGHTWEIGHT CHAMPION OF THE WORLD.**

This is the uppercut I showed Carnera that Knocked out Sharkey.

**HOW TO REDUCE OR GAIN WEIGHT AT THE DESIRED POUNDAGE WITHOUT EXPENSE OR LOSING STRENGTH.**

In truth and in fact each and every one of the above detailed representations is grossly exaggerated, false, and misleading.

**PAR. 6.** The effect of the false and misleading representations and acts of the respondent, as set out in paragraph 5, is to mislead a substantial portion of the public, including prospective pupils and actual

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pupils, in the several States of the United States by inducing them to believe that all of said statements and representations are true and correct and that each of them, upon subscribing to and paying for respondent's course of instruction, including accessory booklets and pamphlets, will receive benefits therefrom substantially commensurate with the said representations.

PAR. 7. Each of the statements and representations made by the respondent as above set out in paragraph 5 has the capacity and tendency to mislead a substantial portion of the public and prospective pupils and to cause them to enroll as pupils and to pay or agree to pay the tuition or charges agreed upon on account of a mistaken and erroneous belief in the truth of said statements and representations.

PAR. 8. There are among respondent's competitors many who sell courses of instruction by correspondence in the science and art of muscle development, physical culture, and physical health restoration, boxing, and fighting training, and similar arts, and transport them, or cause them to be transported, to, into, and through other States of the United States to the purchasers thereof at their respective points of location and who do not make use of the same or similar representations and statements with respect to the benefits that will be received by the purchasers thereof and the alleged acts, practices, and representations of the respondent have a tendency and capacity to, and do divert a substantial volume of trade from the competitors of respondent engaged in similar businesses, with the result that substantial quantities of said courses of instruction, as described in paragraph 1, are sold to the consuming public on account of said beliefs induced by said false and misleading representations, and as a consequence thereof a substantial injury has been done to substantial competition in commerce among the several States of the United States and in the District of Columbia as herein detailed.

PAR. 9. The above and foregoing acts, practices, and representations of respondent have been, and 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 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."

## 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



## Findings

Federal Trade Commission, on September 18, 1935, issued and served its complaint in this proceeding upon the respondent, Gus Martel, doing business under the trade name and style of Gus Martel, the fighting marvel of the age, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony and evidence, in support of the allegations of said complaint, were introduced by James T. Welch, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it and in defense of the allegations of the complaint by Gus Martel, the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and brief in support of the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gus Martel, is an individual who for a period of more than five years immediately prior to the issuance of the complaint was engaged in business under the trade name and style of Gus Martel, at 198 Broadway, New York City, in the State of New York. He is now engaged in business at New Fairfield, Conn. During all of this time, he has been engaged in the business of offering for sale and selling, by correspondence, courses of instruction in the science and art of muscle development, physical culture, and physical health restoration, and boxing and fighting training, to persons hereinafter referred to as pupils. As incidental and accessory to the courses of instruction in and to the learning, use, and practice of such science and art, the respondent sells to such pupils, severally, certain merchandise consisting of books, booklets, pamphlets, and other articles. When pupils purchase respondent's course of instruction, the respondent sells and ships his said printed instructions, books, and other accessory articles, from the States of New York and Connecticut, to said pupils located at points in almost all of the other States and Territories of the United States, in a continuous current of trade and commerce.

PAR. 2. Other individuals, firms, and corporations are engaged in the business of advertising, selling, and distributing courses of instruction in boxing, fighting, and physical culture, and in selling and

distributing books and pamphlets on these subjects. All of said courses of instruction and all of said books and pamphlets are similar to the courses of instruction and literature sold by the respondent. Such competitors sell and ship these courses of instruction, books, and literature from the States wherein the respective shipments originate to other States and Territories of the United States, and the respondent is engaged in substantial competition with said individuals, firms, and corporations in the sale and distribution of the courses of instruction and literature herein referred to.

PAR. 3. In the course and conduct of his business, the respondent advertises his courses of instruction and his literature used in teaching said courses of instruction by advertisements inserted in newspapers, magazines, periodicals, and other publications of general circulation, and in enrollment blanks, pamphlets, circular letters, and other forms of printed matter.

In said advertisements, the respondent makes numerous representations: (1) as to his own ability and qualifications for teaching the various arts included in said correspondence courses; (2) as to the effectiveness of said courses of instruction and the ability of the ordinary subscriber to said courses to assimilate the information contained therein and benefit therefrom to the extent represented; and (3) as to the price for which said courses are customarily sold, said price being much in excess of the price advertised to be the present price to prospective customers. Respondent represents that he holds the title of undefeated amateur lightweight knockout champion of the world. There is not now and has never been a generally recognized title of amateur lightweight, knockout champion of the world and it is, therefore, impossible for respondent to hold such title. Respondent also represents that in his courses of instruction, he imparts four secret copyrighted knockout blows that "work every time," "never fail," and enables anyone using them to "go right in and knock them all out." The various blows forming the four so-called secret knockout blows consist of a blow to the back and an uppercut, a blow to the jaw and side blows beneath the ear. Such blows are known to fighters generally and are not secret and are not in all cases knockout blows. These blows do not "work every time"—they do fail and they do not enable anyone acquiring a knowledge of them to "go right in and knock them all out." In no case can respondent's pupils expect the never failing results promised in respondent's advertising. These blows are not copyrighted and cannot be copyrighted. Respondent's illustrations and descriptions of these blows do appear to be covered by copyrights. Insofar as the literature used in the

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courses of instruction is concerned, it is copyrighted. Respondent also represents that his so-called "double knockout, lightning shift" doubles the pupil's reach, speed and punching power, with a knockout in either hand. The shift referred to consists of the rapid turning to right or left, as the occasion may require, on the balls of both feet in such a way as to shift the head or body slightly to the right or left, thus causing the opponent's blow to miss and leaving him in a defenseless position. One of the respondent's so-called secret knockout blows is then delivered to the opponent who has been frustrated by the shift. A knockout from one of these blows is possible but they are the same blows with which all informed fighters are familiar and against which defenses and parries are well understood. A combination of the shift and the delivery of one of the above described blows, though possessing advantageous features, cannot be counted on to insure results in all cases. The acquirement of a knowledge of this shift and method of following up with the blows above referred to would not in itself have the effect of doubling the pupil's reach, speed, or punch power. Other fighters have used the same shift as taught by the respondent.

Respondent further represents that his course teaches a pupil to stand on a handkerchief without being hit and to be "punch proof and fearless." The art of evading blows while standing on a handkerchief can be taught. No evidence was introduced indicating that respondent does not teach it, but the acquisition of the knowledge of such a process does not enable any but the very clever to accomplish the result. Respondent's system or course of instruction could not have the effect of making a pupil "punch proof." This has never been accomplished and cannot be. The most successful fighters in ring history have been and can be hit with punches by other fighters. Respondent also represents that the so-called secret copyrighted knockout blows can be learned immediately by either an amateur or professional fighter so that he can "go right in and knock them all out," without fail and that, if the pupil is not an amateur or professional fighter, he can accomplish these results after ten or fifteen days practice or practice for a few minutes a day for a few weeks. These representations are untrue and are far in excess of any results that could ordinarily be expected by persons purchasing respondent's courses of instruction and literature. The length of time required by individuals to assimilate the knowledge furnished and learn to accomplish the results claimed, in respondent's courses of instruction, varies with the individual and the four blows commonly used by advanced pupils of the art of boxing are not blows commonly used

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or understood by beginners in said art. Respondent also represented that one of his secret copyrighted blows is an uppercut which he showed Carnera and with which Carnera knocked out Sharkey. The blow that respondent showed Carnera was an uppercut. The knock-out blow used by Carnera in knocking out Sharkey was an ordinary uppercut not peculiar to any system and is one that is used by all fighters. Respondent has also represented that the price of instruction as to his four "copyrighted secret-sure knockout punches" was \$15.00 each or \$50.00 for the four. Only a limited number of pupils have ever paid the respondent \$50.00 for instruction as to these four blows. The regular or usual price charged by said respondent for instruction as to these four blows is \$1.98, which covers the entire cost thereof.

PAR. 4. Many of respondent's competitors distribute and sell, by correspondence, courses of instruction in the science and are of muscle development, physical culture, and physical health restoration, boxing and fighting training and similar arts, in commerce among and between the various States of the United States, who do not make use of the same or similar misrepresentations and statements for the purpose of inducing the purchase of their respective courses of instruction.

PAR. 5. The representations and statements made by the respondent in his advertising literature, and otherwise, have a capacity and tendency to mislead and deceive the public to its prejudice and injury and into the purchase of the various courses of instruction offered for sale by the respondent in the erroneous belief that in purchasing the respondent's courses of instruction, said pupils would acquire a complete boxing and fighting course and would acquire knowledge of blows not known to other fighters generally and would receive other benefits commensurate with the representations made by the respondent. The representations herein set out, and the pupils' reliance on the truthfulness thereof in purchasing courses of instruction from the respondent, serve to cause an unfair diversion of trade from competitors of the respondent who have truthfully described their courses of instruction and the benefits that may reasonably be expected to be obtained from a study thereof.

## CONCLUSION

The aforesaid acts and practices of the respondent are each and all to the prejudice of the public, and to the 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 approved

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## Order

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 testimony and evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief in support of the complaint filed herein, 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 ordered*, That the respondent, Gus Martel, his agents, representatives, servants and employees, in the offering for sale and sale of correspondence courses of instruction in the science and art of muscle development, physical culture and physical health restoration, and boxing and fighting training, in interstate commerce, cease and desist from:

Representing, directly or indirectly, through advertisements inserted in newspapers and magazines of general circulation or in booklets, pamphlets and other advertising literature, or in any other manner;

(1) that any price at which any course of instruction is offered for sale is a special or reduced price, or is lower than the price ordinarily and usually received therefor when such is not the fact;

(2) that Gus Martel is the "Amateur Lightweight Knockout Champion of the World";

(3) that respondent's course of instruction imparts information with reference to any secret or copyrighted blows, or that said blows, in connection with which instruction is given, are universally effective, work every time, never fail, and enable the user thereof to knock out all opponents;

(4) that any of the instructions with reference to blows or shifts imparted in respondent's courses will serve to double the user's reach, speed and power;

(5) that a study of respondent's course of instruction and a knowledge of the instruction contained in said courses will enable a pupil to stand on a handkerchief without being hit and enable said pupil to be punch proof in all cases;

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(6) that respondent taught to any fighter the blow with which said fighter knocked out any other fighter, when such is not the fact;

(7) that the respondent's course of instruction can be successfully learned by amateur or professional fighters immediately, with the result that all of said amateur or professional fighters can knock out all opponents without fail;

(8) that pupils who are not amateur or professional fighters, upon studying respondent's course of instruction, can knock out their opponents without fail after practice for a relatively short period of time.

*It is further ordered,* That respondent shall, within 60 days from the date of service upon him of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which he has complied with the order herein set forth.

Syllabus

IN THE MATTER OF

OLD COLONEL DISTILLERY, INC., OLD COLONEL  
DISTRIBUTING COMPANY AND JOSEPH SCHIFF

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

*Docket 2678. Complaint, Jan. 4, 1936—Decision, July 8, 1936*

Where two corporations and an individual, who owned, operated, and controlled the same, and exercised executive management thereof, engaged as rectifiers and wholesalers of liquors in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in selling same among the various States and in the District of Columbia, in substantial competition with, (a) others engaged in the manufacture by distillation of whiskies, etc., and in the sale thereof, and (b) with others similarly engaged in purchasing, rectifying, etc., spirituous beverages and in selling same as aforesaid—

Represented, through use of word "Distillery" in corporate name of said first concern, output of which was wholesaled by second, and on stationery and advertising and on labels attached to bottles of their said products, and in other ways, to their customers, and furnished latter with means of representing to such customers' vendee-retailers and to the ultimate consuming public as purchasers of their said products, that the whiskies, etc., thus containered and bottled were made by said first-named corporation through process of distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture of product was completed, as long definitely understood by wholesale and retail trade and ultimate purchasing public from said industry's use of word "Distillery";

Facts being said corporation was not a distiller or distillery and did not distill its said whiskies, etc., thus bottled, labeled, and sold, nor own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash;

With effect of misleading and deceiving dealers and purchasing public into belief that such whiskies, etc., were made and distilled by said first corporation as aforesaid, and of inducing dealers and purchasing public, on part of a substantial portion of which there is a preference for buying spirituous liquors prepared and bottled by actual distillers thereof, to purchase same in such belief, and of thereby diverting trade to them from their competitors who do not, through their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation from mash, etc., of whiskies and other spirituous beverages, and with capacity and tendency so to mislead and deceive, etc.; to the substantial injury of substantial competition in commerce:

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

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Lawrence S. Grauman*, of Louisville, Ky., for respondents.

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## COMPLAINT

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, having reason to believe that Old Colonel Distillery, Inc., Old Colonel Distributing Co., and Joseph Schiff, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Old Colonel Distillery, Inc., is a corporation organized, existing, and doing business under the laws of the State of Kentucky with its office and principal place of business in the city of Louisville, in said State. Respondent, Old Colonel Distributing Co., is a corporation organized, existing, and doing business under the laws of the State of Kentucky and has the same office and principal place of business as respondent Old Colonel Distillery, Inc. Respondent, Joseph Schiff, is an individual, owning, operating, controlling, and exercising executive management of the aforesaid two corporate respondents. Respondents and each of them are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said businesses, they cause their said products, when sold, to be transported from their place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Kentucky and some located in other States of the United States and the District of Columbia. In the course and conduct of their businesses as aforesaid, respondents are now, and for more than one year last past have been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of their businesses as aforesaid, respondents are now, and for more than one year last past have been in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blend-



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ing, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distillery" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, a place where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of their businesses as aforesaid, respondent Joseph Schiff manages the affairs of respondent Old Colonel Distillery, Inc., as a rectifier causing its entire output to be sold to the corporate respondent Old Colonel Distributing Co., which operates as the wholesaler for the respondents and each of them and by the use of the word "Distillery" in the corporate name of the respondent Old Colonel Distillery, Inc., printed on its stationery and advertising, and on the labels attached to the bottles in which it and the other respondents sell and ship the said products, and in various other ways, respondents and each of them represent to their customers and furnish them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by the respondent Old Colonel Distillery, Inc., manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when as a matter of fact, respondent Old Colonel Distillery, Inc. is not a distiller or a distillery, and does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and by the other respondents so sold and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondents and each of them engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competi-

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tors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondents and each of them, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondents, and each of them are manufactured and distilled by them from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondents and each of them thereby diverting trade to respondents and each of them from their competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondents and each of them do substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents and each of them are to the prejudice of the public and the competitors of respondents and each of them 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.

## 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 4, 1936, issued, and on January 6, 1936, served its complaint in this proceeding upon the respondents, Old Colonel Distillery, Inc., and Old Colonel Distributing Company, corporations, and Joseph Schiff, an individual, charging them, and each of them, with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondents, and each of them,

## Findings

filed answer thereto admitting all of the material allegations of the complaint to be true, and stating that the Commission might make, enter, issue, and serve upon them, and each of them, without hearing, without further evidence and without other intervening procedure, an order to cease and desist from the violations of law charged in the complaint, and said answer was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Old Colonel Distillery, Inc., is a corporation organized, existing, and doing business under the laws of the State of Kentucky with its office and principal place of business in the city of Louisville, in said State. Respondent, Old Colonel Distributing Company, is a corporation organized, existing, and doing business under the laws of the State of Kentucky and has the same office and principal place of business as respondent Old Colonel Distillery, Inc. Respondent, Joseph Schiff, is an individual, owning, operating, controlling, and exercising executive management of the aforesaid two corporate respondents. Respondents and each of them are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers of liquors, purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said businesses, they cause their said products, when sold, to be transported from their place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Kentucky and some located in other States of the United States and the District of Columbia. In the course and conduct of their businesses as aforesaid, respondents are now, and for more than one year last past have been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia;

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and in the course and conduct of their businesses as aforesaid, respondents are now, and for more than one year last past have been in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "Distillery" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, a place where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of their businesses, as aforesaid, respondent Joseph Schiff manages the affairs of respondent Old Colonel Distillery, Inc., as a rectifier, causing its entire output to be sold to the corporate respondent Old Colonel Distributing Company, which operates as the wholesaler for the respondents and each of them and by the use of the word "Distillery" in the corporate name of the respondent Old Colonel Distillery, Inc., printed on its stationery and advertising, and on the labels attached to the bottles in which it and the other respondents sell and ship the said products, and in various other ways, respondents and each of them represent to their customers and furnish them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by the respondent Old Colonel Distillery, Inc., manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when as a matter of fact, respondent Old Colonel Distillery, Inc., is not a distiller or a distillery, and does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and by the other respondents so sold and transported, and does not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondents and each of them, engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them

and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondents and each of them, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondents and each of them are manufactured and distilled by respondent, Old Colonel Distillery, Inc., from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondents and each of them, thereby diverting trade to respondents and each of them from their competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondents and each of them do substantial injury to substantial competition in interstate commerce.

#### CONCLUSION

The methods and practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and competitors of respondents and each of them, 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 upon the complaint of the Commission, and the answer of respondents, waiving hearing on the charges set forth in the said complaint and stating that they and each of them admit all of the

## Order

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material allegations of the complaint to be true, and that without further evidence or intervening procedure the Commission may make, issue, and serve upon them and each of them findings as to the facts and an order to cease and desist from the violations of law charged in the complaint and the Commission being fully advised in the premises, having thereupon concluded that respondent has violated 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,

*It is now ordered,* That the respondents, Old Colonel Distillery, Inc., Old Colonel Distributing Company, a corporation, and Joseph Schiff, an individual, and the agents, salesmen, and employees of them and each of them, in connection with all whiskies, gins, and other spirituous beverages by them and each of them in interstate commerce hereafter sold or offered for sale do cease and desist from:

Representing through the use of the word "Distillery" in the corporate name of the respondent, Old Colonel Distillery, Inc., printed on its stationery, advertising or on the labels attached to the bottles in which it and the other respondents sell and ship the said products, or in any other way by word or words of like import representing, (a) that the respondent, Old Colonel Distillery, Inc., is a distiller of whiskies, gins, and other spirituous beverages; or (b) that the said whiskies, gins, and other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where such beverages are manufactured by the process of distillation, unless and until the said respondent shall own, operate, or control a place or places where such whiskies, gins, and other spirituous beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

*It is further ordered,* That the said respondents, and each of them, 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, and each of them, are complying and have complied with the order to cease and desist hereinabove set forth.

## Complaint

## IN THE MATTER OF

MEYER BRODIE AND MORRIS WHITE, DOING BUSINESS  
AS M & M BAG AND SUIT CASE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2658. Complaint, Dec. 12, 1935—Decision, July 9, 1936*

Where a firm engaged in the manufacture of leather luggage, about 65 percent of which was made from the inferior split leather or cut or layer of the hide remaining after top grain or surface had been removed therefrom—Conspicuously stamped said products, thus made, "Warranted Walrus Grained Leather," and stamped or represented or designated luggage made by it from such split leather as "leather," without indicating in any way that same was not covered with top grain or genuine leather;

With tendency and capacity to confuse, mislead, and deceive members of public into believing that luggage, thus stamped by it, was covered with outside or top layer of hide, as understood by trade and consuming public from terms "top grain leather," "grained leather," "genuine leather," "genuine cowhide," "warranted leather," "warranted cowhide," and "leather," as applied to leather products, and with effect of inducing them to buy luggage thus stamped because of such erroneous belief, and with tendency and capacity to divert trade to it from competitors who sell such products covered with split hide and truthfully thus label the same, and from sellers of top grain leather covered luggage:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

*Mr. William L. Pencke* for the Commission.

## COMPLAINT

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, having reason to believe that Meyer Brodie and Morris White, copartners, doing business under the firm name and style of M & M Bag and Suit Case Company, have been, and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondents, Meyer Brodie and Morris White are copartners, doing business under the firm name and style

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of M & M Bag and Suit Case Company and have their office and principal place of business in the city of New York and State of New York.

PAR. 2. That said respondents are now, and for more than one year last past, have been engaged in the manufacture of leather luggage and in the sale and distribution of the same in commerce between and among various States of the United States; causing said products, when sold, to be shipped from their 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.

PAR. 3. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of luggage similar in kind to that made and sold by respondents, as hereinafter described, as well as other types of luggage, and such other individuals, firms, and corporations have caused and do now cause their said luggage, when sold by them, to be transported from the various States of the United States where they are located, to, into, and through States other than the State of origin of the shipment thereof. Said respondents have been, during the time aforesaid, in competition in interstate commerce in the sale of their said luggage with such other individuals, firms, and corporations.

PAR. 4. Certain pieces of the luggage manufactured and sold by respondents as aforesaid are made from top grain leather, while other pieces are made from split leather. Top grain leather is that portion of the hide which includes the outer surface or hair side and is of sufficient depth and thickness so that each square foot of said leather weighs not less than two ounces. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide. Split leather is of inferior quality and durability to top grain leather and commands a lower price. It is spongy, dry, and scuffs readily even when finished. The terms "top grain leather," "grained leather," "genuine leather," "genuine cowhide," "warranted leather," "warranted cowhide," "cowhide," and "leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather, as distinguished from split leather as described above, and there is a preference among the trade and consuming public for luggage made of such leather over luggage made from split leather. Certain pieces of the luggage manufactured and sold as aforesaid by respondents are covered with said split leather, and respondents place upon the surface of luggage so manufactured from said split leather, and have done



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## Findings

so for more than one year last past, a conspicuous stamp reading as follows:

Warranted,  
Top Grain Cowhide,  
Leather,  
or,  
Warranted  
Walrus Grained  
Leather.

Respondents also stamp or represent or designate luggage manufactured by it from split leather as "leather" without indicating in any way that the said luggage is covered with split leather and not with top grain or genuine leather. Said stamps and representations imply to the purchasing public that the material with which such luggage is covered is top grain leather, and retailers are thus enabled by reason of said stamps, labels, or representations to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered.

Said stamps represent and imply to the purchasing public that the material with which such luggage is covered is top grain leather, and retailers are enabled by reason of said stamps to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 5. That the representations of respondents, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public who believe that luggage so stamped by respondents is covered with the outside or top layer of the hide, and they are induced to buy luggage so stamped because of such erroneous belief. Such representations also have the tendency and capacity to divert trade to respondents from those competitors who sell luggage covered with split hide and truthfully so label them, as well as from those who sell luggage covered with top grain leather.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' competitors 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.

## 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,

## Findings

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to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 12, 1935, issued and on December 14, 1935, served its complaint upon respondents, Meyer Brodie and Morris White, copartners, doing business under the firm name and style of M & M Bag and Suit Case Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents filed no answer to the complaint. Testimony and evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before Joseph A. Simpson, an examiner for the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and evidence, and brief in support of the complaint; brief of respondent and oral argument of both counsel having been waived; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Meyer Brodie and Morris White, are copartners and trade under the firm name and style of M & M Bag and Suit Case Co. Respondents are now, and for more than one year last past, have been engaged in the manufacture of leather luggage, consisting of suitcases, Gladstone bags, and zipper bags. Their factory and principal place of business is located in the city and State of New York, and they ship said goods, when sold, from said place of business to purchasers thereof located in a State or States of the United States other than the State of New York. Respondents are in competition with similar concerns, who sell and manufacture leather luggage, which, when sold, is shipped by said competitors into and through the various States of the United States and the District of Columbia, to purchasers thereof.

PAR. 2. Certain pieces of the luggage manufactured and sold by respondents as aforesaid are made from top grain leather, while other pieces are made from split leather. Top grain leather is that portion of the hide which includes the outer surface or hair side and is of sufficient depth and thickness so that each square foot of said leather weighs not less than two ounces. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide. Split leather is of inferior quality and durability to top grain leather and commands a lower price. It is spongy,

dry, and scuffs readily even when finished. The terms "top grain leather," "grained leather," "genuine leather," "genuine cowhide," "warranted leather," "warranted cowhide," "cowhide," and "leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather, as distinguished from split leather as described above, and there is a preference among the trade and consuming public for luggage made of such leather over luggage made from split leather. About 65 percent of the luggage manufactured and sold as aforesaid by respondents is covered with said split leather, and respondents placed upon the surface of luggage so manufactured from said split leather, a conspicuous stamp reading as follows:

Warranted  
Walrus Grained  
Leather

Respondents also stamped or represented or designated luggage manufactured by it from split leather as "leather" without indicating in any way that the said luggage was covered with split leather and not with top grain or genuine leather. Said stamps and representations implied to the purchasing public that the material with which such luggage was covered was top grain leather, and retailers were thus enabled by reason of said stamps, labels, or representations to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 3. The representations of respondents, as aforesaid, had a tendency and capacity to confuse, mislead, and deceive members of the public who believed that luggage so stamped by respondents was covered with the outside or top layer of the hide, and they were induced to buy luggage so stamped because of such erroneous belief. Such representations also had the tendency and capacity to divert trade to respondents from those competitors who sell luggage covered with split hide and truthfully so label them, as well as from those who sell luggage covered with top grain leather.

PAR. 4. The record that the practices complained of had been discontinued some months prior to the taking of testimony in this case, but there is no assurance in sight that respondents, if not prohibited, would not resume and continue their former acts and practices, as hereinabove set out.

CONCLUSION

The acts and practices of respondents under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondents' competitors, and were unfair methods

Order

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of competition in commerce and constitute violations 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, testimony and evidence taken before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, and no evidence being offered in opposition thereto, and upon brief filed by William L. Pencke, counsel for the Commission, brief of respondent, and oral argument of both counsel having been waived, 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 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 respondents, Meyer Brodie and Morris White, copartners, doing business under the firm name and style of M & M Bag and Suit Case Company, their agents, servants, and employees, in connection with offering for sale or sale of luggage by them in interstate commerce, do forthwith cease and desist from:

Labeling, stamping, or otherwise marking or advertising luggage manufactured in whole or in part from split leather as "Warranted Walrus Grained Leather" without at the same time and in connection therewith, clearly stating that split leather has been used in the manufacture of such luggage.

*It is further ordered*, That the said respondents, within 30 days from and after the date of the service upon them of this order, shall file with the Commission a report 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.

## ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

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MAIDEN-FORM BRASSIERE Co., INC. Complaint, December 3, 1934. Order, January 14, 1936. (Docket 2254.)

Charge: Advertising falsely or misleadingly; in connection with the manufacture and sale of brassieres.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of respondent and the testimony taken in support of the allegations of the complaint and in opposition thereto, and the brief of counsel for the Commission, and the Commission being now fully advised in the premises;

*It is ordered*, That the complaint herein be and the same is hereby dismissed.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John W. Hildrop* for the Commission.

*Darby & Darby*, of New York City, for respondent.

ELBEE CHOCOLATE Co., INC. Complaint, August 18, 1930. Order to cease and desist, April 11, 1934. 18 F. T. C. 374. Order vacating, etc., January 16, 1936. (Docket 1864.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Reopened by the following order:

This matter coming on for consideration on the record herein, and it appearing to the Commission that an order to cease and desist was entered and issued herein on April 11, 1934, based upon the consent of the respondent to cease and desist from the unfair method of competition embraced in the complaint, and the Commission being fully advised in the premises,

*It is ordered* that the said order to cease and desist entered and issued herein on April 11, 1934, be and the same hereby is vacated and set aside, and that the taking of testimony on the charges of the complaint in this proceeding be and the same hereby is ordered to be begun upon reasonable notice to the respondent herein.

*Mr. Henry C. Lank* for the Commission.

BUNTE BROTHERS, INC. Complaint, May 1, 1930. Order to cease and desist, April 3, 1934. 18 F. T. C. 283. Order vacating, etc., January 17, 1936. (Docket 1811.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Reopened by the following order:

This matter coming on for consideration on the record herein and the Commission being fully advised in the premises,

*It is ordered* that the order to cease and desist heretofore issued in the above matter on the 3rd day of April, A. D., 1934, be, and the same is hereby vacated; and that the taking of testimony on the amended and supplemental complaint issued herewith be and the same hereby is ordered to be commenced in accordance with the provisions of the notice sub-joined to the said amended and supplemental complaint.

*Mr. Henry C. Lank* for the Commission.

STEFANO CRISAFULLI, trading as LUCCA OLIVE OIL Co. Complaint, July 9, 1935.<sup>1</sup> Order, February 11, 1936. (Docket 2290.)

Charge: Using misleading trade name and misbranding or mislabelling as to source or origin of product; in connection with the sale and distribution of olive oil and blended vegetable and salad oils.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record, and the Commission being fully advised in the premises:

*It is ordered*, That this case be closed, without prejudice to the right of the Commission to reopen the same for further investigation and action thereon, for the reason that the record fails to disclose interstate sales of respondent's products alleged to be falsely labeled, advertised or misbranded.

*Mr. Marshall Morgan* for the Commission.

*Wechsler & Wechsler*, of New York City, for respondent.

THE STEARNS & FOSTER Co. Complaint, May 24, 1933. Order, March 2, 1936. (Docket 2104.)

Charge: Misbranding or mislabeling as to prices; in connection with the manufacture and sale of mattresses.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the petition of respondent to dismiss the complaint herein, and the Commission having duly considered said petition and the record, and being now fully advised in the premises;

*It is ordered*, That the case growing out of the complaint herein issued on the 24th day of May 1933, against The Stearns & Foster Company, be, and the same is hereby closed, without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with the regular procedure; the case being closed upon the ground that

<sup>1</sup> Supplemental and amended.

the respondent has filed petition with the Commission in which it represents that it did engage in the practices charged in the complaint but that it ceased such practices more than three years ago and long prior to the issuance of the complaint, and that it has fully discontinued the practices complained of and has no intention of resuming the same.

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. Henry Miller* and *Mr. James M. Hammond* for the Commission.

*Mr. Carl Lehmann* and *Mr. John Weld Peck*, of Cincinnati, Ohio, for respondent.

**THE AGMEL CORPORATION.** Complaint, February 24, 1930. Order, March 6, 1936. (Docket 1766.)

Charge: Advertising falsely or misleadingly as to quality or results of product; in connection with the importation and sale of a so-called medicinal preparation known as "Agmel".

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and the Commission having duly considered the same, and being now fully advised in the premises,

*It is ordered*, That the case growing out of the complaint herein issued on the 24th day of February, 1930, against The Agmel Corporation, be, and the same is, hereby closed upon the ground that respondent has represented that it has not advertised the product involved since 1930 and is not now doing so and that it has no intention of resuming said advertising, but that in the event such advertising is resumed, respondent will so notify the Commission; and

*It is further ordered*, That this case be closed without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

*Mr. Harry D. Michael* for the Commission.

*Chadbourne, Stanchfield & Levy*, of New York City, for respondent.

**MEAD JOHNSON & Co., INC.** Complaint, Jan. 4, 1935.<sup>2</sup> Order, March 18, 1936. (Docket 2279.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of infant diet and nutrition products, including Dextri-Maltose and Viostorol.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint issued herein, the answer thereto, the testimony and evi-

<sup>2</sup> Complaint amended by stipulation so as, in effect, to substitute Mead Johnson & Co., Inc., wholly owned subsidiary of Mead Johnson & Co., for latter.

dence adduced in support of the allegations of the complaint and in opposition thereto, and the briefs and oral argument of counsel for the Commission and for the respondent, and the Commission having duly considered the same and being now fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed, for the reason and on the ground that the use of the methods and practices charged in the complaint was without the knowledge and consent of the responsible officials of the respondent company, and that as soon as such officials learned of the use of said methods and practices, the same were discontinued, which discontinuance was prior to the issuance of the complaint, and upon the assurance of the attorney of record for the respondent in open hearing before the Commission that such methods and practices will not be resumed.

Before *Mr. William C. Reeves*, trial examiner.

*Mr. Robt. N. McMillen* for the Commission.

*White & Case*, of New York City, and *Mr. Robert L. Owen*, of Washington, D. C., for respondent.

**JUNG & SCHADE LABORATORIES.** Complaint, January 20, 1936. Order, March 21, 1936. (Docket 2689.)

Charge: Using misleading corporate name and advertising falsely or misleadingly in said respect and as to qualities or properties of product and purported money-back guarantee, in connection with the sale of a "sober-up" remedy designated "Vi-Vo."

Record closed by the following order:

This matter coming on for consideration by the Commission, and it appearing that the respondent has been, and now is, out of business for the past nine months, and the Commission having duly considered the record, and all the facts and circumstances attendant therewith, and being now fully advised in the premises;

*It is ordered*, That the case growing out of the complaint herein, issued [served] on the 11th day of February, 1936, against Jung & Schade Laboratories, be, and the same is hereby closed, without prejudice to the right of the Commission, should the facts warrant, to re-open same and resume prosecution of the complaint in accordance with regular procedure.

*Mr. Meyer Turin* for the Commission.

**CALIFORNIA PACKING CORPORATION, ET AL.** Complaint, October 4, 1935. Order, March 23, 1936. (Docket 2569.)

Charge: Cooperating together to coerce and enforce exclusive and non-competitive patronage of controlled service or offering, through promises of business or additional business or threats of diminished or discontinued business, in connection with the packing and sale of a wide line of food products.



Dismissed, after answer, by the following order:

This matter having come before the Commission on motion of respondent to dismiss the complaint of the Commission for lack of jurisdiction over the subject matter of the complaint, and its brief in support thereof, and counsel for the Commission having filed their brief in opposition thereto, and oral argument having been heard, and the Commission being fully advised in the premises,

*It is hereby ordered*, That the said motion of respondent be granted without prejudice to the filing of a new complaint.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. Everett F. Haycraft* and *Mr. A. W. DeBirney* for the Commission.

*Covington, Burling, Rublee, Acheson & Shorb* and *Pillsbury, Madison & Sutro*, of Washington, D. C., for respondents.

MERCHANTS DISTILLERS PRODUCTS. Complaint, May 24, 1935. Order, April 2, 1936. (Docket 2408.)

Charge: Using misleading corporate name as to business status, misbranding or mislabeling and advertising falsely or misleadingly in said respect, in violation of section 5, and of section 1 of article V of the Code of Fair Competition for the Distilled Spirits Rectifying Industry, and as such in violation of section 3 of title 1 of the National Industrial Recovery Act and section 5 of the Federal Trade Commission Act; in connection with the rectifying and wholesaling of liquors.

Record closed by the following order:

This matter coming on for consideration by the Commission upon a showing made March 26, 1936, by Hall Johnston, attorney for respondent, and it appearing to the Commission that the said respondent, Merchants Distillers Products, a corporation, was by consent adjudicated a bankrupt on January 9, 1936, upon petition of three of its creditors; but its entire assets were sold by the referee in bankruptcy at auction to the Marks Mercantile Co., dealers in junk; that neither glass nor labels bearing the name or license number of the bankrupt were included in the sale; that the basic permits of the Merchants Distillers Products were canceled by the Federal Alcohol Administration as of March 9, 1936; and that the affairs of said respondent have been wound up and disposed of, and there is no intention on the part of respondent, its successors, or vendees, to ever again resume operations under the name "Merchants Distillers Products"; and the Commission being fully advised in the premises:

*It is, therefore, now ordered*, That the case growing out of the complaint herein, issued on the 24th day of May 1935, against the said respondent, Merchants Distillers Products, be and the same is hereby closed, without prejudice to the right of the Commission, should the

facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Hall Johnston*, of Washington, D. C., for respondent.

VAN KANNEL REVOLVING DOOR CO. Complaint, May 3, 1935. Order, April 22, 1936. (Docket 2381.)

Charge: Acquiring stock of competitors in violation of section 7; in connection with the manufacture and sale of wood and metal revolving doors and accessories thereto.

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record and recommendation of the chief counsel for dismissal of the complaint and the Commission having duly considered the record and being fully advised in the premises:

*It is ordered*, That the complaint herein be, and the same is hereby, dismissed.

Before *Mr. William C. Reeves*, trial examiner.

*Mr. Everett F. Haycraft* and *Mr. Reuben J. Martin* for the Commission.

*Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for respondent.

ROSSETT MANUFACTURING CO. Complaint, March 21, 1935. Order, April 28, 1936. (Docket 2343.)

Charge: Using misleading corporate name and advertising falsely or misleadingly; in connection with the sale, as jobber, of men's hats and caps.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission on the record and the Commission having duly considered the same and being now fully advised in the premises;

*It is ordered*, That the findings as to the facts and the order to cease and desist heretofore issued by the Commission under date of January 30, 1936,<sup>a</sup> be, and they are hereby vacated and set aside.

*It is further ordered*, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. John W. Hildrop* for the Commission.

*Mr. Joseph Schron*, of New York City, for respondent.

DISTILLERS IMPORTING CORP. Complaint, June 20, 1935. Order, May 11, 1936. (Docket 2450.)

Charge: Using misleading corporate name as to business status and misbranding or mislabeling and advertising falsely or misleadingly

<sup>a</sup> Not published.

in said respect, in violation of Section 5, and of Section 1 of Article V of the Code of Fair Competition for the Distilled Spirits Rectifying Industry, and as such in violation of Section 3 of Title 1 of the National Industrial Recovery Act and Section 5 of the Federal Trade Commission Act.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon supplemental investigation and it appearing that the respondent, Distillers Importing Corporation, has surrendered its permits as of April 30, 1935, and has not further engaged in interstate commerce in the importation or sale of alcoholic beverages since that date, and is in the process of dissolution, and that it therefore appears unlikely that respondent will resume the importation or sale of alcoholic beverages in interstate commerce, and the Commission being fully advised in the premises;

*It is ordered*, That the case growing out of the complaint hereinbefore issued on June 20, 1935, be and the same hereby is closed without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

*Mr. PGad B. Morehouse* for the Commission.

QUAKER CITY CHOCOLATE & CONFECTIONERY Co. Complaint, March 11, 1930. Order to cease and desist, April 3, 1934. Order reopening, May 12, 1936. (Docket 1773.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Reopened by the following order:

This matter coming on for consideration on the record herein, and the Commission being fully advised in the premises,

*It is ordered*, That the order to cease and desist, heretofore issued in the above matter on the 3rd day of April, A. D., 1934 [18 F. T. C. 269], be, and the same is hereby vacated; and that the taking of testimony on the amended and supplemental complaint issued herewith be and the same hereby is ordered to be commenced in accordance with the provisions of the notice sub-joined to the said amended and supplemental complaint.

*Mr. Henry C. Lank* for the Commission.

*Mr. Earl Jay Gratz*, of Philadelphia, Pa., for respondent.

SOL BLOCK AND SIDNEY BLUMENTHAL, doing business as RITTENHOUSE CANDY Co. Complaint, October 24, 1932. Order to cease and desist, April 3, 1934. Order reopening, May 15, 1936. (Docket 2071.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Reopened by the following order:

This matter coming on for consideration on the record herein, and the Commission being fully advised in the premises,

*It is ordered*, That the findings as to the facts and order to cease and desist, heretofore issued in the above matter on the 3rd day of April, A. D., 1934 [18 F. T. C. 339], be, and the same are hereby vacated; and that the taking of testimony on the amended and supplemental complaint issued herewith be and the same hereby is ordered to be commenced in accordance with the provisions of the notice sub-joined to the said amended and supplemental complaint.

*Mr. Henry C. Lank* for the Commission.

PASQUALE MARGARELLA. Complaint, April 29, 1930. Order to cease and desist, April 3, 1934. Order reopening, May 19, 1936. (Docket 1790.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Reopened by the following order:

This matter coming on for consideration on the record herein, and the Commission being fully advised in the premises,

*It is ordered*, That the findings as to the facts and order to cease and desist, heretofore issued in the above matter on the 3rd day of April, A. D., 1934 [18 F. T. C. 278], be, and the same are hereby vacated; and that the taking of testimony on the amended and supplemental complaint issued herewith be and the same hereby is ordered to be commenced in accordance with the provisions of the notice sub-joined to the said amended and supplemental complaint.

*Mr. Henry C. Lank* for the Commission.

HAROLD C. BROOKS, ELLEN J. BROOKS, and LOUIS E. BROOKS, trading as BROOKS RUPTURE APPLIANCE Co., and BROOKS APPLIANCE Co. Complaint, September 10, 1935. Order, June 19, 1936. (Docket 2547.)

Charge: Advertising falsely or misleadingly as to qualities, nature, and history of product; in connection with the sale of an appliance for use in treating rupture.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record and the Commission having duly considered the same and being now fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed.

*Mr. E. J. Hornibrook* for the Commission.

STRONG, CARLISLE & HAMMOND Co. Complaint, January 31, 1936. Order, June 19, 1936. (Docket 2710.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to properties of product; in connection with the manufacture and sale of a solution of sodium hypochlorite for household use.

Record closed by the following order:

This matter coming on to be heard by the Commission, and it appearing that the respondent has signed a stipulation as to the facts, which has been approved by the Commission, and the Commission having duly considered the record and being now fully advised in the premises;

*It is ordered*, That this proceeding be closed without prejudice to the right of the Commission to reopen the same and resume prosecution thereof should future facts so warrant.

*Mr. T. H. Kennedy* for the Commission.

D. BLUM & Co., INC. Complaint, October 3, 1935. Order, June 25, 1936. (Docket 2567.)

Charge: Misbranding or mislabeling as to properties of product; in connection with the sale of certain cleaning fluids.

Dismissed, after answer and trial, by the following order:

This matter coming on regularly to be heard upon testimony, briefs, and arguments of counsel for the Commission and counsel for the respondent, and the Commission having duly considered the same and being now fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed for the reason that certain of the practices charged in the complaint have been abandoned by respondent and for the further reason that there is a failure of proof as to the other practices charged.

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. James M. Brinson* for the Commission.

HENRY S. BLUMENTHAL, individually, and as trustee of THE RIBBONNEW CORP. OF AMERICA, ETC. Complaint, October 23, 1935. Order, June 25, 1936. (Docket 2595.)

Charge: Threatening patent infringement suits or other litigation, not in good faith, and spying on competitors incident thereto; in connection with the manufacture and sale of a device for rejuvenating worn-out typewriter ribbons and fluid for use in connection therewith.

Dismissed, after trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly examined the same and being now fully advised in the premises;

*It is ordered*, That the complaint be, and the same hereby is, dismissed upon the authority of *Flynn & Emerich Co. v. Federal Trade Commission* (52 F. (2d) 836).

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

*Mr. J. T. Welch* for the Commission.

TISSUE BRANDS, INC., and BELMONT CORN and ALBERT H. ARNSTEIN. Complaint, November 14, 1935. Order, June 25, 1936. (Docket 2627.)

Charge: Advertising falsely or misleadingly as to properties or qualities of product and nature thereof; in connection with the manufacture and sale of medicated cleansing tissue which it sells under the trade name "Sankerchief."

Dismissed, after answers and trial, by the following order:

This matter coming on regularly to be heard and the Commission having considered the record and being fully advised in the premises;

*It is ordered*, That the complaint herein be, and hereby is, dismissed.

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. James M. Brinson* for the Commission.

*Mr. William C. Sullivan*, of Washington, D. C., for respondents.

DeLuxe Manufacturing Co. Complaint, December 5, 1935. Order, June 25, 1936. (Docket 2646.)

Charge: Using misleading corporate name and misrepresenting business status; in connection with the sale of bar fixtures and equipment.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record and the Commission having duly considered the same and being fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Charles F. Diggs*, trial examiner.

*Mr. Alden S. Bradley* for the Commission.

*Mr. Joseph B. Beckenstein* and *Mr. Oscar A. Goerlick*, of Detroit, Mich., for respondent.

MAURICE LEVINE, trading as E-Z KLEENER MANUFACTURING Co., Etc. Complaint, December 12, 1935. Order, June 25, 1936. (Docket 2657.)

Charge: Using misleading trade name, misrepresenting business status and misbranding or mislabeling; in connection with the repacking and sale of steel wool cleaning pads for household use.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises;

*It is ordered*, That the complaint be, and the same hereby is, dismissed upon the ground that the evidence fails to sustain the allegations of the complaint.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. Astor Hogg* for the Commission.

*Mr. George Kossoy*, of New York City, for respondent.

LAIRD & Co. Complaint, April 2, 1936. Order, June 25, 1936. (Docket 2754.)

Charge: Acquisition of stock of competitor in violation of section 7; in connection with the manufacture and sale of applejack brandy.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed upon the authority of *Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission* (291 U. S. 587), for the reason that subsequent to the issuance of the complaint but prior to the taking of testimony, respondent herein purchased all of the assets of the Hyland Distilling Corporation in consideration for the surrender to the Hyland Distilling Corporation by respondent of all the issued and outstanding capital stock of said Hyland Distilling Corporation, and for the further reason that subsequently the Hyland Distilling Corporation was dissolved.

Before *Mr. Edward M. Averill*, trial examiner.

*Mr. Armand W. DeBirny* and *Mr. Everett F. Haycraft* for the Commission.

*Chaffee, Dawson & Shealy*, of New York City, for respondent.

AMERICAN SCHOOL. Complaint, November 6, 1935. Order, June 26, 1936. (Docket 2615.)

Charge: Advertising falsely or misleadingly as to opportunities in product or service and business status; in connection with the sale of books, etc., collectively known as home study courses of instruction.

Dismissed, after answer and trial, by the following order:

This matter having come on regularly to be heard and the Commission having considered the record and being fully advised in the premises,

*It is ordered*, That the complaint herein be and hereby is dismissed.

Before *Mr. Robert S. Hall*, trial examiner.

*Mr. James M. Brinson* for the Commission.

*Mayer, Meyer, Austrian & Platt*, of Chicago, Ill., for respondent.

IRVING ROY JACOBSON and PROGRESSIVE EDUCATION SOCIETY, INC. Complaint, August 28, 1934.<sup>4</sup> Original order, September 24, 1934. Docket 2132, 19 F. T. C. 242. Order vacating, etc., June 30, 1936.

Charge: Offering product falsely as free, misrepresenting price and terms and claiming endorsement thereof falsely, in connection with the sale of a set of books titled "Source Book," together with a loose-leaf extension service thereof.

Cease and desist order in this case was vacated by the following order:

This matter coming on for consideration, and the Commission being fully advised in the premises,

*It is ordered*, That the order to cease and desist heretofore issued in the above matter on the 24th day of September, A. D., 1934, be and the same is hereby vacated; and that the taking of testimony on the second amended and supplemental complaint issued herewith be and the same hereby is ordered to be commenced in accordance with the provisions of the notice subjoined to said second amended and supplemental complaint.

WESTERN DISTILLERS CORP. Complaint, May 17, 1935. Order, July 3, 1936. (Docket 2392.)

Charge: Using misleading corporate name as to business status, and misbranding or mislabeling and advertising falsely or misleadingly in said respect, in violation of Section 5, and of Section 1 of article V of the Code of Fair Competition for the Distilled Spirits Rectifying Industry, and as such in violation of Section 3 of Title I of the National Industrial Recovery Act and Section 5 of the Federal Trade Commission Act.

Record closed by the following order:

This matter coming on for consideration by the Commission upon supplemental investigation, and it appearing that the respondent, Western Distillers Corporation, has been adjudged a bankrupt, discontinued business as a wholesaler of spirituous beverages, disposed of its assets by sale to the San Angelo Wine and Spirits Corporation of Los Angeles, Calif., and that there is no reason to apprehend renewal of the unfair practices alleged in the complaint issued herein on May 17, 1935, which said practices are shown to have been long discontinued, and the Commission being fully advised in the premises:

*Now, therefore, it is hereby ordered*, That the case growing out of the complaint herein issued on the 17th day of May 1935, be

<sup>4</sup> Amended.



and the same hereby is closed, without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Norman A. Eisner*, of San Francisco, Calif., for respondent.

MAID-O-BEST, INC., and G. M. MOSES and MORRIS AVERBACH, trading as THE MURIEL Co. Complaint, April 9, 1934. Original order, November 5, 1934, Docket 2168, 19 F. T. C. 330. Order vacating, etc., July 6, 1936.

The cease and desist order in this misrepresentation case was ordered vacated and the taking of testimony directed by the following order:

This matter coming on for consideration on the record herein, and the Commission being fully advised in the premises—

*It is ordered*, That the order to cease and desist entered and issued herein on the 5th day of November 1934, be and the same hereby is vacated and set aside; and that the taking of testimony on the charges of the complaint in this proceeding be and the same hereby is ordered to be begun upon reasonable notice to the respondent herein.

*Mr. Marshall Morgan* for the Commission.



## STIPULATIONS<sup>1</sup>

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### DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST<sup>2</sup>

1622. **Using Lottery Scheme in Merchandising—Candies.**—Hayes Reding, an individual, doing business as Hayes Candy Manufacturer, formerly known as H. & H. Candy Co., engaged in the business of manufacturing candies, 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.

Hayes Reding, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of any scheme, plan, or method of sale, or of promoting the sale of its candy products which involves the use of any gift enterprise, lottery, or scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article. (Jan. 15, 1936.)

1623. **False and Misleading Trade or Corporate Name—Granite.**—Newbarre Granite Co., Inc., a corporation, engaged in the quarrying of granite from a nearby quarry 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.

The Barre district, within which alone Barre granite is produced or quarried, begins at the southerly part of the city of Barre, in Washington County, State of Vermont, and extends westerly about two and one-half miles and southerly about four miles, to and including Williamstown, in Orange County, Vermont. The granite produced in

<sup>1</sup> For false and misleading advertising stipulations effected through the Commission's special board. See p. 994 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, Jan. 14, 1936, to July 9, 1936, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 1621, inclusive—may be found in vols. 10 to 21 of the Commission's decisions.

<sup>2</sup> In the interest of brevity there is omitted from the published digest of the stipulation the agreement under which the stipulating respondent or respondents, as the case may be, agree that should such stipulating respondent or respondents "ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence" against such respondent or respondents, as the case may be, "in the trial of the complaint which the Commission may issue."

the quarries located within this district possesses qualities of texture, color, and durability which give it peculiar fitness for use in the manufacture of monuments and memorials and for building construction; and, because of such qualities, said products have acquired a widespread reputation and popularity, and the producers thereof have a valuable goodwill in the word "Barre" as applied thereto.

Newbarre Granite Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Newbarre" as part of or in connection or conjunction with its corporate and trade name. The said corporation also agreed in connection with the sale of its said product in interstate commerce, to cease and desist from the use of the word "Barre" in connection with the prefix "New" or with any other word or words as part of its corporate or trade name, or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said product is produced from a quarry located in the Barre district, when such is not the fact. (Jan. 22, 1936.)

1624. **False and Misleading Brands or Labels—Corset Lacing and Garters.**—Rhode Island Textile Co., a corporation, engaged in the business of manufacturing narrow fabrics, such as corset lacing, garters, and the like, and in the sale and distribution of 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.

Rhode Island Textile Co., in soliciting the sale of and selling its products in interstate commerce, agree to cease and desist from the use on labels affixed to said products, or in any other way, of the words "silk finish" or the word "silk" in any 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 silk-finished or finished in silk or are composed of or contain silk, the product of the cocoon of the silkworm, either in whole or in part, when such is not the fact; unless, when the words "silk finish" are used merely to describe the sheen of said products, then, in that case, the said words shall be accompanied by some other word or words, printed in type equally as conspicuous as that in which the words "silk finish" are printed, so as to indicate clearly that said products are not composed of and do not contain silk and that will otherwise indicate clearly that the said products are not composed of and do not contain silk and that will otherwise indicate clearly that the said products are composed of a product or products other than silk. (Jan. 23, 1936.)

1625. **False and Misleading Advertising—Hearing-Aid Devices.**—Better Hearing, Inc., a corporation, engaged in the sale and distri-

bution of hearing-aid devices under the trade designation "Aurophone" 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.

Better Hearing, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on its circular or other printed matter distributed in interstate commerce of the statement "America's Oldest Organization Specializing Exclusively in Scientific Hearing Aids" in connection or conjunction with its corporate and trade name "Better Hearing, Inc.", or of any other similar statement which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said Better Hearing, Inc., has been in existence longer than any of its competitors and/or that it is the oldest organization in America specializing exclusively or otherwise in scientific hearing aids, when such is not the fact. The said Better Hearing, Inc., also agreed to cease and desist from the use in its circular or other printed matter of the statement "Founded 1904" in connection with its corporate and trade name "Better Hearing, Inc.", so as to import or imply that the said Better Hearing, Inc., was organized or founded in 1904, when such is not the fact. The said Better Hearing, Inc., further agreed to cease and desist from the use in its said printed matter of the words "Special Introductory Offer" in connection or conjunction with the words "This Offer Expires", followed by a designated date purporting to limit the time within which the alleged special introductory offer must be accepted, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products represented or referred to by such words constitute the subject matter of an offer which is to continue only for the designated or a limited period of time, when such is not the fact. The said Better Hearing, Inc., also agreed to cease and desist from the use on its stationery of the words "London, England", "Montreal, Canada", and "Sydney, Australia", or of any of them, alone or in connection with local addresses, so as to import or imply that the said corporation has offices at London, England; Montreal, Canada; or Sydney, Australia, when such is not the fact. (Jan. 24, 1936.)

1626. False and Misleading Brands or Labels and Advertising—Aspirin.—Burton Brothers Co., Inc., a corporation, engaged in the sale and distribution, in interstate commerce of various products, and in competition with other corporations, firms, individuals, 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.

Burton Brothers Co., Inc., in soliciting the sale of and selling its aspirin in interstate commerce, agreed to cease and desist from the use of the word "Manufacturing" either alone or in connection or conjunction with the word "Chemists" or with any other word or words on labels affixed to its said product or in any other way which directly asserts and clearly imports and implies that the said corporation makes or manufactures said aspirin or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into an erroneous belief that it actually owns and operates or directly and absolutely controls the plant or factory in which said product is made or manufactured. Said corporation also agreed to cease and desist from the use of any of the following statements or of any other similar statements or representations without proper qualification, limitation or explanation, concerning its aspirin in advertisements or advertising matter circulated in interstate commerce; that its aspirin is "safe" or "absolutely safe", or that "it is not harmful" or that it will "give quickest relief because it is scientifically tested for purity, safety, speed and effectiveness" or that it is a "safe, sure relief for colds, nerves, pains and discomfort." Said corporation further agreed to cease and desist from the use in its advertising matter or in any way of the statement "Burton's Aspirin does not nauseate" or of any other similar statement or representation which may have the capacity or tendency to disparage other brands of aspirin by producing in the minds of purchasers the belief that such other brands of aspirin, when used or taken, cause users thereof to be nauseated. Nothing herein shall be construed as preventing the said Burton Brothers Co., Inc., from making proper therapeutic claims and recommendations for its aspirin which are based upon reputable medical opinion or recognized medical or pharmaceutical literature. (Jan. 25, 1936.)

**1627. False and Misleading Brands or Labels and Advertising—Glass Products.**—Gibbs & Co., a corporation, engaged in the manufacture of barber shop and beauty parlor supplies, 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.

Gibbs & Co., in soliciting the sale of and selling its glass products in interstate commerce, agreed to cease and desist from the use of the word "plate" to describe products not made from plate glass. (Jan. 30, 1936.)

**1628. False and Misleading Trade or Corporate Name, Business Status, and Advertising—Silk and Rayon Goods.**—Benrose Silk Manufacturing Corp., engaged in the business of a converter of silk and rayon goods and in the sale and distribution of 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.

Benrose Silk Manufacturing Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Manufacturing" as a part of or in connection with its corporate or trade name, or in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said corporation manufactures the products which it sells in interstate commerce, when such is not the fact; the use of the word "Mills" on letterheads or other advertising matter distributed in interstate commerce, either independently or in connection or conjunction with such words as "Allentown, Pa." or "Easton, Pa." or in any other way which may confuse, mislead, or deceive purchasers into the belief that said corporation owns, controls, or operates a mill or mills at any of the places indicated, when such is not the fact; the use of the word "Satin" to describe or represent commodities not composed wholly of silk, the product of the cocoon of the silk worm; and from the use of the word "Satin" in any way which may confuse, mislead, or deceive purchasers in reference to the composition of such commodities; the use of the word "Silk" without qualification to designate or describe commodities not composed wholly of silk but containing substantial quantities of salts or substances other than silk, being what are known as "weighted silks." If said commodities are in fact composed of silk, the product of the cocoon of the silk worm, but which are weighted to an amount exceeding 15% in black goods or to an amount exceeding 10% in goods other than black, and if the word "Silk" is used to designate or describe such commodities then in that event the word "Silk" shall be accompanied by the word "Weighted" or some other words printed in type equally as conspicuous as that in which the word "Silk" is printed and which will indicate clearly that said commodities are weighted with mineral salts or other weighting substance. (Jan. 30, 1936.)

1629. **False and Misleading Advertising—Kelp Tablets.**—Kelement, Inc., a corporation, engaged in the sale and distribution in interstate commerce, of dehydrated kelp in tablet form for medicinal use, under the trade name or brand of "Kelement", and in competition with other corporations, firms, individuals, 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.

Kelement, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter: That Kelement will keep the human body well, or supply it with an adequate

mineral reserve, or that Kelp products are naturally rich in calcium, phosphorus, copper, and iron, or otherwise exaggerating or misrepresenting the mineral content of kelp; That Kelement is not a drug, or that it contains an adequate supply of food-iodine; That Kelement contains all the organic mineral elements necessary to keep the human body healthy and free from disease, or that the same is a complete substitute for other medicinal preparations; From making comparisons, with or without pictorial illustrations, wherein Kelement is contrasted with food commodities on the basis of weight without making due allowance for the bulk and moisture of the food products, and with the result of distorting and misrepresenting the relative organic mineral content thereof; That many leading physicians believe that 95% of all human ills arise from a lack of proper mineralization in foods; or that the food eaten daily is materially lacking in organic mineral content in a considerable number of cases; That Kelement contains organic minerals in such quantities as to be effective in restoring the systemic mineral balance in cases of deficiency; That Kelement is a specific, or that it has any therapeutic value in the treatment of Anemia, rheumatism, underweight, acidosis, hay fever, skin diseases, pyorrhea, dental caries, colds or catarrh, or that the same is safe for use in cases of thyroid deficiency. (Jan. 30, 1936.)

1630. **False and Misleading Prices and Advertising and Misrepresenting Product—Photographic Portraits.**—Strem Studios, Inc., a corporation, engaged in making photographic portraits of its customers and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Strem Studios, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing, directly or indirectly, by means of advertisements or advertising matter, for itself or through any agent or representative; that its work is "Photography's Latest Creation"; that its work is "Distinctive Portraiture"; that its "Gold-o-Graf" photographs are made in natural colors; that its "Gold-o-Graf" photographs are oil paintings, or are finished in natural oils; that it uses motion picture film in making said "Gold-o-Graf" photographs; that the regular value of said products is \$5.00, and/or that such price has been reduced for advertising purposes, when such is not the fact; from any other similar statement or representation which has the tendency or capacity to confuse, mislead, or deceive purchasers of its said products in any material respect concerning the character or value thereof. (Feb. 4, 1936.)



1631. **False and Misleading Brands or Labels and Advertising—Women's Clothing.**—La Mode Garment Co., a corporation, engaged in the manufacture of women's dresses, underwear and pajamas; and of uniforms for waitresses, etc., and in the sale and distribution thereof, to retailers, in interstate commerce, and in competition with other corporations, firms, individuals 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.

La Mode Garment Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Linene" so as to confuse or mislead purchasers of said products into the belief that the same are made of the fiber of the flax plant; and from the use of the word "Linene" in any way which may have the tendency and capacity to confuse, mislead, or deceive purchasers into the belief that the products so designated and described are made of the fiber of the flax plant, when such is not the fact. (Feb. 4, 1936.)

1632. **False and Misleading Trade Names, Brands or Labels and Advertising—Wood Products.**—J. H. Smith Veneers, Inc., a corporation, engaged in the business of importing, processing, and veneering woods and wood products 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.

The wood known as walnut is the product of the genus "Juglans" of the tree family scientifically called "Juglandaceae", of which there are several known species.

J. H. Smith Veneers, Inc., in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from the use of the words "African Walnut" or "Oriental Walnut Striped" in its printed matter or as trade designations for said products so as to import or imply that said products are that wood or are made of wood derived from trees known as walnut, the product of the genus "Juglans" of the tree family scientifically called "Juglandaceae", when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "Walnut", either alone or in connection or conjunction with the word "African" or the word "Oriental", or with any other word or words, or in any way as descriptive of said products which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are that wood or are made of wood derived from trees of the walnut or "Juglandaceae" family, genus "Juglans", when such is not the fact. (Feb. 6, 1936.)

**1633. False and Misleading Trade Name and Brands or Labels—Shoes.**—Samuel Sobel and Isadore Sobel, copartners trading under the firm name and style of "Sobel Brothers", engaged as wholesalers and, as such, in the sale and distribution of shoes 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.

Samuel Sobel and Isadore Sobel also agreed, in soliciting the sale of and selling their products in interstate commerce, to cease and desist from the use of the word "Doctor" or the abbreviation "Dr.", or any colorable imitation or simulation thereof, in connection or conjunction with a name or with any other word or words, as a trade name, brand, or designation for said products, or in any other way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, orthopedic features which are the result of medical advice and services, when such is not the fact. (Feb. 11, 1936.)

**1634. False and Misleading Brands or Labels and Advertising—Jewelry.**—M. Burton Aronson, an individual, engaged in business as a jobber and wholesaler of jewelry, selling and distributing such merchandise 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.

M. Burton Aronson, in soliciting the sale of and selling his ring products in interstate commerce, agreed to cease and desist from the use in his printed matter distributed in interstate commerce of the word "gold", either alone or in connection or conjunction with the word "solid", or with any other word or words, or in any way so as to import or imply or which may tend to confuse, mislead, or deceive purchasers into the belief that said products, or any part thereof, are or is composed wholly of gold; unless, when the initials affixed to said rings are composed in part of gold and the word "gold" is used as descriptive only of said initials, then in that case, the word "gold" shall be conspicuously accompanied by suitable indicia which shall indicate clearly the actual carat or fineness of the gold used and which also shall indicate clearly that only the initials are thus described. (Feb. 11, 1936.)

**1635. False and Misleading Trade or Corporate Name and Advertising—Pipes.**—Elliott E. Goldman, an individual, trading as The London Pipe Co., engaged in the mail-order business of selling pipes for the use of smokers 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.

The London Pipe Co., Ltd., is the name of a concern whose principal place of business is located at London, England, where it has been engaged, since its establishment in 1837, in the manufacture of pipes for the use of smokers and in the sale and distribution of such products, under its said name, in England. It has now, and for more than nine years last past, has had a local representative in the United States of America, and through such representation its products have been sold and are now being sold under the name "The London Pipe Co., Ltd.", to the jobbing and retail trade located in various states of the United States, and which trade, in turn, resells to the purchasing public. During such period of nine years or more, said products have been extensively advertised in domestic newspapers having interstate circulation and by other means, such advertisements and advertising matter featuring the name "The London Pipe Co., Ltd." As a result of such advertising and sale, The London Pipe Co., Ltd., of London, England, has derived and now enjoys a valuable good will in its said name, and pipes sold in the United States of America, under such name, have become and are popularly known to the trade and to pipe smokers as products manufactured by the said British concern.

Elliott E. Goldman, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "The London Pipe Company" as and for his trade name or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into an erroneous belief that The London Pipe Co. is the same as, or is in any way connected or associated with The London Pipe Co., Ltd., referred to in paragraph 2 hereof. The said Elliott E. Goldman also agreed, in offering for sale and selling his products in interstate commerce, to cease and desist from the use of the word "London" as part of or in connection or conjunction with his trade name or in any way which may tend to confuse, mislead, or deceive purchasers into the belief that said products are made or manufactured at London, England, or by The London Pipe Co., Ltd., of London, England. The said Elliott E. Goldman also agreed to cease and desist from the use in his advertising matter of the statement "For a limited time only \$1.00", or of any similar statement or representation, 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 supply of products offered for sale by the said Elliott E. Goldman is limited or that there is a limitation as to the time during which the products may be pur-

chased or that the designated price of \$1.00 is a special price for a limited time only, or a price other than the price regularly asked for the products in the ordinary course of business. (Feb. 7, 1936.)

**1636. False and Misleading Brands or Labels—Blankets and Automobile Robes.**—Troy Blanket Mills, a corporation, engaged in the business of manufacturing blankets and automobile robes and in the sale and distribution thereof, through an exclusive sales agency, L. C. Chase & Co., Inc., a corporation, in interstate commerce, consigning and shipping all of its products to said exclusive sales agency, which in turn, sells and ships 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.

Troy Blanket Mills, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on labels affixed to said products of the words "All Wool", which directly assert and clearly import and imply that the said products are composed wholly of wool; and from the use of the word "wool" in any way as descriptive of said products which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of wool, when such is not the fact. (Feb. 7, 1936.)

**1637. False and Misleading Brands or Labels—Blankets and Automobile Robes.**—L. C. Chase & Co., Inc., a corporation, engaged in the sale and distribution of blankets and automobile robes 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.

L. C. Chase & Co., Inc., in soliciting the sale of and selling products in interstate commerce, agreed to cease and desist from the use on labels affixed to said products of the words "All Wool", which directly assert and clearly import and imply that the said products are composed wholly of wool; and from the use of the word "wool" in any way as descriptive of said products which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of wool, when such is not the fact. (Feb. 7, 1936.)

**1638. Misrepresenting Business Status—Knitted Garments.**—Moses B. Nierenberg, an individual, engaged in the manufacture of knitted outerwear, consisting of sweater coats, ribbed coats, bathing suits, sport vests, and other articles of merchandise, and which products he sells and has sold in interstate commerce, and in competition with other individuals, firms, corporations, 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.

Moses B. Nierenberg agreed, in soliciting the sale of and selling his products in interstate commerce, to cease and desist from the use of the groups of words, "Jersey City, N. J.", and "Newark, N. J.", or of either of the said groups, alone or in connection or conjunction with the word "Mills", or in any 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 individual trading as Dundee Knitting Co. or otherwise, has a mill or factory at Jersey City or at Newark, in the State of New Jersey, when such is not the fact. (Feb. 17, 1936.)

1639. False and Misleading Trade Name and Advertising—Fabric Compound.—Eddie Adair and Cornelius Henney, copartners, trading as The Church Merchant Laboratories, engaged in the sale and distribution of a product designated "Lady-Luck" in interstate commerce, and in competition with other firms, partnerships, individuals 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.

Eddie Adair and Cornelius Henney agreed, in soliciting the sale of and selling their product in interstate commerce, to cease and desist from stating or representing in their advertisements or advertising matter, or in any way, that runs, snags, and breaks in hosiery, rayons, silk, chiffon, and lingerie are prevented by the use of said product on such fabrics, or that the use of said product makes the fabrics treated therewith proof against all spot-producing materials, or makes the colors fast. The said Eddie Adair and Cornelius Henney also agreed, in soliciting the sale of and selling their product in interstate commerce, to cease and desist from the use of the word "laboratories" as part of their trade name or in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that they own, operate, and control a laboratory or laboratories, when such is not the fact. (Feb. 17, 1936.)

1640. False and Misleading Brands or Labels and Advertising—Malt and Health Food Products.—Dextora Co., a corporation, engaged in the manufacture of malt and health food products 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.

Dextora Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on labels or

other advertisements or advertising matter of the words "Malt Syrup" to describe, designate, or represent a product not manufactured entirely from malted barley; the use on labels or other advertisements or advertising matter of such statements and representations as, "100% pure", "Unadulterated", "Made from selected Barley Malt and choicest Oregon Hops", and/or "Wizard Malt Syrup is a concentrated extract of pure barley malt flavored from the juice of the choicest selected Oregon Hops", to describe or represent a product not composed wholly of barley malt flavored with hops; and the use of the words "Triple Strength" to represent and describe malt products not of "triple strength." (Feb. 17, 1936.)

1641. **False and Misleading Brands or Labels—Leather Luggage.**—Samuel Intner, Louis Aberman, and Abraham Boretz, copartners trading under the name and style of Tourist Luggage Co., engaged in the manufacture of leather luggage and other leather products, and in the sale and distribution thereof 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.

As a rule, all hides intended to be made into leather other than sole, belting, or harness, and a few specialties, are split or "skived"; and ordinarily any piece of leather not described or designated as "split" is accepted and understood by the trade and the purchasing public as consisting of the whole hide.

Samuel Intner, Louis Aberman, and Abraham Boretz agreed, and each for himself agreed, in soliciting the sale of and selling their products in interstate commerce, to cease and desist from stamping, branding, or marking their products made of split leather and distributed in interstate commerce with the words "Cowhide Warranted", or with the word "Cowhide" alone, unless the same is accompanied by the word "Split" or "Split Leather", stamped or branded in immediate juxtaposition with the words "Cowhide" or "Cowhide Warranted", and in letters of equal size and conspicuousness. (Feb. 19, 1936.)

1642. **False and Misleading Trade or Corporate Name and Advertising—Cosmetics and Toilet Preparations.**—Barnum Laboratories, Inc., a corporation, engaged in the manufacture or compounding of cosmetic and toilet preparations and in the sale and distribution of said products, under the trade name of Barnum's Special Formula Laboratory, Inc., in interstate commerce, and in competition with other corporations, individuals, partnerships, and firms likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

RECORDED

Barnum Laboratories, Inc., agreed, in soliciting the sale of and selling its products in interstate commerce, to cease and desist from stating and representing in advertisements or advertising matter distributed in interstate commerce, under its corporate name or under its trade name, Barnum's Special Formula Laboratory, Inc.; that its products are made by, or under the personal supervision of Dr. Barnum; that said Dr. Barnum renders any service to its customers, when such is not the fact; that it "individualizes and personalizes" and/or that it selects the products best suited to the skin and complexion of individual customers, when such is not the fact; that its said products are a food for the human skin or tissues, or that they feed, build up, or nourish the same; that said products possess such properties as to be a preventive or a cure for wrinkles, age lines, double chins, or sagging muscles; that said products penetrate the skin and pores, tighten the muscles, and remove double chins or flabby breasts; that any of said products will promote the growth of the eyebrows and eyelashes; from the use of such expressions as "Only U. S. Government Standard Products Used", or of any other similar expressions having the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that, because of the fact that the ingredients of which said products are made may conform to the requirements of the United States Pharmacopoeia, therefore said products are made under the supervision of the United States Government or have its endorsement or approval. (Feb. 24, 1936.)

1643. False and Misleading Advertising—Emmenagogue.—Leon Seelig, an individual trading as Peck Products, engaged in the mail-order business of selling and distributing in interstate commerce, a certain preparation commonly known as an emmenagogue, 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.

Leon Seelig, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from stating or representing in his advertising matter distributed in interstate commerce that said product is harmless or is safe for self-administration. (Feb. 24, 1936.)

1644. False and Misleading Advertising—Redemption Coupons and Silverware.—M. Hopkins, an individual trading as Silverware Redemption Bureau, 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 goods, and in the redemption of such coupons by exchanging therefor various articles of silver-plated ware, in interstate commerce. M. Hopkins also sells and ships to his retailer customers who purchase a minimum of 20,000 coupons, a 26-piece set

of "Andover" silverware and a jar of beans, in order to enable retailers to put on a "Free" guessing contest as to the number of beans in the jar and to offer and deliver said set of silverware as a prize or premium for the best guess made by their customers, 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.

M. Hopkins, in soliciting the sale of and selling his commodities in interstate commerce, agreed to cease and desist from stating and representing, in advertisements or advertising matter circulated in interstate commerce: that the value or usual selling price of the sets of silverware offered as prizes or premiums by his retailer-customers is \$25.75, or any other exaggerated sum, substantially greater than the actual value or usual selling price of the sets referred to; that the offer of silverware premiums is a "special advertising offer", or "for advertising purposes", and/or that the same can be obtained only with his coupons, when such is not the fact; and said M. Hopkins further agreed, in soliciting the sale of and selling his said products in interstate commerce, to cease and desist from furnishing his retailer customers with advertisements and advertising matter wherein there is not set forth the fact that a cash payment, in addition to the required coupons, is exacted and required before the retailers' customers can obtain the silverware promised them, if such a requirement is made. (Feb. 24, 1936.)

**1645. False and Misleading Trade Name, Mark or Brand—Yarns and Threads.**—James Lees & Sons Co., a corporation, engaged in the business of manufacturing yarns and threads 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.

James Lees & Sons Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Rayona", or of any other similar word, as a trade name or designation for said products, or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or fabricated from that material known to the trade and purchasing public as rayon, when such is not the fact. (Feb. 24, 1936.)

**1646. False and Misleading Advertising—Syrup.**—Oelerich & Berry Co., Inc., a corporation, engaged in the manufacture of food products such as molasses, syrups, jellies, and preserves, and in the sale and distribution of said products in interstate commerce, and in competi-



tion 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.

Oelerich & Berry Co., Inc. agreed, in soliciting the sale of and selling its products in interstate commerce, to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the word "maple", either alone or in connection or conjunction with any other word or words, or in any way, as descriptive of its product so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into an erroneous belief that said product is composed wholly of maple syrup; unless, when said product is composed in substantial part of maple syrup, and the word "maple" is used as descriptive of such syrup, then, in that case, the word "maple" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as the word "maple" is printed, so as to indicate clearly that said product is not composed wholly of maple syrup and which will otherwise indicate clearly that said product is composed in part of an ingredient or ingredients other than maple syrup. (Feb. 26, 1936.)

**1647. False and Misleading Advertising—Fabric Compound.**—George A. White, an individual trading as The Church Mart, engaged in the sale and distribution in interstate commerce of a product designated "Check-It" for use in the treatment of silk, chiffon, or rayon hosiery, dresses, and lingerie, 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.

George A. White, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from stating or representing in his advertisements and advertising matter, or in any way, that runs, snags, and breaks in silk, chiffon, or rayon hosiery, dresses, and lingerie are prevented by the use of said product, or that the use of said product makes the fabrics treated therewith proof against all spot-producing materials, or makes all colors fast. (Feb. 27, 1936.)

**1648. False and Misleading Advertising—Craft Work Materials.**—Oscar E. Minor, an individual trading as "Craft Service", engaged in the business of selling and distributing, in interstate commerce, materials, tools, and other articles of merchandise to boy scouts, organizations, and others interested in making craft work, 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.

Oscar E. Minor,<sup>1</sup> in soliciting the sale of and selling his metal products in interstate commerce, agreed to cease and desist from the use in his advertising or printed matter of the words "Navajo Silver" as descriptive of said products which are not in fact composed of silver and which also are not made by an Indian or Indians of the Navajo tribe. The said Oscar E. Minor also agreed to cease and desist from the use in his said advertising matter of the word "silver", either alone or in connection or conjunction with the letters "ite", or with any other letters, word, or words, as descriptive of his metal products, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into an erroneous belief that said products are composed of silver, when such is not the fact. The said Oscar E. Minor also agreed to cease and desist from the use of the word "Navajo", either independently or in connection or conjunction with any other word or words, as descriptive of his said products, so as to import or imply or which may tend to mislead or deceive purchasers into the belief that said products are made by Navajo Indians and/or in accordance with the primitive methods in use among Indians of said tribe, involving the individual craftsmanship of such Indians, when such is not the fact. The said Oscar E. Minor further agreed to cease and desist from the use of the word "suede", or of any derivative thereof so as to import or imply or which may have the capacity or tendency to mislead or deceive purchasers into an erroneous belief that said products are made or fabricated from suede or leather, a product prepared from the skins or hides of certain animals. (Feb. 27, 1936.)

1649. **False and Misleading Trade or Corporate Name, Trade Name and Brands or Labels—Cleaning Fluid.**—Ring-less Cleaning Fluid Co., Inc., purchased the assets of The Neverring Manufacturing Co., Inc., engaged in the manufacture of a cleaning fluid, which said assets included the right to use the trade-mark "Neverring" in the sale and distribution of its products in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Ring-less Cleaning Fluid Co., Inc., agreed, in soliciting the sale of and selling its product in interstate commerce, to cease and desist from the use, on labels affixed to the containers of said product, of the statement, "Not injurious to the most delicate of materials", or of any other statement of similar meaning 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 colors of fabrics or materials dyed with non-fast or fugitive dyes will not be harmed, injured, or affected by the application or use of said product to or on said fabrics

or materials. The said Ring-less Cleaning Fluid Co., Inc., also agreed to cease and desist from the use on such labels of the statements and representations to the effect that the said product will remove stains or spots of whatever kind or character from fabrics or materials to which said product is applied, when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "Ring-less" as part of its corporate and trade name and from the use of the word "Ring-less" in any way which tends or may tend to convey the belief on the part of purchasers that said product will not leave a ring or mark when it is applied to certain fabrics or materials for the purpose of removing a spot or spots therefrom. The said corporation further agreed to cease and desist from the use of the word "Neverring" as a brand or trade name for its product and of the word "Neverring" in any way, either independently or in connection or conjunction with the words, "To avoid ring continue rubbing outer edges of moist surface \* \* \*", or of any other word or words which may have the capacity or tendency to mislead or deceive purchasers into an erroneous belief that said product will not leave a ring or mark when it is applied to a spot or spots on certain fabrics or materials. (Mar. 5, 1936.)

1650. False and Misleading Advertising—General Merchandise.—Spiegel, May, Stern Co., a corporation, engaged in the sale and distribution of a general line of merchandise in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Spiegel, May, Stern Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter distributed in interstate commerce of pictorial or other representations so as to import or imply that the said corporation keeps in stock, has on hand, or is able to obtain products such as are pictorially or otherwise represented, designated, or referred to in said advertising matter and that orders for such products will be filled with such products, when such are not the facts. The said corporation also agreed, in soliciting the sale of and selling its products, to cease and desist from representing such products in its advertising matter in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into an erroneous belief that said corporation will and does fill orders only with such products, that is to say, the advertised products for which the orders have been received. (Mar. 9, 1936.)

1651. False and Misleading Advertising—Mineral Water.—Walter L. Gerke, an individual, trading as Gerke Mineral Co., engaged in the sale and distribution of a mineral water designated "Gerke's

Mineral", 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.

Walter L. Gerke, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from publishing, distributing, and circulating in interstate commerce any advertisements or advertising matter consisting of or containing alleged letters from users of said product containing statements, representations, or allegations that the writers thereof have been healed or cured through the use of said product of any serious or chronic ailment; and from the circulation in interstate commerce of advertisements or advertising matter containing statements and representations claiming for said product healing or medicinal properties or therapeutic values other or greater than those actually possessed by said product. (Mar. 9, 1936.)

**1652. False and Misleading Advertising—Scientific Glass Apparatus and Instruments of Precision.**—New Jersey Laboratory Supply Co., a corporation, engaged in the sale and distribution of scientific glass apparatus and instruments of precision, in interstate commerce, and in competition with other corporation, firms, partnerships, and individuals likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

New Jersey Laboratory Supply Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Manufacturers" in advertisements or advertising matter circulated in interstate commerce; and from the use of the word "Manufacturer" or "Manufacturers" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that it owns, controls, and operates any factory wherein the products which it sells and distributes are made, when such is not the fact. (Mar. 11, 1936.)

**1653. False and Misleading Advertising—Rubber Toilet Articles.**—Chicago Mail Order Co., a corporation, engaged in the sale and distribution in interstate commerce, by mail orders, of a variety of merchandise including rubber toilet requisites, 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.

There are two varieties of bulb-operated vaginal syringes manufactured and in common use, namely: The whirling, rotary, or spiral spray syringe, which expels the water in a whirling or spiral spray; and the balloon or direct spray syringe, which expels the water in

straight streams or sprays. The first named type of syringe is regarded as superior to the latter and sells for a higher price.

Chicago Mail Order Co., in soliciting the sale of and selling its commodities in interstate commerce, agreed to cease and desist from the use of the words "Spiral Spray" in advertisements or advertising matter distributed in interstate commerce, to describe or designate syringes of a type other than those commonly described and understood to be a "Spiral Spray" syringe; and from the use of the words "Spiral Spray" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers in reference to the type of the products so advertised, described, or referred to. (Mar. 11, 1936.)

**1654. False and Misleading Brands or Labels and Advertising—Furniture.**—Tomlinson of High Point, Inc., a corporation, engaged in the manufacture of furniture, consisting chiefly of living-room, bedroom, and dining-room suites, and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Mahogany is a product of the genus "Swietenia", tribe "Swietenioideae", of the tree family scientifically called "Meliaceae." The genus "Swietenia", of which there are several known species, is the only one which produces true mahogany.

Tomlinson of High Point, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, on its labels affixed to said products or in its advertisements and advertising matter, or otherwise, of the word "mahogany", either independently or in connection or conjunction with any other word or words, 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 made or manufactured of wood derived from trees of the genus "Swietenia" of the "Meliaceae" family, known as mahogany, when such is not the fact. (Mar. 12, 1936.)

**1655. False and Misleading Advertising—Gummed Sealing Tape.**—Minnie I. Marshall, an individual, doing business as Green Mountain Gummed Tape Co., engaged in the sale and distribution of gummed sealing tape 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.

Minnie I. Marshall in soliciting the sale of and selling her product in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter, or in any way, of the word "manufacturers", which directly asserts or clearly imports and implies

that the said Minnie I. Marshall, trading as Green Mountain Gummed Tape Co., makes or manufactures the product sold and offered for sale by her. The said Minnie I. Marshall also agreed to cease and desist from the use of the word "manufacturers", either alone or in connection or conjunction with the words "We Sell to Jobbers Only", or with any other word or words which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the erroneous belief that the said Minnie I. Marshall actually owns and operates or directly and absolutely controls the plant or factory in which the product sold by here is made or manufactured. (Mar. 12, 1936.)

**1656. False and Misleading Advertising—Book.**—Landscheft & Bonning, Inc., a corporation, engaged as an advertising agency in the solicitation of advertisements and in the preparation and placing thereof in various periodicals. In the course and conduct of its business Landscheft & Bonning, Inc. had and has as one of its clients, Dr. Robert G. Jackson, and in the course of such employment prepares and causes the periodical advertisements of said Jackson, in soliciting the sale of and selling his said commodities, to appear in various periodicals throughout the United States. Said Landscheft & Bonning, Inc., further superintend the sales of said Jackson's book, "How To Be Always Well", take orders for the same, cause the said orders to be filled, and collect the purchase price thereof as the author's representative, and account to him for the proceeds.

Landscheft & Bonning, Inc. in soliciting the sale of and selling in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter circulated in interstate commerce, and in said book "How To Be Always Well", of statements and representations: that by the use of the system of diet, exercise, or hygiene, or of all three combined, devised and advocated by said Dr. Robert G. Jackson, complete immunity from sickness and disease, or from such minor ailments as colds, can be secured; or that the use of the same will add at least 25 and probably 35 to 50 extra years to human life; that uncivilized or savage tribes of men are almost entirely free from disease; that civilized men eat mostly "unnatural" foods or that savages eat mostly "natural" foods; that the so-called "foods of civilization, such as flour, rice, cereals, meats and dairy products" are "unnatural" foods; and/or that such foods as meats, grain-foods, sugar, tea, coffee, cocoa, fats and oils, the white of eggs, and cheese are acid-forming foods when properly prepared and used; that a perfect human body is immune to all disintegrating and disease-producing influences, or that it cannot become diseased, or that the use of "natural" foods will make it disease-resisting; that five movements of the bowels daily, or one after each meal, constitutes "perfect relief", or that such frequent movements are beneficial or desirable; that the diet used in all diseases should be identical; that fasting is a proper

treatment for high blood pressure, and/or that the drinking of large quantities of hot or cold water is safe or beneficial for such patients; that grain foods cannot be alkaline without the addition of a secret ingredient; that the use of the diet or the regimen described and recommended in said book, "How To Be Always Well", is beneficial or safe for patients suffering from diabetes, appendicitis, or colitis, or for infants. (Mar. 13, 1936.)

**1657. False and Misleading Brands or Labels—Shellac.**—Mirrolike Manufacturing Co., a corporation, engaged in the manufacture of a line of paint, varnish, and other products and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, partnerships, and firms likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Mirrolike Manufacturing Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on labels affixed to the containers of said product of the word "shellac", either alone or in connection or conjunction with the word "white", or with any other word or words, 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 product is composed of shellac gum, cut or dissolved in alcohol; unless, when shellac gum is the principal and predominant element in said product and the word "shellac" is used as descriptive thereof, then in that case, the word "shellac" shall be immediately accompanied by the word "compound", or other suitable word or words, printed in type equally as conspicuous as that in which the word "shellac" is printed, so as to indicate clearly that said product is not composed wholly of shellac gum, and that will otherwise properly describe said product; or unless, when the shellac gum contained in said product; is not the principal and predominant element therein and the word "Shellac" is used as descriptive of such shellac-gum product, then, in that case, the word "shellac" shall be immediately accompanied by the word "substitute", or other suitable word or words, printed in type equally as conspicuous as that in which the word "shellac" is printed, so as to indicate clearly that the shellac gum content of said product is not the principal and predominant element therein, and that will otherwise properly and truthfully describe the product. The said corporation also agreed to cease and desist from the use on its labels of the statement "guaranteed 5½ Lb. Cut", to designate, or as descriptive of, a product which does not actually contain the indicated amount of gum to each gallon of liquid used therewith. Said corporation further agreed to cease and desist from the use of the statement "Compounded Pure Shellac, Pure Gum and Alcohol", as descriptive of its product, so as to import or imply that the principal and predominant element of the solid

portion of said product is composed of shellac gum and that the liquid portion of said product is composed of alcohol, when such are not the facts. (Mar. 17, 1936.)

**1658. False and Misleading Brands or Labels—Olive Oils.**—Ossola Brothers, Inc., a corporation, engaged in the importation of olive oils and in the blending, packing, 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.

Ossola Brothers, Inc., in soliciting the sale of and selling its olive oil products in interstate commerce, agreed to cease and desist from the use of the words "Imported from Italy", or any words of similar meaning, in English or Italian, as a brand or mark for its oil products; or unless, in case said oils are composed in substantial part of oils produced in and imported from Italy, and the words "Imported from Italy" or words of similar meaning are used to describe or designate the same, such words shall be immediately accompanied by some other word or words, printed in type equally as conspicuous as that in which the said quoted words are printed, and which will indicate clearly that said products are not composed wholly of oils produced in and imported from Italy, but contain an oil or oils other than oils produced in and imported from Italy. (Mar. 19, 1936.)

**1659. False and Misleading Advertising—Poultry Treatment.**—Lederle Laboratories, Inc., a corporation, engaged in the business of manufacturing antitoxins, veterinary serums, and other pharmaceutical products and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, firms, individuals, 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.

Lederle Laboratories, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, in its advertising matter distributed in interstate commerce, of statements and representations to the effect that its said products "have an insoluble coating" or that they are "enteric coated", 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 remain insoluble or that the coating of said products remain insoluble until the products, in passing through the body of the fowl, reach the intestines via the gizzard, whose fracturing processes, together with the acids of the intestines, break up and dissolve the coating of said products so as to release the drugs contained in the products at or near the point or seat of worm infection. (Mar. 23, 1936.)



1660. **Disparaging Competitors' Products and False and Misleading Advertising—Pepper.**—McCormick & Co., a corporation, engaged as a packer of food products, including spices, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, individuals, 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.

McCormick & Co., in soliciting the sale of and selling its pepper products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of the statement, "Don't pay for the dust, dirt, stems, and stones that are ground up in cheap pepper", so as to import or imply that the price asked for pepper reflects, or is indicative of, the amount of foreign substances contained in the pepper; and from the use of the said statement, or of any other statement or representation of similar meaning which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that pepper is cheap solely for the reason that it contains dust, dirt, stems, and stones, when such is not the fact. The said McCormick & Co. also agreed, in soliciting the sale of and selling its products, to cease and desist from the use of the said statement, or of any other similar statement or representation, which tends or has the capacity to unwarrantably disparage brands of pepper sold by competitors of the said McCormick & Co. (Mar. 23, 1936.)

1661. **False and Misleading Advertising—Electrical Apparatus.**—Teolinda Mahler, is an individual doing business as D. J. Mahler Co., engaged in the manufacture of toilet requisites and of an electrical apparatus for the removal of surplus hair from the skin of human beings, 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.

Teolinda Mahler, in soliciting the sale of and selling her electrical apparatus in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter distributed in interstate commerce that the use of the Mahler Electrical Apparatus is the only method of permanently destroying superfluous hair or of preventing its regrowth; that the use of said device by self-application is safe, easy, painless, permanent, or harmless, without at the same time qualifying such statements and representations by the condition that proper care and skill are used in its application; that the use of said device for the removal of warts,

moles, birthmarks, red veins, freckles, and other similar facial blemishes by self-application, or except by a skilled dermatologist, is safe; that any person named Daniel J. (or D. J.) Mahler now owns the D. J. Mahler Co.; and from the publication and circulation of any purported literature or letters in his name, either with or without his portrait, or in any way which may have the tendency or capacity to confuse, mislead, or deceive customers into the belief that said D. J. Mahler, the founder of the D. J. Mahler Co., is still living and offering them his services. (Mar. 23, 1936.)

**1662. False and Misleading Trade Name, Brands or Labels and Advertising—Face Cream.**—Montgomery Ward & Co., a corporation, engaged as a large mail-order house, in the sale and distribution of a variety of articles of merchandise in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Montgomery Ward & Co. agreed to cease and desist from the use of the words "turtle oil", either independently or in connection or conjunction with any other word or words, as a trade name or designation for its said facial-cream product, or in any other way, in soliciting the sale of and selling its said 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 oil content of said product is composed wholly of turtle oil; unless, when the oil content of said product is composed in substantial part of turtle oil, and the words "turtle oil" are used as descriptive thereof then in that case, the words "turtle oil" shall be immediately accompanied by some other word or words, so as to indicate clearly that the oil content of said product is not composed wholly of turtle oil, and that will otherwise indicate clearly that the oil content of said product is composed in part of an oil or oils other than turtle oil. Said corporation also agreed to cease and desist from the use, on labels affixed to the containers of said product or in its advertising matter of whatever character, of the statement and representation:

A corrective for wrinkles \* \* \*. Ideal nourishing cream. Aids in retention of youthful complexion. Contains ingredients that nourish the skin.

or of any other statement or representation of similar meaning, 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 product applied externally will nourish the human skin, or act as a corrective for wrinkles, or aid the human skin of all users to retain a youthful complexion, when such are not the facts. (Mar. 24, 1936.)

1663. False and Misleading Trade Name, Brands or Labels, and Advertising—Face Cream.—C. W. Beggs & Sons, Inc., a corporation, operating under the trade names "Marcelle Laboratories" and "Foot-light Products Company", 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 from the alleged unfair methods of competition as set forth therein.

C. W. Beggs & Sons, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "turtle oil", either independently or in connection or conjunction with any other word or words, as a trade name or designation for its said facial-cream products, or in any other way, in soliciting the sale of and selling its said 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 oil content of said product is composed wholly of turtle oil; unless, when the oil content of said product is composed in substantial part of turtle oil, and the words "turtle oil" are used as descriptive thereof, then, in that case, the words "turtle oil" shall be immediately accompanied by some other word or words, so as to indicate clearly that the oil content of said product is not composed wholly of turtle oil, and that will otherwise indicate clearly that the oil content of said product is composed in part of an oil or oils other than turtle oil. Said corporation also agreed to cease and desist from the use, on labels affixed to the containers of said product, of the statement and representation: "A corrective for wrinkles \* \* \* Ideal nourishing cream. Aids in retainment of youthful complexion. Contains ingredients that nourish the skin", or of any other statement or representation of similar meaning, 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 product applied externally will nourish the human skin of all users to retain a youthful complexion, when such are not the facts. (Mar. 24, 1936.)

1664. False and Misleading Advertising—Workingmen's Clothing and Camping Outfits.—Harry Gritz, an individual trading as "Army and Navy Store", engaged in conducting a retail store in the city of Washington, in the District of Columbia under the name of "Army and Navy Store", and in the sale therein of a line of merchandise consisting principally of workingmen's clothing and camping outfits and supplies, such as shirts, pants, overalls, coveralls, caps, socks, shoes, tents, cots, tools, etc.; which merchandise consists to a limited extent of goods formerly owned by the Government of the United States for

use by its military and naval forces, but chiefly of goods purchased through regular commercial trade channels and not made for or formerly owned by any division of the Government, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Immediately after the World War, the United States Army and Navy began to dispose of their surplus products to corporations, firms, partnerships, and individuals merchandising at retail, some of whom described and advertised their business as "Army and Navy Stores", and by other similar designations. The stocks of such surplus products held by the Army and Navy have for some time past been practically exhausted and the only classes of such military goods now procurable by said dealers consist of goods which have become obsolete, wornout, or damaged in storage, and of a few salvaged surplus items, such as canteens, mess kits, pup tents, leggings, etc.

Harry Gritz, in soliciting the sale of and selling his products and merchandise in commerce, as defined by the act, agreed to cease and desist from the use of the words "Army and Navy" on signs or in other advertisements or advertising matter; and from the use of the words "Army and/or Navy" in any way which may have the tendency or capacity to confuse, mislead or deceive purchasers into the belief that the products and merchandise sold and dealt in by him consists of Army and/or Navy surplus products, when such is not the fact. (Mar. 24, 1936.)

1665. False and Misleading Advertising—"Easpirin."—William P. Jacobs, an individual, trading as Easpirin Co., engaged in the purchase of a product from the manufacturer thereof, which product respondent sold under the trade name "Easpirin" 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.

William P. Jacobs, in soliciting the sale of and selling his product designated "Easpirin" in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter of statements or representations, without proper qualification, to the effect that there is not the slightest risk of weakening the heart or causing depression of the same by the use of said product, or that said product will be easy on the heart, or that the said product, as it is compounded or made, will prevent any damage, or that the said product may be used by any and all persons with perfect safety or of any other statements or representations of similar import, when such are not the facts. Nothing herein contained shall be construed as

preventing the said William P. Jacobs from making any proper therapeutic claims and recommendations for his product which are based upon reputable medical opinion or recognized medical or pharmaceutical literature. (Mar. 25, 1936.)

1666. **False and Misleading Brands or Labels—Automobile Accessories.**—Keep Klean Cover Co., Inc., a corporation engaged in the business of manufacturing automobile accessories, including a reflector-type advertising device for automobile tire covers, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Keep Klean Cover Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from marking, branding, or designating said product with the words and figures, "Pat. No. 1947549", or with any other similar words and figures, or in any way so as to import and imply that the said product is patented or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said corporation is the owner of or controls a subsisting patent on said product, when such is not the fact. (Mar. 31, 1936.)

1667. **False and Misleading Trade Name, Brands, or Labels—Felt Base Floor Coverings.**—Mannington Mills, Inc, a corporation, engaged in the manufacture of felt base floor coverings and in the sale 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.

Mannington Mills, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Rubber", either independently or in connection or conjunction with any other word, syllable, or suffix, as a trade name or brand by which to designate, advertise or represent its said products so as to import or imply that its said products are composed of rubber, or in substantial part of rubber, when such is not the fact. (Mar. 31, 1936.)

1668. **False and Misleading Advertising—Radio Tubes.**—Triad Manufacturing Co., Inc., a corporation, engaged in the manufacture of various types of radio tubes, and in the sale and distribution thereof, in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Glass radio tubes were the first kind of tubes used in the radio industry. In or about the fore part of 1935, so-called metal radio

tubes first became publicized, and have since become popularized in the trade and by the purchasing public. Glass tubes are tubes the technical elements of which are sealed in a vacuum in glass. Metal radio tubes are tubes the technical elements of which are sealed in a vacuum in steel.

Triad Manufacturing Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising or printed matter of the words "metal tubes" as descriptive of its products, 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 those products which have become popularized and known to the trade and purchasing public as "metal radio tubes", that is to say, radio tubes in which the technical elements are sealed in a vacuum in steel, or radio tubes wherein metal functions instead of glass, as formerly; unless, if and when the technical elements of said product are sealed in a vacuum in glass which is placed within a metal shell or tube-covering member and the words "metal tube" are used to designate such metal covering member, then, in that case, the words "metal tube" shall be conspicuously accompanied by some other suitable word or words, so as to indicate clearly that said product is not that product, the technical elements of which are sealed in a vacuum in steel, and that will otherwise indicate clearly that said product is a product other than one wherein metal functions instead of glass, as formerly. (Mar. 31, 1936.)

1669. **False and Misleading Trade Name and Advertising—Corn Remover.**—A. J. King, John B. Michael, and R. E. Lorrequer, copartners trading under the name and style "Dr. King's Medical Company", engages in the sale and distribution, of a preparation designated "Dr. King's Positive Corn Remover", for use in treating corns and calli, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

A. J. King and John B. Michael of the Dr. King's Medical Co., in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist from the use, in their advertisements or advertising matter or in any way, of statements or representations to the effect that said product is a cure for corns or a positive corn cure or that it is a competent or reliable remedy or treatment for all types of corns, bunions, warts, and moles, when such is not the fact; and from the use of such statements or representations so as to import or imply that said product, used as a treatment for the specified physical defects, possesses properties or value in excess of what is actually the case. The said copartners also agreed to cease and desist

from the use on their letterheads of the words "President", "Vice President", and "Secretary-Treasurer" in connection with the names, respectively, "A. J. King", "J. B. Michael", and "R. E. Lorrequer", and with the trade name "Dr. King's Medical Company", so as to import or imply that the business conducted under such trade name is that of an incorporation or voluntary association, when such is not the fact. The said copartners also agreed to cease and desist from the use of the abbreviation "DR." as part of their trade name or in connection or conjunction with the words "pharmaceutical" and "chemists", or of either of them, on their letterheads, or otherwise, so as to import or imply that there is a doctor or physician, pharmacist, or chemist connected or associated with their business, when such is not the fact. Said copartners further agreed to cease and desist from the use on their printed matter of the word "manufacturing", either alone or in connection or conjunction with any other word or words, so as to import or imply that the said copartners make or compound the product which they sell and/or that they own, and operate or directly and absolutely control the plant or factory in which said product is made or compounded, when such is not the fact. Said copartners further agreed to cease and desist from the use on their letterheads of the statement, "Representative Offices in \* \* \* Detroit, Michigan, New York, New York, Buffalo, New York", so as to import or imply that they have such offices at the several places indicated, when such is not the fact. (Apr. 1, 1936.)

1670. False and Misleading Brands or Labels and Advertising—Fish.—A. Paladini, Inc., a corporation, engaged in the sale and distribution of fish and other sea foods 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.

A. Paladini, Inc., in soliciting the sale of and selling its fish in interstate commerce, agreed to cease and desist from the use on its invoices or other printed matter of the words "Red Snapper" to designate, or as descriptive of, a species of fish other than that scientifically designated *Lutianus Campechanus* and known to the trade and purchasing public as Red Snapper. The said A. Paladini, Inc., also agreed, in offering for sale and selling its fish in interstate commerce, to cease and desist from the use of the words "Red Snapper" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said fish is that species of fish scientifically designated *Lutianus Campechanus* and known to the trade and purchasing public as Red Snapper, when such is not the fact. (Apr. 1, 1936.)

1671. False and Misleading Brands or Labels—Fabrics.—Cohn-Hall-Marx Co., a corporation, engaged in the sale and distribution of

fabrics to dress manufacturers and retailers of piece goods, in interstate commerce, and in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Cohn-Hall-Marx Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Camelspun", or of any other derivative or simulation of the word "camel", either alone or in connection or conjunction with any other word or words, on its brands or labels affixed to its products which are not composed of camel's hair; and from the use of the word "Camelspun" or of any simulation of the word "Camel", so as to import or imply that said products are composed of camel's hair, when such is not the fact. (Apr. 1, 1936.)

**1672. False and Misleading Trade or Corporate Name and Brands or Labels—Flour.**—Tennessee Mill & Feed Co., a corporation, engaged in the purchase, in interstate commerce, of flour; and in the 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.

Tennessee Mill & Feed Co., in purchasing and/or selling its products in interstate commerce, agreed to cease and desist from the use of the word "Mill" as part of or in connection or conjunction with its corporate or trade name; and from the use of the word "Mill" either in buying or in selling commodities, in any way which may have the tendency or capacity to confuse, mislead, or deceive sellers or purchasers into the belief that said corporation owns, controls, and operates a mill wherein its product is ground, milled, or manufactured, when such is not the fact; from purchasing or causing the shipment in interstate commerce of flour put up in sacks or bags marked, branded, or labeled with any corporate or trade name containing the word "Mill", when in truth and in fact it does not own, operate, and control any mill wherein such product is ground, milled, or manufactured. (Apr. 2, 1936.)

**1673. False and Misleading Trade or Corporate Name and Brands or Labels—Flour.**—The Snell Corporation, engaged in the business of blending or mixing flour 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.

The Snell Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from marking, stamping, imprinting, or branding upon the sacks or containers in



which its products are packed and sold and shipped to customers in interstate shipments, any corporate or trade name of such customer or purchaser containing the word "Mill," or any other word of similar import, so as to import or imply that said product was milled or manufactured by said customer, when such was not the fact. (Apr. 2, 1936.)

1674. **False and Misleading Brands or Labels and Advertising—Fish.**—J. A. Sanborn Co., Inc., a corporation, engaged in the sale and distribution, in interstate commerce, of sea foods, including fish, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Cusk (*Brosme brosme*) is a valuable food fish, allied to the Cod, found on the coasts of Northern Europe and America, which has the quality of filleting readily. The Whitefish is another species of value food fish, of which two species (*Coregonus clupeiformis* and *Prosopium quadrilaterale*) are found in the Great Lakes, and one species (*Caulolatilus princeps*) is found in the waters off the Pacific Coast. All of the Whitefish are popular food fishes which are in demand and find a ready sale.

J. A. Sanborn Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Whitefish" to designate or describe any species of fish other than that properly known as "Whitefish"; and from the use of the word "Whitefish," either independently or in connection or conjunction with the words "Deep Sea," "Fillet," "Cusk," or with any other word or words or in any way which may import or imply that the product so referred to and designated is that species of fish properly known as "Whitefish," when such is not the fact. (Apr. 3, 1936.)

1675. **False and Misleading Advertising—Perfume.**—Wayne Heckman, an individual trading as Moon Glow Perfume Co., engaged in the sale and distribution of perfume, under the trade designation "American Girl" 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.

Wayne Heckman, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use, in his advertising matter distributed in interstate commerce, of the words, "Given Wrist Watch", or of any other words of similar meaning, in connection or conjunction with the statement, "Simply sell 12 bottles of our American Girl Perfume at 25¢ a bottle and remit", so as to import or imply that the said watch will be given as a pre-

mium or prize for only selling and remitting for the specified amount of merchandise, when such is not the fact. The said Wayne Heckman also agreed to cease and desist from the use in his advertising matter of the statement, "A free Gift for your customers", or of any other statement or representation of similar meaning, so as to import or imply that an article of value will be given absolutely as a gratuity, that the cost thereof is not included in the price paid by the customer for the perfume, and that, in order to make use of such alleged gift, the customer will not be required to advance or expend a sum of money in addition to the purchase price of such perfume, when such is not the fact. The said Wayne Heckman also agreed to cease and desist from the use of the word "engraved" as descriptive of the case of the watch offered as a premium for selling his product, when such is not in fact engraved. The said Wayne Heckman further agreed to cease and desist from the use of the word "famous" as descriptive of his product which is not in fact famous, and from the use of the representation that his said product is "used regularly by the most discriminating women", when such is not the fact. The said Wayne Heckman also agreed to cease and desist from the use in his said advertising matter of the statement, "Thousands have successfully sold our famous American Girl Perfumes", so as to import or imply that the said Wayne Heckman numbers his agents or salesmen by the thousands, when such is not the fact. (Apr. 3, 1936.)

**1676. False and Misleading Prices and Advertising—Household Utilities.**—Joseph Auster, an individual trading as General Sales & Drug Co., engaged as a wholesaler in dealing in household utilities, cosmetics, toiletries, drugs, and other similar commodities and in the sale of said products by mail orders, 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.

Joseph Auster, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of fictitious and exaggerated statements and representations in reference to the selling value of the merchandise offered for sale in his catalogues and price lists and sold by mail orders in interstate commerce; stating and representing that he is the manufacturer of the merchandise which he sells and distributes, or of any part thereof, when such is not the fact; from the use of the word "Extracts", in any way which may import and imply that the products referred to are extracts, when such is not the fact. (Apr. 7, 1936.)

**1677. False and Misleading Brands or Labels and Advertising—Fish.**—Bolton-Smart Co., Inc., a corporation, engaged in the sale and

distribution, at wholesale, of fish and other food 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 from the alleged unfair methods of competition as set forth therein.

The Cusk (*Brosme brosme*) is a valuable food fish, allied to the Cod, found on the coasts of Europe and North America, which has the quality of filleting readily. The Whitefish is another species of valuable food fish, of which two species (*Coregonus clupeiformis* and *Prosopium quadrilaterale*) are found in the Great Lakes, and one species (*Caulolatilus Princeps*) is found in the waters off the Pacific Coast. All of the Whitefish are popular food fishes which are in demand and find a ready sale.

Bolton-Smart Co., Inc., in soliciting the sale of and selling its food fish in interstate commerce, agreed to cease and desist from the use, in its advertisements and advertising matter, of the word "Whitefish" to designate or describe any other species of fish than that known as "Whitefish"; and from the use of the word "Whitefish", either independently or in connection or conjunction with the words "Deep Sea", "Fillet", or "Cusk", or with any other word or words, or in any other way which may import or imply that the product so designated and referred to is that species of fish known as "Whitefish", when such is not the fact. (Apr. 8, 1936.)

1678. False and Misleading Trade or Corporate Name and Advertising—Fabrics.—Stehli Silks Corporation, a corporation, is engaged in the manufacture of textile fabrics. The company of which said corporation is the successor began the manufacture of silks, in Switzerland, in the year 1837, and began business in the United States in 1884. It is now one of the largest and best known among the manufacturers of silk in the United States, and has a reputation for its silks and a valuable good will in the word "Stehli" as applied to such products. It now manufactures rayon products having the appearance of silk cloths, and sells and distributes the same widely in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Stehli Silks Corporation, in soliciting the sale of and selling its fabrics in interstate commerce, agreed to cease and desist from the use of the word "Silks" either independently or as a part of or in connection with its trade or corporate name, in advertisements and advertising matter circulated in interstate commerce, in which advertisements or advertising matter the fabrics described and offered for sale are not composed of silk, the product of the cocoon of the silk worm; unless, in the event that the word "Silks" is used in such

advertisements and advertising matter, and the products therein described and offered for sale are composed of a material or materials other than silk, then in that event the material other than silk, of which said products are composed, shall be clear and conspicuously stated and described. (Apr. 8, 1936.)

**1679. False and Misleading Brands or Labels—Dental Solders and Gold Shells.**—N. Wallach & Sons, Inc. a corporation, engaged in the refining of precious metals and the manufacture of dental solders and dental gold shells, 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.

In the dental manufacturing trade, the custom prevails of marking or branding gold solders with figures showing their gold content (such as "585 fine") and such products as gold shells with figures showing the fineness of the gold content thereof (such as "22 karat"); and such markings or brands are standard and are relied upon by dentists in purchasing their supplies.

N. Wallach & Sons, Inc., in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use, as descriptive of its products, of the word and figures "585 Fine" to describe or designate products not containing 585/1000ths of gold content, and of the word and figures "22 karat" to describe or designate products not made of 22 karat gold; and from the use of any or either of the words or figures specified in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers respecting the quantity or quality of the gold content of said products. (Apr. 9, 1936.)

**1680. Using Lottery Scheme in Merchandising—Candies.**—L. D. Bader, an individual doing business as "L. D. Bader & Son Candy Company", engaged in the business of manufacturing candies 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 from the alleged unfair methods of competition as set forth therein.

L. D. Bader, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use in interstate commerce of any scheme, plan, or method of sale or of promoting the sale of his candy products which involves or includes the use of any gift enterprise, lottery, or scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article or articles; and the said L. D. Bader further agreed to cease and desist from using and transporting in interstate com-

merce any advertising matter for the use of dealers in soliciting the sale of said products by means of any gift enterprise, lottery, or scheme of chance whereby an article is offered as a prize or premium for or in consideration of the purchase of any other article or articles. (Apr. 10, 1936.)

**1681. False and Misleading Brands or Labels and Advertising—Hosiery.**—Best & Co., a corporation, is engaged in the sale and distribution, in interstate commerce, of a general line of merchandise, including hosiery.

William Hollins & Co., Inc., a corporation, is engaged in the distribution in the United States, of a line of hosiery manufactured by the William Hollins Co., Ltd., an English concern, and in the sale and distribution of said products, under the trade name or brand of "Viyella", in interstate commerce.

Best & Co. are distributors of products of said William Hollins & Co., Inc., and as such engaged in the sale and distribution, in interstate commerce, of the brand of hosiery known as "Viyella", through its duly authorized salesmen or solicitors and using the brands, labels, and other advertising matter placed thereon by said William Hollins & Co., Inc.

Best & Co. and William Hollins & Co., Inc. are in competition with other corporations, individuals, firms, and partnerships likewise engaged and said Best & Co. entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Best & Co. agreed to cease and desist from stating and representing in advertisements or advertising matter, or on labels attached to said products, the words "Does Not Shrink" or that such products are unshrinkable, or that the same will not shrink; and from the use, in soliciting the sale of and selling said products in interstate commerce, of any words or phrases of similar meaning, or which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so described and referred to will not shrink, when such is not the fact. (Apr. 9, 1936.)

**1682. False and Misleading Brands or Labels and Advertising—Hosiery.**—William Hollins & Co., Inc., a corporation, is engaged as an importer and distributor of a line of hosiery manufactured by the William Hollins Co., Ltd., an English concern, and in the sale and distribution of said products, under the trade name or brand of "Viyella" in interstate commerce.

Best & Co., a corporation, is engaged in the sale and distribution, in interstate commerce, of a general line of merchandise, including hosiery, and were distributors of products of said William Hollins & Co., Inc. and as such engaged in the sale and distribution, in interstate commerce, of the brand of hosiery known as "Viyella", through its

duly authorized salesmen or solicitors and using the brands, labels, and other advertising matter placed thereon by said William Hollins & Co., Inc. and were in competition with other corporations, individuals, firms, and partnerships likewise engaged.

William Hollins & Co., Inc., entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

William Hollins & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in advertisements or advertising matter, or on labels or markings attached to or imprinted upon its said product, the words "Does Not Shrink" or that such products are unshrinkable, or that the same will not shrink; and from the use, in soliciting the sale of and selling its said products in interstate commerce, of any words or phrases of similar meaning, or which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products so described and referred to will not shrink, when such is not the fact. (Apr. 9, 1936.)

**1683. False and Misleading Advertising—Peat Moss.**—Peat Import Corporation, engaged in the importation of peat moss and in the sale and distribution of said product in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Peat Import Corporation, 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 of statements and representations, either by printed word, by pictorial representations, or by both together, constituting a disparagement of the business or products of any competitor. (Apr. 10, 1936.)

**1684. False and Misleading Advertising—Workingmen's Clothing and Camping Outfits.**—Abe Fogel and Irving Fogel, co-partners, own and operate three retail merchandise stores in Washington, D. C., under the names of "Fogel's Army and Navy Store", "Irving's Army and Navy Store", and "Peoples' Army and Navy Store", wherein are sold a line of merchandise consisting principally of workingmen's clothing and camping outfits and supplies, such as shirts, pants, overalls, coveralls, caps, socks, shoes, tents, cots, tools, etc., which merchandise consists to a limited extent of goods formerly owned by the Government of the United States for use by its military and naval forces, but chiefly of goods purchased through regular commercial trade channels and not made for or formerly owned by any division of the Government; and are in competition with other partnerships, firms, corporations, and individuals likewise engaged. Abe Fogel

and Irving Fogel entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Immediately after the World War, the United States Army and Navy began to dispose of their surplus products to corporations, firms, partnerships, and individuals merchandising at retail, some of whom described and advertised their business as "Army and Navy Stores" and by other similar designations. The stocks of such surplus products held by the Army and Navy have for some time past been practically exhausted and the only classes of such military goods now procurable by said dealers consist of goods which have become obsolete, worn out, or damaged in storage, and of a few salvaged surplus items such as canteens, mess kits, pup tents, leggings, etc.

Abe Fogel and Irving Fogel, in soliciting the sale of and selling their products and merchandise in commerce as defined by the act, agreed to cease and desist from the use of the words "Army and Navy" on signs or in other advertisements or advertising matter; and from the use of the words "Army and/or Navy" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the products and merchandise sold and dealt in by them consist of Army and/or Navy surplus products, when such is not the fact. (Apr. 13, 1936.)

1685. False and Misleading Advertising—"Kalp-O-Lite."—Pacific Kelp Products Co., Inc., a corporation, engaged in the manufacture of a line of remedies, composed of green kelp and certain minerals, and in the sale and distribution of such products, under the trade name of "Kalp-O-Lite", 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.

Pacific Kelp Products Co., Inc., in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter distributed in interstate commerce, that said products are a cure, or a competent and adequate remedy for the treatment of burns, cuts, bruises, boils, ulcers, blood poisoning, poison oak, all affections, and irritations of the skin; as a vaginal pack and urethral wash by men or women; as an astringent for the treatment of catarrh, sinus trouble, tonsillitis, sore throat, canker sore in the mouth, pyorrhoea, ulcerated teeth, colds in the head, ulcerated and inflamed ears, head noises, and catarrhal deafness; for drawing out opiates used in the extraction of teeth; as enemas and for the treatment of hemorrhoids, fistulas, pin worms, colitis, chronic constipation, and all rectal troubles; or for producing bowel evacuation; that its Kalp-O-Lite No. 4 works on the

whole digestive tract, including stomach, intestinal tract, liver and kidneys, and the digestive glandular system; and/or that they have a germicidal and poison destroying property that makes them cleansers without laxative properties; that by the use of its said alleged remedies cancer can be prevented; that it has a staff of regularly licensed physicians, gynecological experts, or of specialists in the treatment of chronic diseases; and that its "Kalp-O-Lite" products are a competent or adequate remedy for the diseases and ailments referred to; and from the use of any misleading, inaccurate, or exaggerated statements or representations regarding the same which may have the tendency or effect to confuse, mislead, or deceive the public into the belief that said products have value or possess remedial, curative, and therapeutic properties in excess of what is probable of accomplishment from the use thereof. (Apr. 13, 1936.)

**1686. False and Misleading Brands or Labels and Advertising—Skin Balm.**—George Boardman, an individual, trading as Vermel Co., engaged in the business of manufacturing a so-called skin balm for humans and animals and in the sale and distribution of said product, under the trade designation "Vermel Skin Balm—Ozark Ripley Formula" in interstate commerce in competition with other individuals, partnerships, 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.

George Boardman in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use of statements and representations in his advertising matter or on his labels distributed in interstate commerce, the effect of which is to import or imply that said product is a remedy or cure for all forms of dog or other animal mange, or that it is effective as a treatment for any form of eczema and skin diseases of animals, or that it will effect a healing of or stop itching or irritation due to acute forms of eczema, or that it will prevent infection and keep the feet in perfect condition, when such are not the facts. The said George Boardman also agreed to cease and desist from statements and representations in his said advertising or on his labels to the effect that said product is a competent remedy for human eczema or in the treatment of dandruff. (Apr. 17, 1936.)

**1687. False and Misleading Trade or Corporate Name—Fabrics.**—Irving Mills Corporation, a corporation, engaged in the sale and distribution of cotton and rayon fabrics 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 herein.



Irving Mills Corporation in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "mills" as a part of its corporate or trade name under which to carry on its said business; and from the use of the word "mills" in any way so as to import or imply that the said corporation actually owns and operates or directly and absolutely controls a mill or factory wherein the products which it sells and distributes in interstate commerce are made or fabricated, when such is not the fact. (Apr. 13, 1936.)

**1688. False and Misleading Advertising—"Poloris Tablets."**—Poloris Co., Inc., a corporation, engaged in the manufacture or compounding of an alleged remedy and in the sale and distribution thereof, under the trade name or brand of "Poloris Tablets", 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.

Poloris Co., Inc., in soliciting the sale of and selling its "Poloris Tablets" in interstate commerce, agreed to cease and desist from making the following or any other similar statements or representations without proper qualification, limitation, or explanation, in advertisements or advertising matter used in soliciting the sale of and selling said product that its product does not affect the heart or the stomach; that its product leaves no ill after effects; that its product gives safe, positive relief; that its product will allay any nervous tension; that its product is chemically broken up in the duodenum and not in the stomach, and therefore gives quicker relief, does not affect the heart nor irritate the stomach, and is not habit forming or narcotic; that its product is an adequate treatment for the pathology underlying the conditions which produce pain and will relieve, check, remove, or cure such conditions. (Apr. 21, 1936.)

**1689. False and Misleading Trade Name, Brands or Labels, and Advertising—Shellac.**—The Northwestern Chemical Co., a corporation, engaged in the manufacture of paints, varnishes, lacquers, and enamels and in the sale of said products in interstate commerce 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.

The Northwestern Chemical Co. in soliciting the sale of and selling products in interstate commerce, agreed to cease and desist from the use of the word "Shellac" to describe a product not composed wholly of shellac, and the use of the word "Shellac" as part of its trade name for any product not containing shellac in substantial quantity; and

from the use of the words "shellac compound," or either of them, in advertisements or on labels, in any way which may import or imply that the product so described or referred to contains shellac in substantial quantity, when such is not the fact. (Apr. 24, 1936.)

1690. **False and Misleading Advertising—Magazine, Newspaper, and Booklets.**—Irving H. Myers, an individual, trading under his own name and also under the names and styles of "Mailbox" and "Irving H. Myers Publications" engaged in business as publisher of a magazine, a newspaper, and the booklets hereinafter referred to, and in the sale of said products in interstate commerce in competition with other 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.

Irving H. Myers in soliciting the sale of and selling his books and periodicals in interstate commerce, agreed to cease and desist from stating and representing in advertisements or advertising matter that his set of booklets "Library of Selected Opportunities" is a \$2.98 or a \$3.00 set, or has been sold at either of such prices; or that such prices have been paid by thousands of purchasers; that the original edition of his set of booklets, "Library of Selected Opportunities," was bound in cloth; that he has had ten years' experience in the mail order business field, or that he is an authority in said field, or that he has been employed as a business expert by mail order houses or paid from \$10 to \$50 per report for his work, when such is not the fact; that a serialized advertising course published in one of his periodicals sold for \$96 or any other sum. (Apr. 24, 1936.)

1691. **False and Misleading Brands or Labels and Advertising—Wine Products.**—Gimbel Brothers, Inc., a corporation, engaged in the sale of general merchandise in interstate commerce 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.

Gimbel Brothers, Inc., in soliciting the sale of and selling its said wine products in interstate commerce, agreed to cease and desist from the use of the term "1928 Blend" on the labels affixed to the containers of its product or in its advertising relating to said product which does not contain wine of the vintage of 1928 in such substantial quantity as to be properly and correctly labeled or advertized as aforesaid; and from the use of the term "1928 Blend" in any way so as to import or imply that said product contains wine of the vintage of 1928 in substantial quantity, when such is not the fact. (Apr. 28, 1936.)

1692. **False and Misleading Brands or Labels and Advertising—Wine Products.**—The John McClure Estate, Inc., a corporation, engaged in the business of producing and bottling wines and in the

sale and distribution of said products under its trade name "Burbank Winery Division" in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The John McClure Estate, Inc., in soliciting the sale of and selling its said wine product in interstate commerce, agreed to cease and desist from the use of the term "1928 Blend" on the labels affixed to the containers of its product which does not contain wine of the vintage of 1928 in such substantial quantity as to be properly and correctly labeled as aforesaid; and from the use of the said term "1928 Blend" in any way so as to import or imply that said product contains wine of the vintage of 1928 in substantial quantity, when such is not the fact. (Apr. 28, 1936.)

1693. False and Misleading Trade Name and Advertising—Paints, etc.—William Russell Briggs, an individual, trading as "Russell Paint Company" and as "Blackhawk Paint & Varnish Works" engaged in the sale and distribution of paints, varnish, and allied products in interstate commerce in competition with other individuals, partnerships, 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.

William Russell Briggs in soliciting the sale of and selling his paint product designated "Red Star" in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising or printed matter of the words "White Lead" as descriptive of said product, the pigment content of which is not composed of white lead. The said William Russell Briggs also agreed to cease and desist from the use of the word "Lead" in connection or conjunction with the word "White", or with any other word or words, so as to import or imply that the pigment content of said product is composed of white lead, when such is not the fact. The said William Russell Briggs further agrees to cease and desist from the use of the word "Works" as part of or in connection or conjunction with his trade name, so as to import or imply that the said William Russell Briggs makes or compounds the products offered for sale and sold by him in interstate commerce and/or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made, manufactured, or compounded, when such is not the fact. (Apr. 28, 1936.)

1694. False and Misleading Advertising—Petroleum Products.—Union Oil Co., a corporation, engaged in the manufacture of petroleum products, including an insecticide designated "Bif", and in the sale and distribution of said product so designated in interstate commerce in competition with other corporations, individuals, firms, and partner-

ships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Union Oil Co. in soliciting the sale of and selling its said insecticide product in interstate commerce, agreed to cease and desist from the use in its advertising matter of whatever character of the statements, "30% More Fly-Killing Power Than Government Requirements" or "Tests prove Bif to have 30% more killing power than the government specifications for commercial fly sprays", when, in fact, there are no standard United States Government specifications or requirements for products of such character; and from the use of the said statements, or either of them, or of any other statement or representation of similar meaning, so as to import or imply that the United States Government has adopted a standard set of specifications or requirements for insecticides, when such is not the fact. (Apr. 28, 1936.)

**1695. False and Misleading Trade Name, Brands or Labels, and Advertising—Cosmetics.**—United Enterprises, Inc., a corporation, engaged in the business of manufacturing cosmetics and in the sale and distribution in interstate commerce of said products in competition with other corporations, firms, individuals, 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.

United Enterprises, Inc., in soliciting the sale of and selling its cosmetic preparations in interstate commerce, agreed to cease and desist from the use, in its advertising matter or on its labels affixed to said preparations, of any and all statements and representations to the effect that said preparations, or any of them, when applied externally to the skin, will penetrate or be absorbed by the skin so as to nourish, revive, vitalize or revitalize, rebuild, or rejuvenate the underlying tissues or cells of the skin and thereby prevent wrinkles and flabbiness, build up sunken features, overcome relaxed facial contours, assist in reducing double chin, or keep the face round, when such are not the facts. The said corporation also agreed to cease and desist from the use of the words "Turtle Oil" as a trade name, brand, or designation for its product which is not in fact composed wholly of turtle oil; unless when said product is composed in substantial part of turtle oil and the words "Turtle Oil" are used as descriptive thereof, then in that case the words "Turtle Oil" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Turtle Oil" are printed, so as to indicate clearly that said product is not composed wholly of turtle oil and that otherwise will indicate clearly that said product is composed in part of an oil or oils other than turtle oil. The said corporation further agreed to cease and desist from the use in its advertising matter or

on its labels of the statements, "Acne Lotion (For Pimples and Eruptions)" or "Acne Lotion is unexcelled in the treatment of pimples, acne and ordinary eruptions. Wonderful results in clearing up unsightly skins", or of any other statements, or representations of similar meaning, so as to import or imply that said preparation is an effective remedy for, or will prove beneficial in all cases of, pimples or skin eruptions, when such is not the fact. (Apr. 28, 1936.)

1696. **False and Misleading Trade Name, Brands or Labels, and Advertising—Peddler Specialties.**—Reliable Merchandise Co., Inc., a corporation, carrying on part of its business under the trade names of "Gold Seal Laboratories" and "Gold Seal Spice Mills", engaged in the sale, at wholesale, of a number of specialties for the peddler trade, known as "flash merchandise", in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Reliable Merchandise Co., Inc., in soliciting the sale of and selling its commodities in interstate commerce, agreed to cease and desist from the use of the word "Laboratories" as a part of or in connection with any trade name under which to carry on its said business; from the use of the word "Mills" as a part of or in connection or conjunction with any trade name under which to carry on its said business; from making any statements or representations in advertisements or advertising matter circulated in interstate commerce to the purport and effect that it is able to sell at low prices because of its large buying power, when such is not the fact; the use of labels or other advertisements or advertising matter for its products wherein said products are referred to or designated by means of exaggerated or misleading statements or representations concerning the value of said products or the prices at which they or any of them are sold or intended to be sold in the usual course of trade; the use of the words "Extra Strength", or "Triple Strength" on labels or in other advertisements or advertising matter to designate and describe products which are not of extra or triple strength; the use on labels attached to the containers in which its said products are sold and distributed in interstate commerce of such words as "strawberry", "Orange", etc., to describe and represent synthetic products; the use of the words "Strawberry", "Orange", or of the name of other fruits on labels attached to the containers in which its said products are sold and distributed in interstate commerce, and which products are respectively not so compounded of the fruit or the juice of the strawberry, the orange, etc.; provided that when said products simulate the flavor of the strawberry, the orange, or other fruit and the name of such fruit is used to designate or describe such flavor, then the name of such flavor shall be immediately accom-

panied by the word "Imitation", or by some other word or words printed in type equally as conspicuous as that in which the name of the fruit is printed and that will clearly indicate that the fruit flavor of such product is not due to the use of genuine fruit, but is an imitation thereof; the use of the word "Imitation" on labels attached to the bottles in which its products are packed, sold, and distributed in interstate commerce, in type which, by comparison with the surrounding printed matter, is small and inconspicuous, and not as conspicuous as the type in which the fruit name, if used, is printed. (Apr. 28, 1936.)

**1697. False and Misleading Trade Name and Brands or Labels—Shoes.**—Joseph Beim, Max Ivler, and Samuel Breiter, copartners trading as Beim, Ivler & Breiter, engaged as wholesalers in the sale and distribution of drygoods and notions, including shoes, in interstate commerce 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.

Joseph Beim, Max Ivler, and Samuel Breiter, in soliciting the sale of and selling their shoes in interstate commerce, agreed to cease and desist from the use of the words "Dr. Wainer's Health Shoes" as a trade name, brand, or designation for their shoes which are not made in accordance with the design and/or under the supervision of a doctor and do not contain special, scientific, orthopedic features which are the result of medical advice and services. The said copartners also agreed to cease and desist from the use of the word "Doctor" or the abbreviation "Dr.", or any simulation thereof, either alone or in connection or conjunction with the name "Wainer" or any other name, word, or words so as to import and imply that their shoes are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, orthopedic features which are the result of medical advice and services, when such is not the fact. (Apr. 29, 1936.)

**1698. False and Misleading Trade Name, Prices, and Brands or Labels—Cigars.**—Masterpiece Cigar Co., a corporation, engaged in the manufacture of cigars 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.

Masterpiece Cigar Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of exaggerated price-markings, in excess of the price at which its products are sold or intended to be sold, and contrary to the internal

revenue taxes paid and stamps placed thereon; the use on labels or elsewhere of the names of the former manufacturers of its said "Mi Alvina" brand of cigars, in any way which may import or imply that said former manufacturers have made said products; and from the use of the word "Manufacturers" in connection with the name of any firm or concern which is not the actual manufacturer of said products; the use of the word "Habana" or "Havana" as descriptive of the tobacco from which its cigars, or any part thereof, are made, when in fact the same are not manufactured from Havana tobacco or from tobacco produced on the Island of Cuba. (Apr. 27, 1936.)

1699. **False and Misleading Brands or Labels—Luggage.**—General Leather Products, Inc., a corporation, engaged in the manufacture of luggage, including leather bags, and in the sale and distribution of said products in interstate commerce, 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.

As a rule, all hides, intended for leathers other than sole, belting, harness, and some specialties are split or "skived." The outer or top cut or layer of a split hide is generally designated as the grain, and ordinarily any piece of leather made from split hide and not described as a split is accepted and understood by the trade and the purchasing public to be the top or grain cut.

General Leather Products, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Genuine Cowhide" as a mark, stamp, brand, or label for products not manufactured from the top or grain cut of the leather; and from the use of the word "Cowhide" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so marked, stamped, branded, or labeled are manufactured from the top or grain cut of the leather, when such is not the fact. (Apr. 29, 1936.)

1700. **False and Misleading Advertising—"Aspergum."**—Health Products Corporation, a corporation, engaged in the business of manufacturing drugs, including "Dillard's Aspergum", and in the sale and distribution of said products in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Health Products Corporation, in soliciting the sale of and selling its product designated "Dillard's Aspergum" in interstate commerce, agreed to cease and desist from stating or representing in its advertising matter of whatever character that its said product acts more quickly than aspirin in other forms, when such is not an established

fact. The said corporation further agreed to cease and desist from stating or representing in its said advertising matter that the use of its said product "does not harm the heart", so as to import or imply that said product may be safely taken or used by individuals having idiosyncrasies or characteristic susceptibility toward salicylates and, more particularly, acetylsalicylic acid; and from the use of the said statement, or of any other statement of equivalent meaning, which may have the capacity or tendency to mislead or deceive purchasers into the belief that the use of said product will not prove harmful to the heart of the user in any instance and/or regardless of the dosage taken. (Apr. 30, 1936.)

**1701. False and Misleading Brands or Labels and Advertising—Mineral Water.**—E. C. Hurd, an individual trading as Medico Minerals Co., engaged in the business of producing a liquid product for both internal and external use, and in the sale and distribution thereof under the trade name or designation "Medico Mineral Water" in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

E. C. Hurd, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from stating or representing, in his advertising matter or on his labels, either directly or indirectly through the use of alleged testimonials of users or otherwise, that his said product has value or possesses therapeutic properties especially beneficial in cases of the kind referred to in said advertising matter; and from the circulation in interstate commerce of advertising matter and from the use of labels in which or on which statements or representations are made, or appear, attributing to said product remedial or curative value or properties other or greater than those usually to be obtained from the use of ordinary drinking water. (Apr. 30, 1936.)

**1702. Boycott and Other Coercive and Concerted Acts—Millinery.**—The Millinery Quality Guild, Inc., a membership corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, its membership consisting of corporations, individuals, firms, and partnerships engaged in manufacturing ladies' hats at factories located in the State of New York and elsewhere in the United States, and especially reproductions of hats originally designed, manufactured, and sold by French milliners; and in the sale and distribution of said products in interstate commerce, and the members of said Millinery Quality Guild, Inc., were, prior to the organization of said Guild, in competition with each other and with other corporations, individuals, firms and partnerships likewise engaged.



The Uptown Creators' Guild, a voluntary unincorporated association of corporations, individuals, firms, and partnerships engaged in designing, manufacturing, selling, and distributing millinery, including ladies' hats, in interstate commerce, the members of said Uptown Creators' Guild were, prior to the time when they began to cooperate with the Millinery Quality Guild, Inc., in competition with each other, and were in competition with corporations, individuals, firms, and partnerships likewise engaged.

Bergdorf & Goodman Co., Inc. was a member of the said The Uptown Creators' Guild.

Bergdorf & Goodman Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from soliciting or securing from its members' customers any agreement or "Declaration of Cooperation" wherein or whereby the signers undertake and agree to refrain from or to refuse to purchase the goods or commodities of manufacturers who are not members of any such Guild or Association; concertedly failing or refusing to solicit the sale of their products by, or to sell the same to, retailer customers on the ground that such individuals, firms, or corporations have failed or refused to sign any such agreement or "Declaration of Cooperation"; expelling, or threatening to expel, from its membership any member or associate member for the sole reason that he or it has solicited the business of or sold products to a retailer who fails or refuses to sign any such agreement or "Declaration of Cooperation"; devising or carrying out any system or scheme of carrying on business having the tendency or capacity to set up a boycott by agreement, concertedly to substitute private action for due process of law in the correction of alleged trade abuses, and/or unduly or unreasonably to restrain trade in a line of commerce. (May 4, 1936.)

1703. False and Misleading Trade or Corporate Name and Brands or Labels—Alcoholic Beverages.—R. O. W., Inc., a corporation, engaged in business as an importer and wholesaler of alcoholic beverages and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

R. O. W., Inc., in soliciting the sale of and selling its whisky in interstate commerce, agreed to cease and desist from the use of the words "Macnab Distilleries Limited", either alone or in connection with the purported address, "266 Clyde St., Glasgow, Scotland", or with the words "Produce of Scotland", or with any other word or words, on its labels, or in any other way, so as to import and imply that said product is produced by Macnab Distilleries Ltd., or by Macnab Distilleries Ltd. of 266 Clyde St., Glasgow, Scotland, or that

Macnab Distilleries Ltd. actually owns and operates or directly and absolutely controls the distillery in which said product is produced. (May 5, 1936.)

**1704. False and Misleading Brands or Labels and Advertising—Soaps, Perfumes, Etc.**—Shulton, Inc., a corporation, engaged for some time past as a distributor in the sale of soaps, soap novelties, talcum powder, and perfumes in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Shulton, Inc., in soliciting the sale of and selling its soap products in interstate commerce, agreed to cease and desist from the use, as a brand or label for its said products, of the words "Royal York", either independently or in connection or conjunction with a pictorial representation or outline of a crown, or with the word "Lavender", or with any other word or words, or in any way so as to import or imply that said products are made or manufactured in England or that they are of British origin, when such is not the fact. The said Shulton, Inc., also agreed to cease and desist from the use on its bill-heads or other printed matter of the word "Soapmakers" as descriptive of the business carried on by it; and from the use of the word "Soapmakers" in any way so as to import or imply that the said corporation makes or manufactures the soap products sold by it, or that the said corporation actually owns and operates or directly and absolutely controls the plant or factory wherein said products are made or manufactured, when such is not the fact. (May 4, 1936.)

**1706.<sup>1</sup> False and Misleading Advertising—Dog and Cat Foods.**—W. J. Ross and George H. Hyland, copartners, trading under the firm name and style of Dr. W. J. Ross Co., engaged in the manufacture and packing of prepared dog and cat foods and in the distribution of said products in interstate commerce in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

W. J. Ross and George H. Hyland, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter of statements and representations that their products constitute a balanced diet or ration for dogs and cats; that their products consist only of lean red meat, just choice cuts of rich red meat, or any other similar words implying or importing that such meat is the sole or predominant content thereof; that their products are made under strict sanitary

<sup>1</sup> The general subject matter which it had been anticipated would be embraced by Stipulation No. 1705 (which did not reach the stage of an approved and accepted stipulation) is involved in formal complaint in Docket 8142, Rex Merchandise Corp. of America et al.

control, or under the same sanitary conditions as foods intended for human consumption, when such is not the fact. (May 5, 1936.)

**1707. False and Misleading Advertising—Cosmetics and Toilet Preparations.**—Edna Wallace Hopper, Inc., a corporation, engaged in the compounding or manufacture of cosmetics and toilet preparations and in the sale and distribution thereof in interstate commerce 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.

Edna Wallace Hopper, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter distributed in interstate commerce that its "Special Restorative Cream" will restore the oils of youth to the skin or supply the skin with natural oils; keep the skin young and free of wrinkles or age lines, and/or erase wrinkles, sags, age lines, or crow's feet; take ten or any number of years off of the user's face, within ten minutes or any other period of time; is absorbed or drunk in by the skin; is the discovery of a great French scientist or of a famous beauty expert; can be depended upon to restore youthful appearance to the skin, or normal conditions to skins disfigured by the natural consequences of age; that its "White Youth Pack (Clay)" is of French origin, or that it will remove blackheads, or that by its use blackheads and enlarged pores go in a single application. (May 5, 1936.)

**1708. False and Misleading Brands or Labels and Advertising—Hair Preparation.**—The Parmeda Co., a corporation, engaged in the business of manufacturing a preparation for use on the hair, and in the sale and distribution of the same in interstate commerce 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.

The Parmeda Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use, on its labels and in its advertising matter relating to said product, of the words "Hair Tonic and Restorative" and of the statements or representations that its said product "restores the natural color to gray and fading hair", or that, when it is applied to the hair, it will "bring back the color of the hair to a natural shade", or of any other statements or representations of similar meaning or import, as descriptive of its said product, which does not act as a tonic to the hair and/or have the property of restoring gray and faded hair to its natural color or shade. The said corporation also agreed to cease and desist from stating or representing that its product, when used on the hair, will stimulate the

growth of the hair, or that it will promote the health of the hair and scalp, or that it will stop falling hair. The said corporation further agreed to cease and desist from stating or representing that its product is not a dye or that the said product is other than a dye. (May 5, 1936.)

**1709. False and Misleading Trade or Corporate Name, Brands or Labels, and Advertising—Household Remedies.**—Scientific Laboratories of America, a corporation, engaged in the manufacture or compounding of household remedies and in the sale of said products at wholesale, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Scientific Laboratories of America, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Scientific" and "Laboratories" as part of or in connection with its corporate or trade name under which to carry on its said business; and from the use of the words "Scientific" or "Laboratories", or either of them (in any way which may import or imply that it owns, controls, or operates a scientific laboratory, when such is not the fact); stating or representing in advertisements or advertising matter distributed in interstate commerce—that its remedies are prepared in one of the world's largest laboratories; that it spent many years in research before its remedies were sold to the public; that it has a staff of expert chemists who test the ingredients used by it in compounding its various preparations; the use in such advertisements and advertising matter, or as part of its brand name for any of its said products, of the word "Doctor", or the abbreviation "Dr." in conjunction with a name, or with any other word or words or in any way as a trade name, brand, or designation for its products, so as to import or imply that the product so labeled, branded, described, or represented is compounded in accordance with the prescription or under the direction of a doctor and contains special or scientific features which are the result of medical advice or services, when such is not the fact; the use in advertisements or advertising matter of any purported "Certification" of its own products, with or without an accompanying "Seal", in any way which may import or imply that such "Certification" is a means of protection to purchasers, when such is not the fact; the use in advertisements or advertising matter, or on labels, of the words "Pacific Coast Division", unless and until said corporation sets up and maintains as a part of its organization appropriate divisions of the territory within which its said products are sold and distributed, including such a bona fide division for the Pacific Coast; the use in such advertisements or advertising matter

of statements and representations—that its product “Re-Duce-Oids” is a scientific preparation, or that its use is a scientific method of reducing; that it will regulate the functions of the glands and/or provide nourishment for them; or that it is safe for self-administration; that its product “Alax” will stimulate or activate the liver; or that it is not habit-forming and is safe for self-administration; that its product “Ko-Sex” contains mercurochrome when such is not the fact; that it is recommended by leading physicians; that it is alkaline; or that it is a safe and competent treatment for self-administration in the treatment of diseased conditions; that its “Digesta” (liquid) will promote digestion, secretions, or motility of the alimentary tract; or that the same is a safe and competent treatment for diseased conditions; that its “Digesta” (tablets) will assist in the digestion of starches, meats, or albumin; making exaggerated, unscientific, and unwarranted claims for its said product “Digestans” and/or that its use by self-administration without skilled diagnosis is safe or desirable; the use in advertisements or advertising matter of inaccurate or exaggerated claims, and/or of any and all statements and representations which do not truthfully and accurately represent the said products offered for sale and sold, and the results which may reasonably be expected from their use. (May 11, 1936.)

1710. False and Misleading Advertising—Medical Preparations.—Whitney Payne Corporation, engaged in the manufacture of medical preparations and in the sale and distribution of said products, under the trade names of “Pheno-Cosan” and “Pheno-Cosan Medicated Soap”, in interstate commerce, and Stuart H. Heist, president of Whitney Payne Corporation, and its managing officer, personally active in carrying on its business, 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.

Whitney Payne Corporation and Stuart H. Heist, in soliciting the sale of and selling their said products in interstate commerce, agreed to cease and desist from stating and representing in advertisements or advertising matter distributed in interstate commerce that said products will cure, or permanently relieve eczema, psoriasis, or general skin diseases; and from the use of any and all statements and representations which do not properly and correctly represent and describe said products and the results which can be secured by the use thereof. (May 11, 1936.)

1711. False and Misleading Advertising—Hair Tonic.—Frank J. Speckert, an individual, engaged as a distributor in the sale of a product under the trade name “Leyden’s Hair Tonic” in interstate commerce, 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.

Frank J. Speckert, in soliciting the sale of and selling his product designated "Leyden's Hair Tonic" in interstate commerce, agreed to cease and desist from the use of any and all statements and representations in his 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 an erroneous belief that said product will impart nourishment to the hair roots and thereby bring gray or faded hair back to its natural color, or that through its use said product will restore the natural or original color to hair except in the sense that it may dye the hair, or that the said product will bring the scalp to a healthy condition, or will remove dandruff completely, stop falling hair and start it to grow, or stop itching scalp, or restore new life to hair. The said Frank J. Speckert also agreed to cease and desist from the use of the statements, "It is good for children to use as well as adults" and "It is positively harmless", or of either of said statements, or of any other statement or representation of similar meaning which directly asserts or clearly imports and implies that the use of said product by children or adults will not result in harmful effects to such users under any conditions or circumstances, when such is not the fact. (May 11, 1936.)

1712. **Combining or Conspiring to Fix and Maintain Uniform Prices, etc.—Decalcomanias or Transfer Pictures.**—Meyercord Co., a corporation; Rayner Decalcomania Co., a corporation; American Decalcomania Co., a corporation; Palm-Fechteler & Co., a corporation; National Decalcomania Corp., a corporation; John R. Commerford and William P. Price, copartners, trading as Commerford-Price Co.; Consolidated Decalcomania Corp., a corporation; Palm Brothers Decalcomania Co., a corporation; Kalasign Co. of America, a corporation; Ed. A. Borden, trading as Borden Decalcomania Co.; The Di-Noc Manufacturing Co., a corporation; and The International Transparency Co., a corporation, engaged in the manufacture of decalcomanias, or transfer pictures, and in the sale and distribution of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Meyercord Co., Rayner Decalcomania Co., American Decalcomania Co., Palm-Fechteler & Co., National Decalcomania Corp., John R. Commerford, William P. Price, Consolidated Decalcomania Corp., Palm Brothers Decalcomania Co., Kalasign Co. of America, Ed. A. Borden, The Di-Noc Manufacturing Co., The International Transparency Co., in soliciting the sale of and selling their products

in interstate commerce, agreed and each of them agreed, to cease and desist from collectively or concertedly agreeing upon uniform prices, terms, discounts, or differentials, or adopting or employing any means or methods which tend to fix the prices, terms, discounts, or differentials at which their products, or the products of any of them, are sold, or which are designed to or do equalize or make uniform the prices, terms, discounts, or differentials to be used by them or any of them in the sale of their products in interstate commerce. (May 12, 1936.)

1713. **False and Misleading Advertising—Mineral Salts.**—Salts of Siloam Co., a corporation, engaged in the business of packing mineral salts obtained from the waters of Soap Lake, in the State of Washington, and in the sale and distribution of said product under the trade name or designation "Salts of Siloam" in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Salts of Siloam Co., 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, or otherwise, of any and all statements and representations which, either directly or by implication, claim for or attribute to said product curative, remedial, or beneficial properties or therapeutic value other than such as belong to a laxative, diuretic, and/or cleansing agent. The said corporation also agreed to cease and desist from the use of the statement, "This Water Analyzed by the United States Government", or of any other similar statement, either alone or in connection or conjunction with any other word or words, or in any way, so as to import or imply that the United States Government actually made or caused to be made an analysis of the waters of Soap Lake as set forth in said advertising, when such is not the fact. (May 14, 1936.)

1714. **False and Misleading Advertising—Stationery.**—Maud J. Taylor, an individual trading as M. J. Taylor Co., engaged in the business of printing and engraving social and business stationery, such as social announcements, invitations, letterheads, and the like, and in the sale and distribution of said products in interstate commerce 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.

Maud J. Taylor, in soliciting the sale of and selling her products in interstate commerce, agreed to cease and desist from the use in her printed or advertising matter of whatever kind distributed in interstate commerce of the words "engraving", "engraved", and "engravers", or of any of them, as descriptive of said products which are not in

fact manufactured in accordance with the process of producing an impression on such products from inked plates in which have been stamped, cut, or carved, letters, sketches, designs, or inscriptions from which impressions or reproductions are made, known as engraving or embossing. The said Maud J. Taylor also agreed to cease and desist from the use of the word "engrave", or of any other word of similar meaning, either alone or in connection or conjunction with the hyphenated words "semi-tone", or with any other word or words, as descriptive of her products, so as to import and imply that said products are manufactured by the well-known engraving or embossing process, when such is not the fact. (May 14, 1936.)

**1715. False and Misleading Brands or Labels and Advertising—Radio Specialties.**—Nu-Tone Laboratories, Inc., a corporation, engaged in the business of manufacturing electrical, radio, and household specialties, including a so-called "Nu-Tone Aerial Eliminator" and a "Nu-Tone Line-Noise Eliminator", and in the sale and distribution of said products in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Nu-Tone Laboratories, Inc., in soliciting the sale of and selling its so-called "Aerial Eliminator" in interstate commerce, agreed to cease and desist from the use on labels affixed to said products, or otherwise, of statements or representations to the effect that its said products, or either of them, when used according to directions, would result in less static, perfect tone, perfect selectivity, or greater distance, or that the use thereof would reduce static and noise or would eliminate all outside wires, in the sense that it would obviate the use of an outside aerial, if proper radio reception was to be obtained. The said corporation also agreed, in soliciting the sale of and selling its so-called "Line-Noise Eliminator" in interstate commerce, to cease and desist from the use of statements and representations to the effect that said product would eliminate line noise or reduce static and noise, when used on a radio set. (May 18, 1936.)

**1716. Simulation and False and Misleading Advertising—Cigarette Lighter and Case.**—Charles E. Berry, Jr., an individual trading under the name and style of Best Products Co., engaged as a food broker and job printer, also as a dealer in certain specialties, and in the sale of said products in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Art Metal Works, Inc., of Newark, N. J., is the manufacturer of the so-called "Ronson" cigarette lighters. It has advertised its "Ronson Mastercase Model" combination lighter and cigarette case widely,



and caused such advertisements to be accompanied by a pictorial representation of the model referred to, the list price of which is \$7.50, and by means of such advertising and expenditures obtained a valuable good will in the design of said product.

Charles E. Berry, Jr., in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter of any pictorial representations simulating the "Ronson" combination lighter and cigarette case manufactured and sold by the Art Metal Works, Inc., of Newark, N. J. (May 18, 1936.)

**1717. False and Misleading Advertising — Correspondence Courses.**—Lew Bradley, an individual trading under the name and style of Modern Institute of Denver, engaged in imparting the instruction usually given by business schools, and in the sale and distribution, in interstate commerce of courses of study and instruction designed and intended to prepare students thereof for examinations for various civil service positions under the United States Government, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Lew Bradley, in soliciting the sale of and selling his courses of instruction in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter distributed in interstate commerce of exaggerated and inaccurate statements and representations respecting the probability of students securing civil service positions; exaggerated and misleading statements and representations in reference to the number of civil service employees being appointed, the probability of examinations being held, that the United States Government is in need of or is seeking civil service employees, that such positions are permanent, for life, steady, well paid, or any other similarly inaccurate or misleading statements; from advertising, entering into, or making any so-called agreements to refund tuition fees in the event of the student's failure to secure the position for which he tries, without at the same time specifying the time within which such refunds are to be made. (May 20, 1936.)

**1718. False and Misleading Trade Name, Brands or Labels, and Advertising—Shoes.**—Graham-Brown Shoe Co., a corporation, engaged as a jobber and distributor in the sale of shoes for men, women, and children in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Graham-Brown Shoe Co., in soliciting the sale of and selling its shoes in interstate commerce, agreed to cease and desist from the use

of the word "Doctor", or the abbreviation "Dr." in connection or conjunction with the name "Austin" as a trade name, brand, or designation for its shoes which are not made in accordance with the design and/or under the supervision of a doctor and do not contain special, scientific, orthopedic features which are the result of medical advice and services. The said Graham-Brown Shoe Co. also agreed to cease and desist from the use in its advertising matter of whatever character, or in any other way, of the word "Doctor", or the abbreviation "Dr.", or any simulation thereof, either alone or in connection with a name or any word or words, so as to import and imply that its shoes are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, orthopedic features which are the result of medical advice and services, when such is not the fact. (May 20, 1936.)

1719. **False and Misleading Brands or Labels—Pillows and Table Scarfs.**—Ben Greenberg & Brother, Inc., a corporation, engaged in the business of manufacturing pillows and table scarfs and in the sale and distribution of said products in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Ben Greenberg & Brother, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "kapok", either alone or in connection with the word "processed", or with any other word or words, as a brand or label for its said products which are not filled with kapok, a product obtained from the seeds of the Javanese kapok tree; and from the use of the word "kapok" in any way relating to its said products so as to import and imply that the filling of said products is composed of kapok, when such is not the fact. (May 20, 1936.)

1720. **False and Misleading Advertising—Hair Remover Device.**—Annette Lanzette, Inc., a corporation, engaged in the manufacture of a pumice-stone device for the removal of superfluous and unwanted hair, and in the sale and distribution of said product, under the trade name "Lanzette Laboratories" in interstate commerce, in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Annette Lanzette, Inc., 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 of whatever character of statements and representations to the effect or which may import and imply that the use of depilatories causes or may cause erosion of the skin or blood poisoning, or that either shaving or the use of depilatories will increase the hair growth or make hair return thicker and darker

than ever, or that the use of waxes will enlarge the pores and increase hair growth. The said Annette Lanzette, Inc., also agreed to cease and desist from representing in its advertising matter, either directly or by inference, that the medical profession generally recognizes or acknowledges the pumice-stone method to be the best or probably the best method now known of removing hair from the body, when such is not the fact. (May 20, 1936.)

1721. **False and Misleading Advertising—Handkerchiefs.**—U. S. Handkerchief Co., Inc., a corporation, engaged as an importer and distributor of handkerchiefs, and in the sale of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

U. S. Handkerchief Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in advertisements or advertising matter circulated in interstate commerce that its products, or any thereof, are domestic made, when such is not the fact; that it owns, controls, or operates a factory at Passaic, N. J., or elsewhere, when such is not the fact; the use of the word "Manufacturers" in advertisements or advertising matter in soliciting the sale of and selling its products in interstate commerce; and from the use of the word "Manufacturers" in any way which may import or imply that it owns, controls, or operates any mill or factory, when such is not the fact. (May 22, 1936.)

1722. **False and Misleading Brands or Labels and Advertising—Hosiery.**—D. S. & W. Hosiery Co., a corporation, engaged in the manufacture of hosiery and in the sale of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

D. S. & W. Hosiery Co., in soliciting the sale of and selling its hosiery in interstate commerce, agreed to cease and desist from the use of the word "silk", either alone or in connection or conjunction with the words "pure thread", or with any other word or words, as a stamp, brand, or label for said hosiery, so as to import or imply that the said hosiery is composed wholly of silk, the product of the cocoon of the silkworm, when such is not the fact, and from the use of the word "silk" in any way which may import or imply that the hosiery is composed in substantial part of silk, when such is not the fact; provided that, when the hosiery is composed in substantial part of silk, and the word "silk" is used as descriptive of such silk content, the word "silk" shall be accompanied by some other word or words, printed in type

equally as conspicuous as that in which the word "silk" is printed, so as to indicate clearly that the hosiery is not composed wholly of silk but is composed in part of a material or materials other than silk; as, for instance, when the hosiery is composed in substantial part of silk and in substantial part of rayon, and the words "silk" and "rayon" are used to designate the silk content and the rayon content, respectively then, in that case, the words "silk" and "rayon" shall be printed in equally conspicuous type. The said corporation also agreed to cease and desist from the use of the word "silk" as descriptive of the minor component part of its said hosiery in any way which may import or imply that it is the major or predominating element thereof. (May 22, 1936.)

**1723. False and Misleading Advertising—Furniture.**—The Hecht Co., a corporation, engaged in dealing in a general line of merchandise, including furniture, and in the sale of said products in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Mahogany is a product of the genus "Swietenia", tribe "Swietenioideae", of the tree family scientifically called "Meliaceae." The genus "Swietenia" of which there are several known species, is the only one which produces true mahogany.

The Hecht Co. agreed, in soliciting the sale of and selling its products in commerce as defined by the act, to cease and desist from the use in advertisements, advertising matter, or otherwise of the word "Mahogany", either independently or in connection or conjunction with any other word or words, to describe or designate products not made or manufactured from wood derived from trees of the genus "Swietenia" of the "Meliaceae" family; and from the use of the word "Mahogany" in any way which may import or imply that the products so described or referred to are made of true mahogany, when such is not the fact. (May 26, 1936.)

**1724. False and Misleading Advertising—Fans and Blowers.**—Champion Blower & Forge Co., a corporation, engaged in the manufacture of blowers, forges, drills, fans, and other similar machinery and in the sale and distribution of said products, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Buffalo Forge Co. is a corporation engaged in the manufacture of blowers, forges, drills, fans, and other similar machinery and in the sale and distribution of said products in interstate commerce in com-

petition with other manufacturers of similar products, including the Champion Blower & Forge Co.

Owing to a number of variable factors in their installation which affect the performance of ventilating fans, there is no known method of testing their capacity which will accurately reflect their performance under all working conditions. A joint committee of the National Association of Fan Manufacturers and of the American Society of Heating and Ventilating Engineers have, however, worked out a Standard Code Test for Disc and Propeller Fans, Centrifugal Fans, and Blowers, which has been published by the National Association of Fan Manufacturers, and is regarded by the industry as the nearest approach to substantial accuracy yet achieved and which is in general use as a standard by the best manufacturers.

The Buffalo Forge Co. has for a number of years past caused the standard tests above referred to to be applied to its fans and blowers and has advertised the capacity of its products in accordance with the results of such tests.

Champion Blower & Forge Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter of figures which purport to represent the various capacities for air exhaustion of its fans, and which are substantially greater than the actual capacity thereof as ascertained by the rules laid down in the Standard Test Code for Disc and Propeller Fans, Centrifugal Fans, and Blowers as prepared by representations of the National Association of Fan Manufacturers and the American Society of Heating and Ventilating Engineers. (May 25, 1936.)

1725. False and Misleading Advertising—Novelty Jewelry.—Robert Y. Powell, an individual trading as Powell Brothers, engaged in selling and distributing novelty jewelry in interstate commerce in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Robert Y. Powell, in soliciting the sale of and selling his merchandise in interstate commerce, agreed to cease and desist from the use in his advertising matter of whatever character of the words "Mexican gems", either alone or in connection with the word "genuine", or with any other word or words, to describe ring settings which consist of a species of glass or ornamentation obtained from a country other than Mexico; the word "cameo" as descriptive of rings which are in fact engraved intaglios; the word "chromium" to describe a ring not manufactured from chromium; the words "rhodium finish" as descriptive of rings not finished with rhodium. The said Robert Y. Powell also agreed to cease and desist from the use on his printed

matter distributed in interstate commerce of the words "manufacturers" or "manufacturing" so as to import or imply that the said Robert Y. Powell actually owns and operates or directly and absolutely controls the plant or factory wherein are made or manufactured the products sold by him. The said Robert Y. Powell further agreed to cease and desist from the use on his printed matter of the words "importing" or "importers" and "exporting" so as to import or imply that the said Robert Y. Powell imports and exports the products offered for sale and sold by him, when such is not the fact. (May 25, 1936.)

**1726. False and Misleading Advertising—Hair Dye.**—Fan Tan Co., Inc., a corporation, engaged in the manufacture of a hair dye and in the sale and distribution of said products, under the trade name of "Black Diamond", using in such sale and distribution the trade name or style of "Black Diamond Company" in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Fan Tan Co., Inc., in soliciting the sale of and selling its said product, "Black Diamond Hair Dye" in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter circulated in interstate commerce of any and all statements and representations that said product is safe or harmless to use on the human hair; that said product will not stain the hands or the scalp of the user. (May 25, 1936.)

**1727. False and Misleading Advertising—Razor Blades.**—The Marlin Firearms Co., a corporation, engaged in the manufacture of firearms and in the sale and distribution of the same in interstate commerce, and recently said corporation undertook to sell, and sold and distributed razor blades as well as firearms in interstate commerce in competition with other firms, corporations, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Marlin Firearms Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the statement or slogan, "Direct from the factory", in connection with the sale and distribution by it in interstate commerce of razor blades which it does not make or manufacture, and from the use of the said statement or slogan, "direct from the factory", or of any other similar statement or slogan, either alone or in connection or conjunction with any other word or words, in its advertising matter of whatever character, so as to import and imply that the said

Marlin Firearms Co. actually owns and operates or directly and absolutely controls the plant or factory in which are made or manufactured the razor blades offered for sale and sold by it, when such is not the fact. (May 25, 1936.)

1728. False and Misleading Brands or Labels—Saddle Soap.—The Service Legging Co., Inc., a corporation, engaged in the sale and distribution of saddle soap in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Service Legging Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on labels affixed to the containers of said product, or otherwise, of the statements, "Warranted to Conform to U. S. Govt. Specifications" and "U. S. Government Standard Saddle Soap", or of either of said statements, or of any other statements or representations of similar meaning, so as to import and imply that said product has been approved and used as a general standard by the United States Government or that the specifications under which said product is made are the same as those approved and used generally by the United States Government; provided, that nothing herein contained shall be construed to prevent the said Service Legging Co., Inc. from stating or representing that its said product conforms with the specifications approved and used by some particular part or branch of the United States Government when and if such is the fact. (May 26, 1936.)

1729. False and Misleading Brands or Labels—Saddle Soap.—R. M. Hollingshead Corp., a corporation, engaged in the business of manufacturing saddle soap and in the sale and distribution of same in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

R. M. Hollingshead Corp., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on labels affixed to the containers of said product, or otherwise, of the statements, "Warranted to Conform to U. S. Govt. Specifications" and "U. S. Government Standard Saddle Soap", or of either of said statements, or of any other statements or representations of similar meaning, so as to import and imply that said product has been approved and used as a general standard by the United States Government or that the specifications under which said product is made are the same as those approved and used generally by the United States Government; provided, that nothing herein contained shall be construed to prevent the said R. M. Hollingshead Corp. from

stating or representing that its said product conforms with the specifications approved and used by some particular part or branch of the United States Government when and if such is the fact. (May 26, 1936.)

**1730. False and Misleading Brands or Labels—Hosiery.**—Unrivaled Hosiery Mill, a corporation, engaged in the manufacture of hosiery and misses' anklets and in the sale and distribution of said products in interstate commerce in competition with other corporations, individuals, and firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Unrivaled Hosiery Mill, in soliciting the sale of and selling its hosiery in interstate commerce, agreed to cease and desist from the use of the word "silk", either alone or in connection or conjunction with the words "pure thread", or with any other word or words, as a stamp, brand, or label for said hosiery, so as to import or imply that the product is composed wholly of silk, the product of the cocoon of the silkworm, when such is not the fact; provided that, when the hosiery is composed in substantial part of silk, and the word "silk" is used as descriptive of such silk content, the word "silk" shall be accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "silk" is printed, so as to indicate clearly that the hosiery is not composed wholly of silk but is composed in part of a material or materials other than silk; as, for instance, when the hosiery is composed in substantial part of silk and in substantial part of rayon, and the words "silk" and "rayon" are used to designate the silk content and the rayon content, respectively, then, in that case, the words "silk" and "rayon" shall be printed in equally conspicuous type. (May 26, 1936).

**1731. False and Misleading Brands or Labels—Hosiery.**—M. L. Victorius & Co., Inc., a corporation, engaged as a jobber in the sale and distribution of hosiery in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

M. L. Victorius & Co., Inc., in soliciting the sale of and selling its hosiery in interstate commerce, agreed to cease and desist from the use of the word "silk", either alone or in connection or conjunction with the words "pure thread", or with any other word or words, as a stamp, brand, or label for said hosiery, so as to import or imply that the product is composed wholly of silk, the product of the cocoon of the silkworm, when such is not the fact; provided that, when the hosiery is composed in substantial part of silk, and the word "silk" is used as descriptive of such silk content, the word "silk" shall be accompanied by some other word or words, printed in type equally



as conspicuous as that in which the word "silk" is printed, so as to indicate clearly that the hosiery is not composed wholly of silk but is composed in part of a material or materials other than silk; as, for instance, when the hosiery is composed in substantial part of silk and in substantial part of rayon, and the words "silk" and "rayon" are used to designate the silk content and the rayon content, respectively, then, in that case, the words "silk" and "rayon" shall be printed in equally conspicuous type. (May 26, 1936.)

**1732. False and Misleading Brands or Labels—Jewelry.**—S. Buchsbaum & Co., a corporation, engaged in the manufacture of jewelry and in the sale of said products, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

S. Buchsbaum & Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from marking, branding, stamping or designating any of its products with the word "Gold", or with any combination of which the word "Gold" forms a part so as to import or imply that the said product is composed of gold either in whole or in part, when such is not the fact. (May 29, 1936.)

**1733. False and Misleading Advertising—Ladies' Coats.**—Maurice L. Rothschild, Inc., a corporation, engaged in the business of selling at retail and by mail order men's and women's wearing apparel, primarily a local retail establishment, but shipping merchandise regularly in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Maurice L. Rothschild, Inc., in soliciting the sale of and selling its ladies' coats in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter circulated in interstate commerce of the words "lamb's wool" as descriptive of the interlinings of said coats which are not in fact interlined with lamb's wool; and from the use in any way of the words "Lamb's wool" to designate the interlinings of its coats so as to import or imply that the interlinings of said coats are composed of lamb's wool, when such is not the fact. (May 29, 1936.)

**1734. False and Misleading Advertising—Batteries.**—Gamble-Skogmo, Inc., engaged as a dealer, both wholesale and retail, in general merchandise, consisting in large part of hardware and automobile supplies. It owns and operates, under the trade name of "Gamble Stores" a large number of stores located in various States of the United States. In addition to selling the merchandise of Gamble-Skogmo, Inc., at retail, said "Gamble Stores" also act as

wholesale distributors to a large number of retail stores in neighboring small towns, known as "Authorized Agency Gamble Stores", of the merchandise of Gamble-Skogmo, Inc. Said Gamble-Skogmo, Inc. also distributes its merchandise through 26 stores known as "Tiger Store", located in various States of the United States, which "Tiger Stores" are owned by individuals operating them, who buy their stocks from both Gamble-Skogmo, Inc. and other sources, but who follow the Gamble-Skogmo, Inc., selling plan and benefit by its advertising. Said Gamble-Skogmo, Inc., also sells auto accessories, including batteries and tires, at wholesale, to about 900 independent stores, commonly referred to by it as "Authorized Agency" stores. Gamble-Skogmo, Inc., at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Gamble-Skogmo, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter circulated in interstate commerce, in tables or schedules purporting to constitute a comparison of its batteries with those of competitors, of any erroneous or inaccurate statements or representations respective of the length of time for which any thereof are guaranteed by the makers, the prices, or in any other material respect; the use in such advertisements or advertising matter of any inaccurate or misleading tabulations purporting to follow the specifications and ratings of the Society of Automotive Engineers, but which in reality materially differs from and misrepresents the same. (May 29, 1936.)

**1735. Disparaging Competitors and False and Misleading Advertising—Check Perforating Machines.**—The National Perforator Co., Inc., a corporation, engaged in the manufacture, repair, sale, and distribution in interstate commerce of check perforating machines in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Among the larger manufacturers of check perforating machines are the American Perforator Co. and the Cummins Perforator Co., both of Chicago, in the State of Illinois. Their check perforating machines have been widely sold and are in use by banks and others in various States of the United States.

The National Perforator Co., Inc., in soliciting the sale of and selling its check perforating machines in interstate commerce, agreed to cease and desist from directly or indirectly misrepresenting the business or status of its competitors, and especially of the American

Perforator Co. and the Cummins Perforator Co.; and from the use of any statements or representations which may have the tendency or capacity to confuse, mislead, or deceive purchasers or prospective purchasers respecting the identity of the company with which they are dealing. (May 29, 1936.)

1736. False and Misleading Trade Name, Brand or Label, and Advertising—"Krome Plate."—Frank Jones Chemical Works, Inc., a corporation, engaged in the manufacture of a product which it designated by the brand name of "Krome Plate" in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Frank Jones Chemical Works, Inc., in soliciting the sale of and selling, labeling, advertising, and distributing its said product in interstate commerce, agreed to cease and desist from the use of the words "Krome Plate", or either of them, as a trade name or brand for its product; and from the use of the word "Krome", or any other colorable imitation of the word Chromium in any way which may import or imply that said product contains Chromium, when such is not the fact; and from the use of the word "Plate" in any way which may import or imply that the use of said products constitutes a means of plating other products, when such is not the fact. (June 4, 1936.)

1737. False and Misleading Trade Name and Advertising—Manicure Preparations.—The Theon Co., Inc., a corporation, engaged in the sale and distribution in interstate commerce of a number of manicure preparations, including polishes, polish removers, and a product sold and distributed under the trade name of "Nailtone", consisting of a "Massage Cream" and a "Nourishing Cream", in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from alleged unfair methods as set forth therein.

The Theon Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Nourishing" as part of the trade name under which to sell and distribute any products which do not feed or nourish the nails; and from the use of statements and representations that its products will correct or remove rings or corrugations from the nails, or prevent the nails from breaking. (June 4, 1936.)

1738. False and Misleading Brands or Labels and Advertising—Cardboard Cabinets.—Decorative Cabinet Corp., a corporation, engaged in the business of manufacturing cardboard cabinets and in the sale and distribution of said products in interstate commerce, in com-

petition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Decorative Cabinet Corp., in soliciting the sale of and selling its cabinets in interstate commerce, agreed to cease and desist from the use in its advertising matter, or otherwise, of the words "cedar-lined" to describe said cabinets, the lining of which is not composed of cedar wood and is not of such thickness or in such substantial quantity or per cent by weight of such wood as to afford that protection against moths which is now and for many years past has been generally understood and recognized by the public to be characteristic of "cedar" products and "cedar-lined" products. Said corporation also agreed to cease and desist from stating or representing that its cabinets are made of a multiple-ply construction, the inner or any ply of which is composed of cedar or cedar wood, when such is not the fact. Said corporation also agreed to cease and desist from the use of the word "cedar", either alone or in connection or conjunction with the words "compressed" and "wood", or any other word or words, as descriptive of the inner ply of its cabinet construction, so as to import or imply that the inner ply is composed of cedar or cedar wood, when such is not the fact; provided that when said inner ply is composed in substantial part of cedar pulp and the word "cedar" is used as descriptive of such cedar-pulp content, then, in that case, the word "cedar" shall be prominently accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "cedar" is printed, so as to indicate clearly that said inner ply is not composed wholly of cedar pulp and that will otherwise clearly indicate that the material of which said inner ply is composed is not cedar wood. (June 4, 1936.)

1739. **Misrepresenting Product and False and Misleading Advertising—Correspondence Course.**—Benjamin Peram Scott, an individual trading under the name and style of American Institute of Technology. Prior to January 22, 1936, said Scott and Iver M. Holton were copartners owning and operating said school. On said date Scott became the sole owner thereof, and said Holton became and still continues to be a salesman or solicitor in the employ of said American Institute of Technology. Said school has been conducted as a correspondence school teaching "Electronics", by which is meant photoelectric cell, radio, and television engineering, in interstate commerce, in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Benjamin Peram Scott and Iver M. Holton, in soliciting the sale of and selling their courses of instruction in interstate commerce, agreed to cease and desist from entering into contracts and agreements whereby they promise and undertake to provide students with equipment, unless the same is actually furnished as agreed; stating and representing to students and prospective students that they will be periodically and regularly called upon and coached by engineers connected with the school, when such is not the fact; that it will be necessary for them to attend classes and receive instruction at the class-room and laboratories of the American Institute of Technology in Detroit, and/or be given there a pre-graduation examination, when such is not the fact; that their school and laboratories are under Government supervision and inspection, and that previous to their being given employment students are being required to pass a Federal examination in order to obtain a license in "Electronic" engineering, when such is not the fact; that after securing such license students will be given government employment; that their students can or do, after graduation, secure jobs paying \$125.00 or more per month or that their graduates have secured positions paying \$20,000 per annum; or that, upon graduation, student's portraits and a notice of their graduation will appear in newspapers, when such is not the fact. (June 4, 1936.)

1740. **False and Misleading Advertising—Vermin Exterminator and Courses of Instruction.**—Seaver Exterminating Systems, a corporation, engaged in the manufacture of a vermin exterminator and in the sale of said product, in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Seaver Exterminating Systems, in soliciting the sale of and selling its exterminator and courses of instruction in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter of statements and representations: that the founder of its system has astounded America, or that he is the most famous exterminator in the world; that students can earn up to \$15,000, or any other exaggerated sum, per year; that Mr. Seaver, or students of its course in exterminating, are the only men in America who can eliminate the word "Control" in referring to their work; that Mr. Seaver has not had a failure in his thirty-one years' experience; that rats will not come back within a year; or that the complete lesson material is, or will be sent to subscribers immediately upon receipt of their subscriptions, when such is not the fact. (June 4, 1936.)

1741. **Misrepresenting Product and False and Misleading Advertising—Polish Remover.**—Glame, Inc., a corporation, engaged in the sale and distribution, in interstate commerce, of a number of manicure

preparations, including polishes, polish removers, and a product sold and distributed under the trade name of "Nail Balm", in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Glame, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of any and all statements and representations that its Glame Polish Remover feeds or nourishes the nails or cuticle of users; and from the use of the words "feeds" or "nourishes" in any way which may import or imply that said product, or the glycerine content thereof, has the power or capacity to feed or nourish the nails or skin. (June 5, 1936.)

**1742. False and Misleading Brands or Labels—Rabbit Skins.**—Meskin Brothers Fur Corporation, engaged in the business of dyeing and dressing furs and in the sale and distribution of said products in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Meskin Brothers Fur Corporation, in soliciting the sale of and selling its dyed rabbit skins in interstate commerce, agreed to cease and desist from the use of the words "Seal" and "Beaver", or of either of said words, or of the pictorial representation of either of said mammals, as a mark, stamp, or brand for or otherwise to describe said rabbit skins; except and unless, when the words "Seal" and "Beaver", or either of them, are or is used to designate rabbit skins which have been dyed so as to simulate seal or beaver, said words or word shall be immediately accompanied by other apt and adequate words printed in conspicuous type so as to indicate clearly that said products are dyed rabbit skins and not seal or beaver skins. (June 4, 1936.)

**1743. False and Misleading Trade or Corporate Name, Brands or Labels, and Advertising—Wines.**—The Swiss Colony Vineyards Corporation, engaged in business as a distributor in the sale of wines in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Italian Swiss Colony is the present name of a concern which was originally incorporated in 1881 as "Italian-Swiss Agricultural Colony" under the laws of the State of California for the purpose of operating vineyards and nurseries in the said State. In 1900 the name of the said corporation was changed by dropping the word "Agricultural" therefrom, so that in 1900 the said corporation became known, and at all times since 1900 has continued to be and is now known as "Italian Swiss Colony" in the grape and wine industry. It maintains distribut-

ing plants in New York and Chicago; and its wines, sold and distributed throughout the United States under its corporate name, "Italian Swiss Colony", enjoy and for a number of years have enjoyed a wide and favorable reputation.

The Swiss Colony Vineyards Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Swiss Colony", or of either of said words, alone or in connection with any other word or words, as part of its corporate and trade name, in its printed matter distributed in interstate commerce, or on its brands or labels affixed to said products sold in interstate commerce; and from the use of its corporate and trade name, including the words "Swiss Colony", in any way, in soliciting the sale of and selling its products in interstate commerce, which tends or may tend to mislead or deceive purchasers into the belief that the business conducted by the said Swiss Colony Vineyards Corporation and that of its competitor, Italian Swiss Colony, are one and the same, or that the said Swiss Colony Vineyards Corporation is connected or associated in any way with the said Italian Swiss Colony. The said Swiss Colony Vineyards Corporation also agreed to cease and desist from the use of the word "Vineyards" as part of its corporate and trade name, or on its printed matter, or in any way so as to import and imply that the said Swiss Colony Vineyards Corporation actually owns and operates or directly and absolutely controls the vineyard wherein are grown the grapes from which its wines are produced or made. The said corporation further agreed to cease and desist from the use of the word "Winery", either alone or in connection with any other word or words, so as to import and imply that the said corporation actually owns and operates or directly and absolutely controls the winery establishment in which its wines are made, when such is not the fact. (June 8, 1936.)

1744. **False and Misleading Trade Name and Advertising—Silverware and Redemption Coupons.**—William M. Irvine and George F. Taylor, copartners trading as Rogers Silverware National Distributors and now as National Silverware Distributors, engaged in the sale and distribution, in interstate commerce, of coupons for use by retailers in connection with the sale of their merchandise, and in the redemption of such coupons by exchanging therefor various articles of silverware, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

William M. Irvine and George F. Taylor, in soliciting the sale of and selling their commodities in interstate commerce, agreed to cease and desist from the use of the word "Rogers" as part of or in connection with their trade name under which to carry on their said

business; stating and representing in advertisements or advertising matter that they are manufacturers of Wm. A. Rogers silverware; stating or representing in advertisements or advertising matter that they are distributors of Wm. A. Rogers silverware; stating or representing in advertisements or advertising matter that they are engaged in a nation-wide advertising campaign to increase the distribution of their silverware; stating and representing, directly or indirectly, that their agents or solicitors have nothing to sell; stating and representing, directly or indirectly, that their agents or solicitors are with the Wm. A. Rogers silverware people; stating or representing that their sales plan costs or will cost the local merchant nothing; stating and representing that their sales contract is a money-back or guaranteed cash refund contract; the use in contracts of ambiguous and misleading statements and representations respecting the terms and conditions relating to refunds of sums paid for coupons; stating and representing that the silverware given for the redemption of coupons is free; stating or representing, directly or indirectly, that they will do local advertising in support of sales campaign, unless such advertising is actually done; stating and representing, directly or indirectly that they have a business connection with R. L. Polk Co., and/or that they are in a position to, or will, secure from that company the distribution of local advertising; using the name of Dun & Bradstreet (or "Dunn & Bradstreet") as a reference, without authority from that company. (June 16, 1936.)

**1745. False and Misleading Advertising—Electrical Refrigerators and Other Equipment.**—Tidewater Electric Corporation, engaged in business as a distributor in the sale of "Kelvinator" electrical refrigerators and other types of electrical equipment in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Tidewater Electric Corporation, in soliciting the sale of and selling its Kelvinator electrical refrigerators in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter, or in any way, of the statement, "Again the Government contract goes to Kelvinator", or of any other similar statement, either alone or in connection or conjunction with pictorial representations of Government buildings, battleships, or property, so as to import and imply or which may tend to confuse, mislead, or deceive purchasers into the belief that the United States Government uses only Kelvinator electrical equipment, or that United States Government awards are made to the Kelvinator Corporation of Detroit, Mich., to the exclusion of all other refrigerator companies, or that the United States Government building, battleships, and properties illustrated



or otherwise represented in said advertising matter are equipped wholly with Kelvinator refrigerators, when such is not the fact. (June 16, 1936.)

**1746. False and Misleading Trade Name and Brands or Labels—Marmalades.**—S. C. Clayton Co., Inc., a corporation, engaged in the manufacture of preserves and syrups and in the sale and distribution thereof in interstate commerce in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

S. C. Clayton Co., Inc., in soliciting the sale of and selling its marmalades in interstate commerce, agreed to cease and desist from the use of the word "Paisley's", in connection or conjunction with a tartan and a coat of arms of foreign appearance or which simulates the British coat of arms, on the labels affixed to the containers of its said products, which are of domestic make or manufacture. (June 16, 1936.)

**1747. False and Misleading Advertising and Disparaging Competitors' Products—"Kleenex" Tissues.**—International Cellucotton Products Co., a corporation, engaged in the sale of cellulose products, including "Kleenex" disposable tissues, in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

International Cellucotton Products Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter distributed in interstate commerce, from stating and representing: that Kleenex imprisons 99% of all the germs that touch it, or that it holds all the germs that touch it, or any other exaggerated and misleading statement or representation in reference to the germ collecting or germ retaining properties of said product; the use of any claims or representations in disparagement of cotton or linen handkerchiefs and from all statements and representations with respect to cotton and linen handkerchiefs which may be misleading or deceptive to the purchasing public; that the use of Kleenex prevents self-infection during colds, without proper qualification; and setting up claims respecting the benefits derived from the use of Kleenex which are exaggerated and impossible of accomplishment. (June 16, 1936.)

**1748. False and Misleading Brands or Labels and Advertising—Dental Amalgam.**—Pontiac Refining Co., Inc., a corporation, engaged in the refining of gold, platinum, and silver, in the distillation of mercury and the compounding of amalgams for the use of dentists, and in the sale and distribution of said products in interstate com-

merce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Pontiac Refining Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating and representing in advertisements and advertising matter distributed in interstate commerce that it is the manufacturer of its "Chief Castloy" brand of dental amalgam; from the use of the brand name of "white gold" in any way to describe or designate a product the gold content of which is not substantial; that dentists can make an economical casting gold by the use of gold scrap to alloy "White Castloy." (June 17, 1936.)

**1749. False and Misleading Advertising—Electrical Refrigerating Equipment.**—Kelvinator Corporation, engaged in manufacturing electrical refrigerators and equipment, owns and controls the capital stock of Leonard Refrigerator Co. also engaged in manufacturing electrical refrigerators, and each of the said corporations, engaged in the sale and distribution of its products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Kelvinator Corporation and Leonard Refrigerator Co., in soliciting the sale of and selling their products in interstate commerce, agreed and each of them agreed, to cease and desist from the use, in their advertising matter or in advertising matter furnished by them, or by either of them, to others for use, of statements and representations, the effect of which is to import and imply or which may tend to import and imply that the electrical refrigerating equipment manufactured by Kelvinator Corporation and Leonard Refrigerator Co., or by either of them, is the only electrical refrigerating equipment purchased and used by the United States Government or with which the various buildings, properties, and structures referred to in said advertising matter are equipped, when such is not the fact; that any test or investigation has been made by the United States Government of any or all standard makes of electric refrigeration before making its awards, except such investigation as has been made from performance figures furnished by the refrigerator manufacturers submitting bids on proposals. Said corporations also agreed, and each of them agreed, to cease and desist from the use of awards made to them, or to either of them, by the United States Government, or any part thereof, as a basis for advertising or for the advertising furnished by them, or by either of them, to or for the use of others. (June 17, 1936.)

**1750. False and Misleading Advertising—Electrical Refrigerators.**—National Manufacture & Stores Corporation, engaged as a manufacturer of furniture and also as a distributor of Leonard electric refrigerators manufactured by Leonard Refrigerator Co. in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

National Manufacture & Stores Corporation, in soliciting the sale of and selling its Leonard electric refrigerators in interstate commerce, agreed to cease and desist from the use in its advertising matter, or otherwise, of statements and representations, the effect of which is to import and imply or which may tend to import and imply that the electric refrigerators manufactured by Leonard Refrigerator Co. are the only electric refrigerators purchased and used by the United States Government, when such is not the fact; that any test or investigation has been made by the United States Government of any or all standard makes of electric refrigerators before making its awards, except such investigation as has been made from performance figures furnished by the refrigerator manufacturers submitting bids on proposals. The said National Manufacture & Stores Corporation also agreed to cease and desist from the use, in its advertising matter having interstate circulation, of awards made to Leonard Refrigerator Co. as a basis for advertising its refrigerators. (June 17, 1936.)

**1751. False and Misleading Trade Name and Advertising—Tonic.**—Roscoe D. Hogue, an individual, trading under the name and style of Pioneer Medicine Co. and also as Pioneer Drug Co., engaged in the manufacture or compounding of an alleged liver and kidney remedy, and in the sale and distribution of said product, under the trade name of "Old Pioneer Indian Tonic", in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Roscoe D. Hogue, in soliciting the sale of and selling his said product in interstate commerce, agreed to cease and desist from the use of the word "Indian" as a part of the trade name under which to offer for sale and sell said product in interstate commerce; and from the use of the word "Indian", either independently or in connection or conjunction with any other word or words, in any way which may import or imply that said product was either originated by Indians, or used by them; the use in advertisements or advertising matter circulated in interstate commerce of claims and representations respecting the therapeutic properties of his said product which are exaggerated and improbable of accomplishment. (June 23, 1936.)

**1752. False and Misleading Advertising—Herb Tea.**—Benjamin Eidinger and Rose Eidinger, copartners, trading as Lion Cross Products Co. and as Lio-Pharmacy, engaged in the sale and distribution of a product designated "Lion Cross Herb Tea" in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Benjamin Eidinger and Rose Eidinger, in soliciting the sale of and selling their product designated "Lion Cross Herb Tea", in interstate commerce, agreed to cease and desist from the use in their advertisements and advertising matter, or in any way, of any and all statements and representations so as to import and imply that said product is a cure, remedy, or aid for high blood pressure, rheumatism, periodic headaches, bladder disorders, exhaustion and loss of sleep, stomach troubles of all types, or all types of constipation, heartburn, indigestion, gas and sour stomach, female irregularities, loss of pep in men and women, back pains, kidney disorders, arthritis, or skin eruptions. Said copartners also agreed to cease and desist from stating or representing that the use of said product will bring health, happiness, and long life to the users thereof. Said copartners further agreed to cease and desist from stating or representing that said product is always "safe for children" or "harmless in every respect." Said copartners also agreed to cease and desist from the use of the phrases "made by nature", "natural remedy", "treatment", or "this marvelous product grows on the highest mountain peaks, where it absorbs all the healing elements and vitamins from the sun", or of any other similar statement, as descriptive of said product, which is not in fact properly so described. Said copartners also agreed to cease and desist from the use, in their advertising or printed matter pertaining to said product, of the word "laboratory", either alone or in connection or conjunction with any other word or words, or in any way, so as to import or imply that the said Benjamin Eidinger and Rose Eidinger actually own and operate or directly and absolutely control a place devoted to experimental study and to the application of scientific principles in testing and analysis or in the preparation of said product, when such is not the fact. (June 23, 1936.)

**1753. False and Misleading Brands or Labels—Women's Clothing.**—Ben Greenholtz, an individual, trading under the name and style of Greenmoor Coats Co., engaged in the manufacture of women's dresses, cloaks, etc., and in the sale and distribution of said products in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Ben Greenholtz, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use on brands or labels affixed or intended to be affixed to his said products of the words "British Tweed" independently or in connection with the words "King Edward VIII", or of any pictorial representation of the British Royal Arms, or of the Union Jack; and from the use of the British Royal Arms or of the Union Jack, alone or in connection with any words so as to import or imply that the product to which the same is attached is made of cloth manufactured in Great Britain, when such is not the fact. (June 25, 1936.)

1754. **False and Misleading Brands or Labels and Advertising—Clothing.**—Hecht Brothers & Co., Inc., a corporation, engaged in the sale of a general line of merchandise, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hecht Brothers & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on brands or labels or in advertisements and advertising matter, of the words "British Tweed" either independently or in connection with the words "King Edward VIII", or of any pictorial representation of the British Royal Arms, or of the Union Jack; and from the use of the British Royal Arms or of the Union Jack, alone or in connection with any words so as to import or imply that the product to which the same is attached is made of cloth manufactured in Great Britain, when such is not the fact. (June 25, 1936.)

1755. **False and Misleading Trade Name, Brands, or Labels, and Advertising—Skin Preparation.**—R. H. Macy & Co., a corporation, engaged in the business of selling general merchandise, both at retail and by mail order in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

R. H. Macy & Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the words "skin food" as a trade designation for its said product, and from the use of the said quoted words, or of any other word or words of similar meaning, on the labels affixed to the containers of said product or in advertising matter distributed in interstate commerce, so as to import or imply that said product is a skin food, or that it will feed or nourish the skin when applied externally thereto, or that it possesses value in excess of what is actually the fact. (June 29, 1936.)

## DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS <sup>1</sup>

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01141.<sup>2</sup> Vendor-Advertiser—Lubricant.—Gracon Manufacturing Co., a corporation, St. Louis, Mo., vendor-advertiser, is engaged in selling Co-Lubes, a graphite lubricant and in advertising represented:

Actual tests prove 20% Increased Speeds, 20% Savings in gas and oil, faster pickup, more power, pep and smoothness for Autos using Revolutionary New Dry Lubricating aid—Co-Lubes.

Amazing results. Saves repairs. Cuts up-keep costs. Improves every motor. Cannot harm most delicate mechanism.

Profits pile up fast. Up to \$20.00 to \$30.00 daily clear profit is just a start!

Get the Facts—the scientific proofs—reports of tests—and the New Profit-Making Plan that means a fortune for you from the day you start with us.

Up to \$40.00 Daily for Agents and Distributors.

Saves Your Car.

Actual tests show Co-Lubes cut down repairs, prevent friction, prolong engine life, effect tremendous economies in operation \* \* \* boosts power, increases speed, makes motors run smoother and better.

Friction defeated, gasoline and oil go up to 40% further! That—and keeping the car out of the shop—spells money savings to motorists far beyond anything known, says automotive experts of Co-Lubes.

Listen to this. A 1931 Chevrolet Coupe after a 500-mile treatment with Co-Lubes was driven Without Oil at speeds of Up To 50 Miles An Hour, for Six Days—a total of 300 Miles—and an examination revealed absolutely no injury to bearings or valves. You can scarcely imagine anything like it, can you. Every car driver knows the danger of running without oil. But this discovery absolutely defies all common rules of lubrication.

Here are other incidents that will make you gasp. A 1932 V-8 Ford had gone over 50,000 miles and was using a great deal of oil and gas in proportion to distance traveled. It was treated with Co-Lubes. Then the miracle happened. From an average of 11 to 12 miles per gallon of gas, it showed an increase to 20 Miles per gallon. The knocking had stopped and the oil consumption was greatly reduced.

A 4-year-old Chevrolet was run 4,000 miles without an oil change and lost only 1 qt. of oil and the oil still had wonderful lubricating qualities.

Another car consumed 3 qts. of oil every 600 miles but Co-Lubes reduced it to only 1 qt. per 1,000 miles.

Reports are streaming into my office showing from 35% to even 75% increase in gasoline mileage—oil consumption reduced up to 25%—old cars running like new—quiet, smooth, peppy motors even under heavy loads—lightning pickup—lubrication good after 4,000 miles without oil change.

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<sup>1</sup> Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, Jan. 14, 1938, to July 9, 1938, inclusive. For digests of previous stipulations, see vols. 14 to 21 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602, et seq.

<sup>2</sup> Stipulations 01131 to 01140, inclusive, not released.

Think, man, think! Ye Gods—who could pass up a chance like this to secure that silky purr of his motor even if it is 3 to 5 years old and at the same time save up to 50% of the operating cost?

What a difference this discovery makes! Just drop the convenient tablet, one into each quart of oil and one into each five gallons of gasoline put into the tank. They start dissolving at once. The potent forces in them are released and they go to work. Some of them form on the surfaces of the steel, sealing up the pits, holes and cavities, adhering to protect the steel from friction, and give it a highly efficient lubricating surface. Others form in a thin film between the steel. They withstand a temperature of over 3,000 degrees F. and are the highest known lubricating value. As a result, the pistons and valves slide up and down easily, Without Drag. They don't gum up. Friction is reduced to a minimum and lubrication increased to the Maximum. Consequently, you Must get far more power, faster pickup, smoother and quieter motor, and less consumption of oil and gasoline. And records prove it. Gasoline mileage has been increased up to 75%. Oil may be used for 2,000 to 3,000 miles and over before changing. In fact, all things considered, operating cost should be cut at least in Half!

Now let's look at this thing from a purely economical standpoint. Suppose Co-Lubes increase your gasoline mileage only 25 percent. That means a saving of one-fourth, or around 4 cents per gallon of gas, 40 cents on 10 gallons. Its well worth while, isn't it? Then besides, it will cut your oil bills at least in half for the same oil will run your car from two to four times farther. That means a minimum savings of 12 cents per quart of oil, or around 70 cents per filling. On 2,000 miles your oil and gasoline saving will total around \$5.00. It may run up to \$7.00 and more. Besides, think of the saving in repairs—the satisfaction of riding behind a smooth, quiet motor running like new, pistons and valves operating perfectly, a lightning pickup, more power, and every moving part receiving the highest known lubricating value. I ask you in all frankness and sincerity, is this worth only 3 cents per tablet? There is only one answer and you know it.

Light a match and hold it under the tin. The resulting liquid is the most highly concentrated, highest value lubricant known, containing a number of secret, potent ingredients. They mix with the gasoline and oil. They spread their protecting film over every point of friction and wear \* \* \* and practically eliminate friction as long as they are used! They are especially valuable in the upper cylinder section where there is such a woeful lack of lubrication, accounting for sticky, gummed-up, pitted valves and cylinder walls, producing enormous Friction, Wear and Drag.

In Co-Lubes there is a complete absence of anything that may cause sludge. It positively Will Not clog up or interfere in any way with the lubricating system. Rather, it is a decided benefit to it, for it also attacks carbon and is the very climax of purity. They contain no camphor, corrosive acid, ether, gummy oil, or other harmful chemicals that could cause damage to the finest motor mechanism. Co-Lubes Are Non-Corrosive. The colloidal graphite, one of the ingredients in Co-Lubes, has been treated by our secret process so that it is of the non-clogging type and will readily pass through all filters, oil lines, ducts, or passages in any motor lubricating system. We positively Guarantee Co-Lubes to be harmless In Any Way to any part of a motor.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in

that, according to scientific opinion rendered the Commission, respondent's product will not produce the results claimed therefor, nor can salespersons selling respondent's product make the earnings indicated.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Co-Lubes will give 20% increased speeds, 20% to 75% savings in gas and oil mileage, faster pickup, more power, pep and smoothness for automobiles;

(b) That Co-Lubes will cause great saving in automobile repair bills, upkeep, and will improve motor;

(c) That Co-Lubes cannot harm the most delicate mechanism;

(d) That Co-Lubes will prevent friction and prolong engine life;

(e) That Co-Lubes will keep one's car out of the repair shop;

(f) That automobiles previously treated with Co-Lubes can be driven at high speeds and for long distances without oil and result in no injury to bearings or valves;

(g) That Co-Lubes will stop knocking in automobiles;

(h) That Co-Lubes will cause motors to have good lubrication after 4,000 miles without oil change;

(i) That Co-Lubes seal up pits, holes, and cavities, adhering to protect the steel of motors from friction and give them highly efficient lubricating surfaces, also forming a thin film between the steel capable of withstanding a temperature of over 3,000 degrees F. and producing the highest known lubricating value;

(j) That Co-Lubes attack carbon;

(k) That agents or distributors and district managers can earn the following sums of money selling Co-Lubes, namely:

1. Up to \$20.00 to \$30.00 daily clear profit at the start;
2. Up to \$40.00 daily;
3. A fortune from the day one starts;

and from making any other claims or assertions of like import.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, stipulates and agrees—

(l) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business;

(m) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business; and

(n) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings.



The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 20, 1936.)

01173.<sup>1</sup> **Vendor-Advertiser—Medicinal Treatments.**—Siroil Laboratories, Inc., Detroit, Mich., vendor-advertiser, is engaged in selling Siroil, offered for psoriasis and dandruff, and Exoil, offered for eczema and in advertising represented:

The Siroil Laboratories are gratified to announce a relief for the discomforts of psoriasis, the successful nature of which is well attested by many men and women whose cases have been most stubborn.

About ten years ago a victim of psoriasis unable to obtain relief from the best skin specialists, began intensive research to find satisfactory application. After six years of effort he developed a preparation which successfully treated his own condition. The scales and sores disappeared and his skin in the affected area became clear.

Doctors began prescribing Siroil for their own psoriasis patients, and also, in instances for their own use where they themselves were afflicted with the disease. Over 15,000 people have used Siroil, and over 98 percent of the cases have received great benefit.

Siroil represents a tremendous advance over any other method for treating this disease that has yet been developed.

For nearly a year I suffered from psoriasis. My head was almost solidly crusted, and the eruptions spreading over my body. I ordered a bottle of Siroil, which reached me on February 2 and immediately began using it. In two days I could note improvement, which progressed steadily, until today, when I am able to say that I am relieved.

All of my doctors and specialists had agreed on One thing and that was the incurability of Psoriasis. At least three-fourths of my body was more or less affected, including my scalp and hands which were Very scaly. I applied Siroil, the scales all disappeared after the first application, my scalp and hands soon became clear. I have had a total of 20 applications and many of the spots have entirely disappeared, leaving the skin soft and white, while All of the others are slowly but surely yielding to the application of this oil.

I have only used a little Siroil of my second bottle and aside from some discolored skin where patches were, my psoriasis is relieved, and not a sign of itching or scabs—or any new patches.

For fourteen years I had suffered from psoriasis. The medicine came Thursday, and I began on one leg. By Saturday that leg had just some pink spots left. Saturday night I began with my whole body. Inside of two weeks there was not a spot on my whole body, and no more "Dandruff" and I had not finished the bottle.

After eighteen years and thousands of dollars spent on psoriasis, nine days' application of three-quarters of the contents of one five dollar bottle of Siroil, which relieved a fairly bad case from body, legs, arms and scalp, leaves one in a very pleasant fog.

My son, Teddy, age 15, has been afflicted with psoriasis for the past eight years. We have used your Siroil according to your instructions and I am amazed to see how after the first week's treatment those ugly spots disappear.

<sup>1</sup> Stipulations 01142 to 01172, inclusive, not released.

I have used it just three weeks and spots of psoriasis that I have had for thirteen years have completely disappeared. My face, arms, and neck are as smooth and as soft as a baby's.

**Siroil Shampoo**—Our Answer to an Obvious Demand for an Ideal Protection to Hair and Scalp. Many psoriasis sufferers had psoriasis of the scalp. Siroil relieved their condition. Siroil Shampoo is the most efficacious product which has thus far been developed for keeping scalp skin in a healthy perfect condition.

Out of thousands of cases where Siroil has been used it has been effective in bringing relief to over 98%.

On February 11, 1934, Mr. Jack M. Davidson, of Detroit, came to the Siroil Laboratories seeking relief from a case of psoriasis. Mr. Davidson's scalp was one mass of scales. Only a few applications were necessary to completely clear up the scalp. April 28. On this day Mr. Davidson's skin, which a few months ago was a mass of scales, is now as soft as a baby's.

For many months the Siroil Laboratories have been engaged in developing a relief for eczema. Today this relief, Exoil, has been perfected.

Exoil is a skin rejuvenator.

The osteopath's wife's case was an extreme one. She had been a chronic sufferer from psoriasis for many years. Her body was a mass of scales. In less than a week after commencing applications her skin began to clear. In two weeks the evidence of psoriasis had disappeared. There was a slight return of the condition after a relapse of ten months, but a half dozen applications eliminated the symptoms entirely.

The case of the wife of the retired capitalist was similar to the osteopath's wife. Two weeks after beginning treatment the scales disappeared and her skin resumed its natural, healthy texture.

In the very great majority of cases Siroil gives relief for \$5.00; in other words, one bottle does the work.

Siroil is being prescribed by many physicians.

Many people have spent hundreds, even thousands of dollars, in a vain effort to relieve their condition. We maintain that it can be relieved for approximately \$5.00.

Complete elimination has been effected in hundreds of cases through the use of only one bottle of Siroil.

In our files are a great many letters from physicians telling of the wonderful results they are having with Siroil in their practice. Several of these letters tell of physicians using Siroil on themselves and members of their own family.

Siroil applied externally to the affected area causes the scales to disappear, the red blotches to fade out, and the skin to resume its normal texture.

Siroil, the new relief for psoriasis, will solve your problem for you. It has brought relief to thousands of men and women throughout the country.

Exoil—this new eczema relief—is applied externally to the affected areas.

Siroil—a wonderful scalp cleanser and conditioner. The way it removes dandruff, grime, and foreign particles is just amazing. But it's far more than merely a scalp wash. Its olive and cocoanut oil base, combined with the healing properties of Siroil (The famous psoriasis relief) puts and keeps the scalp in that healthy condition nature intended.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that according to medical opinion furnished the Commission, Siroil

does not constitute proper treatment for psoriasis and dandruff; while according to abundant medical authority, there is no known preparation which is recognized as a competent treatment or an effective remedy for eczema, as implied in the claims made for Exoil.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Siroil is a competent treatment or an effective remedy for psoriasis or dandruff; or that it will do more than remove the scales or crusts of said diseases, or be of some temporary benefit;

(b) That any definite proportion of the cases treated with said preparation have been relieved unless supported by reliable medical evidence;

(c) That said preparation represents a tremendous advance over any other method of treating psoriasis.

(d) That Siroil Shampoo is the "most" efficacious product for keeping scalp skin in a healthy perfect condition;

(e) That in a great majority of cases Siroil gives relief from psoriasis for \$5.00, or that one bottle "does the work";

(f) That "Complete elimination" of either psoriasis or dandruff has been effected in hundreds of cases through the use of only one bottle of said preparation;

(g) That said preparation applied externally, or otherwise, causes sores to disappear, or blotches to fade, or the skin to clear or to resume its normal texture;

(h) That said preparation will solve one's psoriasis problem for him, or that it has brought relief to "thousands" of men and women throughout the country;

(i) That Exoil is a competent treatment or an effective remedy for eczema, unless limited to relief of the itching or burning caused by eczema;

(j) That Exoil is a skin rejuvenator;

(k) That Siroil may be expected with a few applications to clear up or cause psoriasis to disappear in conditions such as the following:

(1) A head solidly crusted;

(2) A scalp a mass of scales;

(3) A body a mass of scales;

(4) A body three-fourths affected;

(5) A chronic sufferer for many years;

(6) Cases of 8, 13, 14 or 18 years standing, respectively;

(l) That Siroil puts and keeps the scalp "in that healthy condition nature intended", without regard to circumstances;

(m) That with only a few applications of Siroil a skin afflicted with psoriasis becomes as soft as a baby's;

(n) That by two weeks' treatment Siroil restores to a psoriasis-afflicted skin its natural healthy texture;

(o) That "many" or "a great many" physicians prescribe Siroil for their patients or for themselves or for their own families;

(p) That conditions upon which "hundreds", "even thousands" of dollars have been spent can be relieved by Siroil for approximately \$5.00;

(r) That Siroil is a "guaranteed" relief for psoriasis;

(s) That Exoil is a "perfected" relief for eczema;

and from making any other claims or assertions of like import. (Jan. 22, 1936.)

**01174. Vendor-Advertiser—Medicinal Preparation.**—Clark-Wright, Inc., Boston, Mass., vendor-advertiser, is engaged in selling Thymo Foot Cream, medicinal preparation offered for foot troubles and in advertising represented:

If your disposition is upset because of aching uncomfortable feet, get a jar of Thymo \* \* \* brings relief to unhappy feet.

You also need complete foot comfort and health. Nothing is more detrimental \* \* \* than tired, hot, aching feet. It's foolish to tolerate such conditions when for 50¢ you may buy Thymo Foot Cream \* \* \* Enjoy complete foot comfort.

Don't let tired feet spoil your week-end activities \* \* \* All those aches acquired throughout the day \* \* \* will be smoothed away as the skin absorbs this delightfully cool—Invigorating cream.

Much of foot trouble can be eliminated through use of Thymo Foot Cream. A delightful toilet accessory that \* \* \* fairly rejuvenates tired feet.

Foot ease means a youthful, attractive appearance. The foot cream habit is good for everyone.

How are your feet? Do they ache and burn, Get Thymo Foot Cream \* \* \* rub some into your feet \* \* \* you'll enjoy the sensation of feeling the bothersome aches and pains disappear \* \* \* leaving the feet full of the renewed vitality.

Nothing is more important to the general well-being of an individual than healthy comfortable feet \* \* \* Give them a refreshing Thymo massage each day and keep yourself bodily youthful.

My feet are killing me. You can eliminate that pained expression \* \* \* by using Thymo Foot Cream.

Thymo \* \* \* promptly relieves all of the usual foot annoyances such as burning, tired, itching, and swollen conditions and the troubles resulting from callouses. Its application on callouses a few times produces a marked softening effect and the callouses promptly disappear.

You can safely present this cream as a new toilet accessory, sure to give pleasing results for all the above conditions.

Banish foot troubles with Thymo Foot Cream. Actually stops itching, burning, swelling.

A little Thymo Foot Cream applied to tired feet at least once a day will create such pleasant foot ease that the lines will naturally disappear from the face.

Thymo \* \* \* is \* \* \* healing and antiseptic and eliminates that tired feeling.

Thymo \* \* \* brings positive relief to weary feet eliminating that "tired feeling."

Here's a delightful new way to banish that tired feeling. Smooth on this soothing rejuvenating cream.

Thymo. They \* \* \* antiseptic foot cream.

This new cream promises to make work, play, and rest happier by banishing all foot discomfort \* \* \* Thymo penetrates into the skin surface to silence those impish nerves that torture feet during warm weather.

Everyone knows that comfort stays under foot. Here's a soothing, cooling, antiseptic cream.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in

that according to medical opinion received by the Commission respondent's product is not an effective remedy for the ailments indicated.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Thymo Foot Cream will banish or eliminate all foot troubles and give complete comfort in cases of aching, painful, burning, itching, and swelling feet.

(b) That Thymo Foot Cream makes callouses disappear.

(c) That Thymo Foot Cream is an antiseptic.

(d) That Thymo Foot Cream will penetrate the skin surface of the foot to silence the nerves that torture feet.

(e) That Thymo Foot Cream is a positive relief to weary feet.

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 22, 1936.)

01181.<sup>1</sup> **Vendor-Advertiser—Scalp Treatment.**—Paul's, Inc., Minneapolis, Minn., vendor-advertiser, is engaged in selling Tarola, offered as a combination shampoo and scalp treatment and as a preventive of dandruff and falling hair and in advertising represented:

Are you troubled with itchy scalp and falling hair? If you are one of the many who are, then there is a solution to your problem—Tarola.

That marvelous combination shampoo and scalp treatment will correct these faults and return the natural gloss and sheen to your hair that nature intended it should have.

Tarola not only cleanses the scalp, it gets down under the oil glands and makes them function properly. This in turn tones up your hair and gives it new life.

If you've tried Tarola you know what it can do to waken those dead oil glands and restore your hair to its natural beauty.

Tarola gets right down into the pores and wakens up the oil glands.

Tarola not only cleanses your scalp but gets down into the pores and wakens up those oil glands, making them function the way they should.

Are you troubled with itchy scalp or falling hair? Then let Tarola correct this fault.

Tarola does the work where it is needed.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that according to scientific opinion furnished the Commission, said preparation is not a competent treatment for the scalp and will not prevent falling hair or dandruff.

<sup>1</sup> Stipulations 01175 to 01180, inclusive, not released.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation is a competent treatment or an effective remedy for itchy scalp, or that its use will prevent hair from falling;

(b) That said preparation is a competent treatment or an effective remedy for dandruff;

(c) That said preparation either

(1) Gets down into the oil glands;

(2) Wakens the oil glands;

(3) Makes the oil glands function properly;

(4) Gets down into the pores;

(d) That said preparation does the work where it is needed;

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 23, 1936.)

01191.<sup>1</sup> Vendor-Advertiser—Poultry Remedy.—Burrell-Dugger Co., a corporation, Indianapolis, Ind., vendor-advertiser, is engaged in selling Group-Over, a poultry remedy, and in advertising represented:

Group-Over for colds in poultry. Use this famous remedy at the first symptoms of colds in your flock;

You don't risk a penny trying any Burrell-Dugger Remedy. There is a special trial size of each, fully guaranteed to give you satisfaction—or we will promptly refund your money;

This Vapor Treatment Stops Cold Epidemics. \* \* \*

\* \* \* Heat two bricks. Place them in a pan, and carry them into your hen house. Then pour on a few drops of Group-Over \* \* \* All night long the soothing, healing vapor treats every fowl in the place. In the morning you'll be amazed at the results. Wheezing, choking, sneezing ends. Running nose stops. Usually every sign of a cold disappears over night;

You need no longer stand helplessly by and watch costly cold epidemics go through your flock. Group-Over has solved the problem for thousands of poultry owners;

Last winter one of my valuable birds got a severe cold. His nose was running and his eyes were swollen almost shut. I treated him with Group-Over and he was completely well the next morning. Later, when several birds got cold, I gave the whole flock a Group-Over vapor treatment, and within 24 hours every sign of a cold was gone. Since then I have used Group-Over in the drinking water as a preventive \* \* \*;

Try Group-Over at Our Risk: \* \* \* Send us 50¢ for a liberal supply \* \* \* If it doesn't do the work to your entire satisfaction, simply tell us and we'll promptly refund your money;

I have been using your Group-Over for three years, and find it by far the best medicine for bronchitis and infectious colds I ever saw;

<sup>1</sup> Stipulations 01182 to 01190, inclusive, not released.

I have used two \$1 bottles of Group-Over \* \* \* and have found it to be the best remedy I have ever used for the treatment of colds and similar infections \* \* \*;

We bought some birds that had made the fairs and shows, and they had developed chicken-pox and colds, also canker. In spite of good treatment, we lost several good birds. Then we tried Group-Over on some cockerels that were almost beyond help, and saved all of them. So we want a dollar bottle this year to prevent such an outbreak \* \* \*;

I want to tell you how Group-Over affected my hens with colds. I had lost about a dozen in a week's time. I tried your Group-Over and in a short time they were better and began laying;

After using nearly every advertised poultry remedy for infectious colds \* \* \* I decided to give Group-Over a trial. The first few applications we gave to a hen which we had considered chronic and incurable, has saved her completely \* \* \*;

We have used Group-Over for over two years. We always have a supply of it on hand, using it daily in the drinking water and for various winter diseases. My wife and I \* \* \* highly recommend Group-Over and think it is the last word as a preventive against winter colds. I am glad to say that all of our birds are in A-1 condition;

Colds in Poultry Quickly Stopped. \* \* \*

Wheezing, Rattling, Choking, ends. Trouble conquered in 48 hours;

I have had birds with their eyes closed from colds, and have saved them all. One cockerel was nearly dead. He lost 5 pounds. I gave him Group-Over and in two weeks he was full of pep and fighting every rooster on the place. Why do people let their birds die? It's so easy to save them with Group-Over;

\* \* \* Group-Over ends colds in poultry. A few drops in the nostrils usually banishes every symptom overnight—while a little in the drinking water, as a preventive, guards the whole flock.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that, according to medical opinion rendered the Commission, Group-Over will not cure colds overnight or stop cold epidemics, or prevent colds in poultry.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Group-Over will

1. "Stop" cold epidemics "overnight"; or
2. "End" colds in poultry; or
3. "Banish" every symptom overnight; or
4. "Stop" wheezing, choking, sneezing, running nose, or every sign of a cold "overnight"; or
5. Quickly "stop" colds in poultry; or
6. "Conquer" wheezing, rattling, choking in 48 hours;

(b) That respondent "guarantees" satisfaction;

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 30, 1936.)

**01192. Vendor-Advertiser—Medicinal Preparation.**—Nova Sal Laboratories, Inc., Brooklyn, N. Y., vendor-advertiser, is engaged in selling Nova Sal, offered as a relief for all pains attending menstruation and in advertising represented:

No more days missed when Nova Sal is in the Infirmary or Rest Room.

Less depressing than the usual compounds.

Keeps the female employees satisfied and on the job during their most uncomfortable period.

Nova Sal—A prescription used by thousands of doctors, and ever so many large employers of females in the industrial world.

A recognized factor in business today; handicapped by the periodic pains and headaches, Women find those lost days each month a stumbling block which lowers their average worth to their employers.

Assures full time for your female employees.

No need to lie down.

Nova Sal—The Tablet for Menstrual Pains.

No "days off" when Nova Sal is in the Infirmary. Immediately relieves pain and the subsequent headache so frequent in women.

Do you employ female help? Stop that costly loss of time that upsets production, causes unnecessary absences, excuses to go home, and undermines the quality of your employees' work during the uncomfortable time of periodic pain or headache.

No need for any women to suffer that torturous backache and pain in the legs—no more need for youngsters to worry about "Mummy's headache" and go tiptoeing around the house.

Thanks to Nova Sal women can enjoy every day of their lives.

Send ten cents in stamps or silver and we will be glad to send you a small package—sufficient to relieve the most stubborn case.

Even if you are a chronic sufferer Nova Sal will bring quick relief.

Nova Sal tends to reduce fever. Is pleasant to take, is less depressant than most other compounds and does not disturb the stomach.

Nova Sal—when stiff and in pain due to exposure—acts promptly, and thus may avoid a good many complications.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Nova Sal is effective in "immediately" relieving pains attending menstruation;



(b) That Nova Sal will quickly relieve the most stubborn or chronic menstruation pains;

(c) That women taking Nova Sal need never suffer torturous backache, headache, or pains in the legs accompanying menstruation;

(d) That Nova Sal will enable women to enjoy every day of their lives and keeps the female employees satisfied and on the job during their most uncomfortable period, so that they do not have to miss any days from their employment;

(e) That Nova Sal is a prescription used by thousands of doctors;

(f) That Nova Sal does away with the necessity for women to lie down during their menstruation periods;

(g) That Nova Sal tends to reduce fever or is less depressant than most other compounds;

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 30, 1936.)

01239.<sup>1</sup> **Vendor-Advertiser—Cleaning Compound.**—J. L. Prescott Co., a corporation, Passaic, N. J., vendor-advertiser, is engaged in selling a chemical compound sold as Oxol and in advertising represented:

(1) Destroys Odors. Kills Germs.

(2) Oxol is one of the best disinfectants and germicides known to science.

(3) Disease germs simply cannot live in its presence when properly diluted.

(4) Its bacteria destroying properties are many times stronger than carbolic acid.

(5) It is harmless to the skin and non-poisonous when used in accordance with directions.

(6) Sick Room Equipment can be thoroughly cleansed and sterilized \* \* \* in a strong Oxol solution.

(7) Oxol cleans all it touches \* \* \* knocks all dirt out completely and purifies each garment \* \* \*

(8) Kills all germs.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that, according to medical opinion rendered the Commission, the product will not destroy all odors, kill all germs, or remove all stains.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Oxol destroys odors or kills germs unless clearly indicated in direct connection with such claims that it will not destroy all odors or all germs;

<sup>1</sup> Stipulations 01193 to 01238, inclusive, not released.

(b) That Oxol is one of the best disinfectants or germicides known to science;  
 (c) That Oxol cleanses all it touches or "knocks the dirt out completely and purifies each garment";

(d) That disease germs cannot live in the presence of Oxol, unless limited to the specific germs it is known to kill;

(e) That Oxol's bacteria-destroying properties are stronger than carbolic acid, unless this is established by competent, reputable evidence,

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 14, 1936.)

01342.<sup>1</sup> Vendor-Advertiser—Accounting Service.—A. F. Duverger, operating as National Distributors and Income Audit Service, Washington, D. C., vendor-advertiser is engaged in selling "Income Audit Service", a book, and also an Accounting and Income Tax Service and in advertising represented:

1. Make up to \$150 weekly. (See also (14) below.) (A-1) (A-5)
2. Get in on Fast Selling Service Required By Law. (A-1) (A-2) (A-3) (A-4) (A-5) (F-1)
3. No competition. (A-1) (A-3)
4. Great Repeater. (A-1) (A-2) (A-5)
5. Over 10,000,000 Prospects. (A-1)
6. The Law Says also, that every business and professional man and woman Must Keep a Book of Records that is Acceptable To the Government Inspectors even if the income is Less than \$5,000.00 per year. So, once again you have the Law and the Government with you. (F-1)
7. An Opportunity of a Lifetime—To Start a Business—And Make \$3,000 to \$15,000 Yearly. (F-1)
8. This Silent Salesman makes it possible for you to get right out and earn immediately a very fine and attractive income in which you get paid every day and every hour of the day if you are working. (F-1)
9. No need to study—no need to lay out any method of preparation, nothing to memorize—no need to "school yourself"—just order your Selling Outfit, which includes the Silent Salesman, and then get out to your prospect and the sale is made and good, hard, American Dollars are in your pocket in the first hour you go to work. (F-1)
10. Our Bond of Performance Which Every Subscriber Receives, Guarantees the Following Services—
  - (1) Securing Proper Allowance for Expenses, Salaries, Losses.
  - (2) Securing Proper Allowance for Losses By Fire And Depreciation, Donations, and Charities.
11. If you own an Automobile we call your attention to the Fact that Every Main Highway in this Broad Land is literally lined with Prospects for you. Every Tourist Camp, Tourist Home, Filling Station, Garage, Hot Dog Stand, and Barbecue Stand, many small manufacturers in small towns and crossroads are ideal Prospects. Again we say that it is up to You to let them Know that you are in Business. (F-1)

<sup>1</sup> Stipulations 01240 to 01341, inclusive, not released.

12. And, then, also, you will have with you Our Silent Salesman which will make it possible for You to do a healthy, profitable business from the very beginning. This remarkable Sales Manual, fully described on the inside pages of this letter, makes it possible for you to earn Big Money at Once. (F-1)

13. A knowledge of Income Tax Matters or Bookkeeping is Not necessary to demonstrate and sell the Income Audit Service. If you will just take out the Silent Salesman and Show it to any business or professional man or woman. Here is your opportunity to earn from \$3,000 to more than \$15,000 if you are willing to Work. Order your selling outfit Today and you will never regret it. (F-1)

14. No Experience Needed. We show you how. Included in your selling outfit will be our Dynamic Automatic Sales-Maker. A Beautiful, Highly Impressive Presentation that makes Mr. Prospect sit up and take notice. If you will work and have the ability you cannot miss making sales at once—the very first day out—if you will show Mr. Prospect through this Sales Manual. (F-3)

15. There is no organized competition. Once a prospect subscribes your renewals will come easy and with little or no effort. In this way, if you cover your territory regularly, you will soon realize it is an excellent opportunity. (F-3)

16. Mail your order for complete working outfit Today. You will receive by return mail the Simplified Business Record complete just as it is sold to the subscriber—(Not just a Sample—we want the subscriber to see in full just what he is getting.) Also full instructions—Sales Talks—our Bond of Performance—A Government Income Tax Form—Order Cards—Our Automatic Sales Maker—then go right out and get your first order, collect your commission, mail the order in to this office, and we will ship C. O. D. for the balance. You will be counting your profits next Saturday night and Every Saturday night thereafter. (F-3)

17. And if You will do this 20 times a day—30 times a day if necessary—Every Day, Day In and Day Out, you will Hit 6 times out of 10. (F-4)

18. All you have to do, Mr. Prospect, is fill out this last page as you see here, answer these few questions, then take this page out and send it to our Washington, D. C. Office, where our Income Tax Experts will prepare your Income Tax Return for you and mail it back to you, officially Notarized, completed, and ready for your signature. Then you simply sign and file the return at your nearest Collector's Office. (F-6)

19. Now, Mr. Prospect, (show Bond) this is our Bond of Performance which guarantees to you, under our Seal, that we will do exactly as I have stated. Your name and address is inscribed here and it is numbered and registered and signed by the President of the Income Audit Service. Mr. Prospect, if you are wise you will get a little frame and hang it on the wall, just in case there would be any check up from Tax Inspectors. It may be a great help to you. (F-6)

20.

TO EVERY INTELLIGENT  
BUSINESS OR PROFESSIONAL  
MAN AND WOMAN

who intends to succeed in his or her chosen profession or business we bring the following highly Important information Regarding

The Federal Income Tax Law

The Law to Compel Record Bookkeeping

The State Sales Tax Laws

Your Financial Success Depends largely upon your knowledge of these laws and the action you take in regards to these laws each and every day. (B-1)

21.

## MANY MEN AND WOMEN

## HAVE BEEN RUINED

by these laws through ignorance or neglect \* \* \* as every one knows ignorance of the law does not excuse the transgressor. It is for this reason we are bringing to you full knowledge of the laws and Showing how simply and inexpensively you can abide by these laws and (B-1)

22.

## —IN NO OTHER WAY—

will you be able to Conduct a Permanent, Profitable Business or Profession. In no other way will you be able to satisfy the Internal Revenue Deputy when he Calls \* \* \* and \* \* \* you can always be sure that he Will Call Sooner Or Later. (B-1)

23.

## OUR BOND OF PERFORMANCE

Definitely Guarantees the above services to you and is included in our shipment to you. Your name and address is inscribed thereon and it is numbered and Registered in this office. It bears the Official Seal of the Income Audit Service and is Signed by the President of the Income Audit Service. (B-1)

24. Subscribe to the Income Audit Service and Immediately You Eliminate Any Possibility of Trouble. (B-1)

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that the commodity offered for sale is similar to many others on the market; it will not render the service claimed for it; and distributors have not earned the sums of money set out in the advertising, under normal conditions and in due course of business.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That this Income Audit Service is required by law;
- (b) That salespersons or distributors for this Income Audit Service have no competition;
- (c) That salespersons or distributors for this Income Audit Service have any specific or definite number of prospects;
- (d) That every business or professional man or woman is required by law to keep a Book of Records;
- (e) That a "Silent Salesman" or an "Automatic Salesman" or any other equipment furnished the salesperson or distributor by respondent will enable one to earn immediately a very fine and attractive income;
- (f) That the income of respondent's salespersons or distributors is paid every day and every hour of the day, or that a sale is made as soon as you get out to the prospect, or that good hard American dollars are in your pocket the very first hour you go to work;
- (g) That the "Bond" of Performance is in any sense a Bond or that it insures or "guarantees" anything;

(h) That Financial Success depends upon one's knowledge of the Federal Income Tax Law or the Law to Compel Record Bookkeeping or the State Sales Tax Law;

(i) That buying or subscribing for this Income Audit Service is the only way to conduct a permanent, profitable business or profession, or to satisfy the Deputy Internal Revenue Collector;

(j) That buying or subscribing for this Income Audit Service eliminates any possibility of trouble;

(k) That the respondent has or uses an "Official Seal";

(l) That there is no need for a salesman to study or lay out any method of preparation to sell this product or service;

(m) That either this service or the respondent brings to the purchaser full knowledge of any law;

(n) That either this Income Audit Service or the respondent can or will—

1. Secure proper allowances for expense, salaries, fire, losses, depreciation, donations, or charities; or

2. Supply notarized income tax returns;

and from making any other claims or assertions of like import.

Respondent in soliciting salespersons or dealers in aid of the sale of such merchandise, stipulates and agrees:

(o) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business;

(p) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business; and

(q) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings. (Feb. 24, 1936.)

01343. **Vendor-Advertiser—Cosmetics.**—Vita Ray Corporation, Lowell, Mass., vendor-advertiser, is engaged in selling facial creams and lotions, among which are products designated

Vita Ray Vitamin Cream, Vita Ray Smooth Skin Lotion, and Dove Skin Oil. and in advertising represented:

Vita-Ray Smoothskin Lotion \* \* \* corrects that common and much abhorred condition of the skin, "goose-flesh."

Vita-Ray Vitamin Cream makes the skin grow young instead of old by feeding the vitalizing sunshine Vitamin D into your skin. It is the only cream ever formulated which can penetrate the skin and feed this sunshine nourishment to hungry, aging cells beneath.

Its rejuvenating effects of the skin will amaze and thrill you.

Vita-Ray Vitamin Cream makes the skin grow young instead of old.

To the woman who has a dry skin, the use of Dove Skin Oil will be a joyful experience. It is compounded of highly beneficial oils and skin sterols and radiated with sunshine Vitamin D.

The oil brings immediate relief to the dry skin relieving the tightness of the skin, smoothing out lines and wrinkles, ending scaliness.

The sunshine Vitamin D penetrates through the skin and revitalizes the aging, withering cells beneath, where the real work of skin rejuvenation is carried on.

Vita-Ray Vitamin Cream, the revolutionary all-purpose beauty cream containing sunshine Vitamin D.

Science at last has discovered a way to feed the hungry cells underlying the skin, awakening beauty and restoring youth to the complexion with Vita-Ray Vitamin Cream.

Micro-photographs by university scientists show that this marvelous beauty cream was actually banishing wrinkles.

Although many cosmetics have claimed to penetrate the skin, science has denied all such claims until the discovery of Vita-Ray.

Vita-Ray, and Vita-Ray alone, contains Vitamin D.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that the medical opinions furnished the Commission are to the following effect:

There is no satisfactory evidence that the products have a rejuvenating effect on the skin;

There is no scientific evidence that the products will restore the skin to youth.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That any of said products corrects "gooseflesh";
- (b) That any of said products will make the skin grow young;
- (c) That any of said products will "rejuvenate" the skin or end scaliness;
- (d) That any of said products will "revitalize" withering cells;
- (e) That Vita-Ray Cream is the only cream containing Vitamin D;
- (f) That Vita-Ray Cream is the "only" cream capable of penetrating the skin;
- (g) That Vita-Ray Cream "restores" youth to the complexion;

and from making any other claims or assertions of like import. (Feb. 19, 1936.)

01344. Vendor-Advertiser—Medicinal Preparation.—M. J. Breitenbach Co., New York, N. Y., vendor-advertiser, is engaged in selling Gude's Pepto-Mangan, a blood builder and in advertising represented:

Gude's Pepto-Mangan restores health by enriching the blood;

For here is something more than a tonic;

There are any number of tonics on the market today. But the only one that has, for nearly half a century, won the steady approval of doctors and public alike is Gude's Pepto-Mangan;

Just try Gude's Pepto-Mangan! It gives the *new vitality* and pep by fortifying the very source of human energy—the red blood cells. When *they* are strengthened and enriched by the iron, manganese and copper elements in Gude's Pepto-Mangan, disease finds its entrance into your system effectively blocked up. This pleasant-tasting, scientific preparation will make you *feel* better, *look* better, and *work* better;

Doctors and public alike are unanimous in their praise of the beneficial effects of Gude's Pepto-Mangan for the anemic, the run-down, the overworked, the invalid, the convalescent, the pale child, the nursing mother, and the aged. It is really a *remarkable blood food*;

Remember—Gude's Pepto-Mangan is *more* than a mere tonic. It restores *health* by *enriching* the blood and is a reliable health builder that has *proven* its worth over many years;

If your complexion is "blotchy" or pale or if your system is "run-down," Gude's Pepto-Mangan taken *regularly* will supply the necessary iron and manganese essential for *your blood stream* to give you good looks and health;

Gude's Pepto-Mangan is an *invaluable aid* to the complexion because it *enriches the blood*. Since our blood is the very *essence of life*, it stands to reason that when our blood stream is *pure*, our systems will have maximum power to *withstand the invasion* of sundry winter ailments such as common colds and influenza, Gude's Pepto-Mangan is not an ordinary tonic by any means. It is also a *blood food* that has been recommended by physicians for almost a half a century;

Gude's Pepto-Mangan is restoring health to *thousands of people*, young and old, by supplying the iron and manganese elements essential to the blood stream;

If you lack pep, or if your complexion is *pale and blotchy*, Gude's Pepto-Mangan taken regularly will revive the *weakened blood cells* and create new reserve of energy to protect *you* from disease and sundry winter ailments! It is also an *ideal tonic* for those of you who may be *recovering* from any illness;

In March, last year, my mother, who is 86 years of age, was very severely burned. Of course, for a woman of that age, the shock alone was terrible, not to mention the pain. She was very slow in recuperating and the Doctor recommended Gude's Pepto-Mangan as a tonic. It did wonders for her and she is entirely restored to health. Naturally, all this anxiety had its effect on me also and I was terribly run down so I tried a bottle of Gude's Pepto-Mangan and before finishing the first bottle I could feel how it was helping me. Of course I did not stop there and before long I was restored to my former vigor and spirits and able to see life in a happy mood again;

My mother was very ill and the doctor who attended the case said, "She must try Gude's Pepto-Mangan, for if that doesn't help her nothing will";

Gude's Pepto-Mangan prevents disease by building up the system;

For almost fifty years doctors not only have prescribed Gude's Pepto-Mangan for their patients but use it themselves in their own families;

Gude's Pepto-Mangan is the one tonic that will help rebuild systems weakened by the rigorous winter months;

Of all the ferruginous tonics which have been used to facilitate convalescence, one stands out—Gude's Pepto-Mangan. It has been used with full satisfaction for the past forty years by physicians all over the world.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that, according to scientific opinion rendered the Commission, this preparation is nothing more than a simple tonic and the therapeutic claims made for it should not go beyond that.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling

its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Gude's Pepto-Mangan—

1. Restores health by enriching the blood; or
2. Revives weakened blood cells; or
3. Creates new energy; or
4. Protects one from disease and sundry winter ailments; or
5. Prevents disease by building up the system.

unless the advertisements are qualified by indicating that the conditions listed above are benefited only by the action of the preparation as a general tonic;

(b) That Gude's Pepto-Mangan has been used with full satisfaction for the past forty years by physicians all over the world;

(c) That Gude's Pepto-Mangan is "more than a tonic", "something more than a tonic", or "more than a mere tonic";

(d) That Gude's Pepto-Mangan—

1. Is the only tonic on the market today that has won the steady approval of doctors and public alike for nearly a half a century; or
2. Is "the one tonic that will help rebuild systems weakened by the rigorous winter months";

(e) That the taking of Gude's Pepto-Mangan effectively blocks the entrance of disease into the system;

(f) That Gude's Pepto-Mangan has any therapeutic value, beyond that of a simple tonic, in the treatment of the anemic, the run-down, the overworked, the invalid, the convalescent, the pale child, the nursing mother, and the aged;

(g) That Gude's Pepto-Mangan will improve a "blotchy" or pale complexion or "give you good looks and health";

(h) That if Gude's Pepto-Mangan doesn't help a very ill person, nothing will;

(i) That for almost fifty years doctors have prescribed Gude's Pepto-Mangan for their patients and used it in their own families, unless this statement is qualified by saying "some doctors" or "many doctors", or a similar statement to indicate that not all doctors have prescribed Gude's Pepto-Mangan, or used it in their families;

and from making any other claims or assertions of like import.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 28, 1936.)

01345. Vendor-Advertiser—Astrological Forecasts, Etc.—M. C. Bass, an individual operating as National Sales Co., Walnut Ridge, Ark., vendor-advertiser, is engaged in selling Astrological Forecasts, Fast Luck Powder, and other similar articles and in advertising represented:

Do You Want Good Luck—Love—Money—Success. Has your husband, wife or sweetheart quit you? Do money matters worry you? Are you unsuccessful in undertakings? Look into the future! Know what to expect! We will send your 1935 Life Reading, package Fast Luck Powder, and a Good Luck Medallion on 30 days Free Trial.



Others charge you from \$3.00 to \$10.00 for Luck Curios not nearly so good as this Combination Powder and Oil.

Rare and Precious! Big Winner! This Fast Luck Powder contains and has combined all the Good Luck talismans and tokens of John the Conqueror Root, Magic Drawing Lodestone, Love Powders, Dragon's Blood, Magnetic Sand, Queen Elizabeth Root with New Orleans Van Van Quick Luck Oil and should be all you wish for.

#### 1000 STRENGTH OIL

This remarkable alleged Fast Luck Powder also contains a certain percentage of the very strong 1000 Strength Oil which is used by Spiritualists. This oil is not diluted or adulterated. It is a secret mixture of seven Pure Essences and Extracts gathered from the seven points of the earth. Spiritualists and Orientals claim it to be Powerful in producing Luck and make the user successful in all undertakings.

\* \* \* *Lucky Hand Luck Emblem*—Did you ever carry a luck emblem? Thousands of people are carrying Good Luck Emblems from which they would not part for anything. Here is a marvelous Good Luck Curio. Something entirely new! Different! Looks like solid gold. This is truly a work of Art and it is reputed by many to be the greatest Luck Token known.

Do you want to be Lucky? Carry this alleged "Lucky Hand" Emblem of Luck Curio. Let its mysterious, strange, and believed Powerful Symbols be with you always. It may Change Your Luck.

Good Luck—Health—Happiness—Prosperity—Long Life.

What Secrets Do The Stars Reveal About You?

#### BE WISE LIKE AN OWL!

*Look Into The Future!*

Will you be Successful in Love?

Will Your Investment Prove Profitable?

Will You Be Successful in Business?

Will you Travel?

*Know What to Expect!*

Will You Inherit Money?

What are Your Lucky Days? Your Unlucky Days? Your Lucky Numbers?

Your Future Revealed According To the Science of Astrology.

Do you want to be successful? Would you like to know what is going to happen? Are you in Trouble? Are you ill? Are you worried about your Home or Business? Are you thinking about making any changes? Do you desire advice on Money Matters, Investments, Journeys, Letters, Parents, Home, Inheritance, Removals, Children, Speculation, Contracts, Lawsuits, Losses, Friends, Wife, Husband, Sweetheart, or Enemies. Have you any particular desire or wish that remains unfulfilled? Is there anything you desire to obtain for yourself? *Then you should have an Astrological Reading.*

Your Astrological Reading will give you the best days and dates for changes, and covers in detail, for an entire year such important matters as Speculation, Travel, Love, Courtship, Marriage, Vocation, Health, Accidents, with "Lucky" and "Unlucky" days of every month throughout the entire year. It contains very valuable information that you surely have been seeking.

Make no changes until you have consulted your Astrological Reading—it will Help You.

Your Astrological Reading will indicate your Natural Vocation \* \* \*. It will Reveal your Financial Destiny and whether your Wealth will come to you by

legacy, Marriage, or successful business endeavor. It will show your best period of Time and Location for Business Success. It will show your periods of Good and Bad Health. It will prove an unerring guide in Love and Marriage.

Good Times and Bad Times clearly outlined in advance by Astrology.

Learn the best times to Buy, Sell, and do things to advantage. If you are Unhappy, Dissatisfied, or perhaps have been unsuccessful in your Marriage, Love or your financial interests have gone wrong, let your Astrological Reading Help You.

Know Yourself. Find out your Hidden talents and possibilities, What is in You, What is back of You, Your Destiny, Your Vocation, from this Knowledge Build Greater Power. There are favorable times for new undertakings. There are days that are favorable for Harmony And Success. How often have you surveyed the Past with all its Mistakes, Failures, and Heartaches, and realized that had you been able to Know the Future, the Mistakes could have been avoided, the Failures would have been Success, and the Heartaches unknown. Those who plan Marriage, engaging in Business, choosing a Profession, undertaking new enterprises, or assuming responsibilities of any kind, should have an Astrological Life Reading. Equip yourself with this Knowledge and make the Best of your time and opportunities.

There is nothing difficult to understand about your Astrological Life Reading. Your Reading is compiled in such a clear and simple manner that a child may easily understand it. Within a few minutes after you have the Reading you will be amazed at the things you will learn about yourself. Your Reading tells what is Best for you. How to master yourself and become more Successful and Happy in the Future \* \* \*.

You Will Receive Your Complete Astrological Life Reading, the Combination Fast Luck Powder and Good Luck Medallion for Only \$1.98.

Whereas in truth and fact the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors in that the various claims made by respondent are fanciful and illusive, without foundation in fact, and are designed to play upon the superstitions and gullibility of ignorant and credulous persons.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the standard printed stock form of Astrological Life Reading sold by respondent is a reading especially prepared for the individual purchasing same;

(b) That respondent's combination Astrological Life Reading, Fast Luck Powder, and Good Luck Medallion will bring one good luck, love, money, success in undertakings;

(c) That others charge \$3.00 to \$10.00 for Luck Curios not nearly so good as the Combination offered by respondent for \$1.98;

(d) That respondent's Fast Luck Powder contains and has all the Good Luck talismans and tokens of John the Conqueror Root, Magic Drawing Lodestone, Love Powders, Dragon's Blood, Magnetic Sand, Queen Elizabeth Root with New Orleans Van Van Quick Luck Oil;

(e) That respondent's Fast Luck Powder contains a certain percentage of the very strong 1000 Strength Oil;

(f) That 1000 Strength Oil is used by Spiritualists;

(g) That 1000 Strength Oil is a secret mixture of seven Pure Essences and Extracts gathered from seven points of the earth;

(h) That 1000 Strength Oil is Powerful in producing Luck and can make the user thereof successful in all undertakings;

(i) That respondent's Lucky Hand Luck Medallion contains mysterious, strange, and powerful symbols that may change one's luck;

(j) That the Astrological Life Readings sold by respondent—

(1) Will make one wise as an owl;

(2) Will enable one to look into the future and to know whether he will be successful in love, investments, or business;

(3) Will enable one to know whether he will travel, or inherit money;

(4) Will inform one as to his lucky and unlucky days or numbers;

(k) That respondent's Astrological Life Readings sold by respondent will advise one regarding money matters, investments, journeys, letters, parents, home affairs, removals, children, speculation, contracts, lawsuits, losses, friends, wife, husband, sweetheart, or enemies;

and from making any other claims or assertions of like import.

The respondent also agrees to cease and desist from selling any powder of the same or similar composition as a Fast Luck Powder or a Luck Powder under any trade name.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by him and stipulates and agrees that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 9, 1936.)

01350.<sup>1</sup> Vendor - Advertiser — Correspondence Course. — Eunice Runge, trading as Wisconsin Institute of Horology, Milwaukee, Wis., vendor-advertiser, is engaged in selling a correspondence course of instruction in watch making and repairing and in advertising represented:

Learn Watch Repairing At Home You can learn by our modern and original system of instruction every part of the Watch Repairing Trade at home as good or better than at a shop. You can earn money while learning and secure a well paying position after completing our course of instruction. Good watch repairers are always in demand and earn very good salaries. For particulars apply to the Milwaukee School of Watch Repairing 524 E. Mason St. Dept. C. Milwaukee, Wisconsin.

(Picture of man working on clocks, watches.)

As a result of these conditions there is an ever increasing scarcity of competent watchmakers and, according to the law of supply and demand, an equally increasing scale of wages.

Anybody with ordinary intelligence and some talent for mechanical work is sure to make a success and become a thoroughly competent watch repairer if the lessons of the "Home Study Course of the Wisconsin Institute of Horology" are

<sup>1</sup> Stipulations 01346 to 01349, inclusive, not released.

conscientiously studied and the work given therein executed as directed in the lessons.

Watch repairing possesses that solid and secure foundation of skilled trades combined with the unlimited opportunities of commerce.

The diplomas of the Wisconsin Institute of Horology enjoy the unusual distinction of being officially recognized by the German authorities and confer upon its possessor the right to practice the trade, which no one, without having served regular apprenticeship or attended an accredited school is permitted to do.

There is such a scarcity of skilled watch repairers that jewelers at times experience great difficulties in satisfying their requirements and the salaries paid to such men are therefore correspondingly high, a fact with which you are probably familiar.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that the Commission is advised one cannot learn the watch repairing trade at home as well as in a shop, the representations of opportunities for success and large earnings by respondent's graduates are greatly overstated, as are also the conditions in the watch repair business; the diploma awarded confers no right per se upon the holder to practice the trade, and proof has not been furnished that it is officially recognized by German "authorities"; furthermore, this correspondence school as conducted is not an "institute."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That by respondent's System of Instruction a person can learn every part of the watch repairing trade at home as good as or better than at a shop;

(b) That after completing said course he "can" secure a well paying position or start in business;

(c) That "very few" apprentices are accepted in the watch repair trade;

(d) That there is an ever increasing scarcity of competent watch-makers, or an equally increasing scale of wages;

(e) That anybody with "ordinary" intelligence and "some" talent for mechanical work "is sure", by following the instructions in said course, to make a success or become a thoroughly competent watch repairer;

(f) That the diplomas of the Wisconsin Institute of Horology enjoy "the unusual distinction of being officially recognized by the German authorities"; or by inference or otherwise that such diploma confers the right to practice the trade;

(g) That a "large proportion" of the students in watch repair schools have wasted "from one to four years or more" of time in shops under incompetent instructors;

(h) That the jewelers experience great difficulties in satisfying their requirements, or that the salaries paid to such men are correspondingly high.

and from making any other claims or assertions of like import. (Mar. 17, 1936.)

01353.<sup>1</sup> **Vendor-Advertiser—Medicinal Preparation.**—Lucky Tiger Manufacturing Co., a corporation, Kansas City, Mo., vendor-advertiser, is engaged in selling a certain medicinal preparation designated "Lucky Tiger Ointment" and in advertising represented:

Danger—Avoid Infections \* \* \* Why risk infection \* \* \* when it has been proven by Government tests that Lucky Tiger Ointment quickly destroys such germs?

\* \* \* prove it in Athlete's Foot \* \* \* Pimples, Rash, etc.

Itch Ringworm—Athlete's Foot And many other skin infections quickly healed with Lucky Tiger Antiseptic Ointment.

\* \* \* avoid dangerous infections.

Essential to Women with "Bad Skin."

Instant relief from burns and skin irritations.

How Would You Like To Clear Your Face of Pimples?

\* \* \* correcting skin eruptions with Lucky Tiger Antiseptic Ointment \* \* \* Stops "Athlete's Foot."

Instant Relief! \* \* \* Simple Piles—Superficial Boils—Pimples and Sores.

A President's son blistered his heel while playing tennis which cost him his life. Are you any more immune than he? Be prepared—get a jar today, and prove to yourself the wonderful results to be obtained.

For a number of years I have had a skin disease \* \* \* entirely cleared up my trouble.

\* \* \* an infection of the scalp \* \* \* one spot after another disappeared until my head was clean.

It will prevent infection \* \* \*.

\* \* \* remedy for blotchy Skin Eruptions—Sore, Crusty Scalps, that have "tried everything else"—Scabby conditions of the neck—Bad Sun Burns—Ring Worm—or "Athlete's Foot" or Burning Feet \* \* \* Avoid Infection.

\* \* \* skin ailments \* \* \* skin eruptions.

The respondent hereby admits:

That Lucky Tiger Ointment as an antiseptic and germicide can only reduce the danger and risk of infection, and cannot avoid or prevent infections absolutely;

That Lucky Tiger Ointment will not quickly or otherwise destroy germs of all kinds, and can kill or inhibit only those germs with which it comes in actual contact;

That Lucky Tiger Ointment is not a competent remedy or treatment for Athlete's Foot;

That Lucky Tiger Ointment is not a competent treatment for—

- (a) Pimples,
- (b) Rash.
- (c) Itch,
- (d) Skin infections,
- (e) "Bad Skin",
- (f) Skin irritations,
- (g) Skin eruptions,
- (h) Skin disease,
- (i) Piles,
- (j) Boils,
- (k) Skin "trouble",
- (l) Blotchy skin,
- (m) Skin ailments,

<sup>1</sup> Stipulations 01351 and 01352 not released.

- (n) Sore, crusty scalps,
- (o) Scabby condition of the neck,
- (p) Burning feet,
- (q) Sores,

unless limited to palliative relief of superficial condition;

That Lucky Tiger Ointment is only a palliative to relieve itching, burning, and surface irritations resulting from or associated with the conditions above mentioned;

Since healing is the function of the living tissues, Lucky Tiger Ointment can do no more than aid Nature in healing;

That Lucky Tiger Ointment will not give "instant" relief in all cases;

That Lucky Tiger Ointment will not make scalp infection disappear, unless it is a superficial infection due to external causes.

In a stipulation filed and approved by the Federal Trade Commission, this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of Lucky Tiger Ointment will—

- (1) Enable one to avoid infections,
- (2) "Prevent" infection,

unless the statements are qualified by a limitation or qualification to the effect that Lucky Tiger Ointment may be of value because of its antiseptic or germicidal qualities, but only when in proper contact;

(b) That Lucky Tiger Ointment is a competent treatment for—

- (1) Pimples,
- (2) Rash,
- (3) Itch,
- (4) Skin infections,
- (5) "Bad skin"
- (6) Skin irritations,
- (7) Skin eruptions,
- (8) Skin disease,
- (9) Piles,
- (10) Boils,
- (11) Skin "trouble",
- (12) Blotchy skin,
- (13) Skin ailments,
- (14) Sore, crusty scalps,
- (15) Scabby condition of the neck,
- (16) Burning feet,
- (17) Sores,

unless limited to palliative relief of superficial conditions;

(c) That Lucky Tiger Ointment is a competent treatment or an effective remedy for Athlete's Foot, or that it is useful for anything more than relief from itching, burning, and surface irritations;

(d) That Lucky Tiger Ointment will "heal" itch, ringworm, athlete's foot or "many other skin infections";

(e) That Lucky Tiger Ointment gives "instant" relief;

(f) That Lucky Tiger Ointment will make an infection of the scalp "disappear";

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 17, 1936.)

01354. Vendor-Advertiser—Medicinal Preparations.—C. H. Sisson, an individual, operating under the trade name of Sisson Drug Co., Columbus, Ohio, vendor-advertiser is engaged in selling certain medicinal preparations designated Sisson's Formula Tablets No. 1, Sisson's Formula Tablets No. 2, and Sisson's Formula Tablets No. 3, and in advertising represented:

If you are suffering from Rheumatism, Inflammatory, Sciatica, or muscular, Arthritis, Neuritis, or lumbago, you are no doubt discouraged with the many "so called" remedies you have tried, with little or no results. There are many different theories regarding the cause of these painful afflictions, hence the numerous disappointments in treatments. Sisson's Formula No. 1 Tablets are based upon the theory that all these complaints are caused by a crystallized residue of poison uric acid, resembling finely ground glass.

Our treatment will surprise you with efficient and almost immediate results  
\* \* \* We ask that you continue with a light treatment for at least sixty days, even after you have obtained complete relief.

To those suffering from \* \* \* *Sluggish Liver*, or cystitis, kidney and bladder acids and irritation will do well to investigate the merits of Sisson's Formula Tablets No. 2 and No. 3.

If you had positive proof that a remedy exists which would put a stop to your rheumatic aches and pains, would you try it? Sisson's Formula are vouched for by thousands of people who have been relieved of terrible suffering. Many have been cases of long standing, and given up as hopeless. Many men and women have been enabled to return to work, after a brief treatment of Sisson's Formula Tablets. Sisson's Formula Tablets are especially for Rheumatism, Arthritis, Neuritis, Sciatica, Lumbago, Muscular, Neuralgia, or Inflammatory. These tablets contain a solvent which dissolves the crystallized uric acid in the system. In most cases only a few days are required to produce relief, but of course, a consistent amount should be taken in order to entirely eliminate the poison, which caused your trouble.

Sisson's Formulas Each Do One Thing Well By Dissolving Uric Acid Correcting Constipation and Intestinal Sluggishness Neutralizing Kidney Acids, all of Which Cause Rheumatism Inflammatory Muscular, Arthritis, Neuritis, Sciatica, Lumbago, Neuralgia.

We do not claim that our four dollar treatment will rid your system entirely of poison, we have found that our seven dollar size is the reasonable treatment for light cases, and of course, more for stubborn cases of long standing.

The Old Reliable Sisson Formula Tablets are the same today as, when Mr. C. H. Sisson gave them to his own Mother (12) years ago, who had suffered (for many, many years) from Arthritis. Though every "so-called" remedy tried up to this time had failed miserably, Mr. Sisson never gave up hope. Whether at home or abroad he was ever mindful of his Mother's affliction. He then engaged the services of a German chemist to formulate the tablets especially for his Mother, and today she is enjoying health and happiness. There was no thought of putting tablets on the market at that time, but after Mother Sisson gained complete and lasting relief, other Rheumatic sufferers prevailed upon Mr. Sisson to supply them with the tablets, and as good news always travels fast, today there are thousands

of satisfied users throughout the country, who are daily going out of their way to point out the merits of Sisson's Formula Tablets in the interest of suffering humanity.

\* \* \* regardless of the many so-called treatments for Rheumatism, Arthritis, Neuritis, Sciatica, Neuralgia, or Lumbago, you have tried with little or no results, just remember this—Sisson's Formula Tablets have relieved thousands during its twelve years existence and has yet to find a single case where permanent and lasting relief is not being enjoyed by those who take Sisson's Formula Tablets as Directed and Over the Required Period of Time.

\* \* \* by continuing the treatment over a reasonable period of time, you will have eliminated every particle of poison from the system.

\* \* \* Their Purpose is to Dissolve Crystallized Uric Acid, which Causes Your Rheumatic Aches and Pains. \* \* \*

The respondent hereby admits:

That the therapeutic value of Sisson's Formula Tablets No. 1 is limited to excessive uric acid conditions, of No. 2 to that of a laxative, and of No. 3 to that of a diuretic;

That rheumatism and kindred ailments are often caused by pathological conditions other than uric acid;

That according to reliable medical authority, preparations indicated for intestinal sluggishness or kidney acids are not competent or adequate treatments for rheumatic conditions.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of said preparations, alone or in combination, is a competent treatment for rheumatism or rheumatic pains, unless such representations are qualified by limiting the claims to rheumatism or rheumatic pains caused by uric acid;

(b) That any of said preparations, alone or in combination, is a competent treatment for

1. Sciatica; or
2. Neuritis; or
3. Lumbago; or
4. Sluggish liver; or
5. Cystitis;

(c) That other preparations, which are not based upon the theory that rheumatism and kindred ailments are caused by the formation of uric acid crystals, are ineffective for the treatment of those ailments;

(d) That any of said preparations, alone, or in combination, will

1. Produce almost immediate results; or
2. Afford complete relief; or
3. Be effective in cases which have been given up as hopeless, or in stubborn cases of long standing; or
4. Entirely eliminate poison; or
5. Neutralize kidney acid; or
6. Afford permanent or lasting relief; or
7. Be effective regardless of the failure of other treatments; or



(e) Generally that rheumatism or kindred ailments are caused by uric acid;  
 (f) That rheumatism or any kindred ailment is caused by intestinal sluggishness or kidney acid;

(g) That there has been no case where respondent's preparations did not afford permanent or lasting relief;

(h) That respondent employed a German chemist to develop the formula by which the preparation "Sisson's Formula Tablet No. 1" is compounded;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 21, 1936.)

01355. Vendor - Advertiser — Feminine Hygiene Products. — Servex Laboratories, Ltd., Hollywood, Calif., vendor-advertiser, is engaged in selling Feminine Hygiene Products known as Servex Jelly and Servex Powder and in advertising represented:

Vaginal Antiseptics by Servex.

Servex In Powder or Jelly for Feminine Hygiene. You, too, should use what doctors prescribe—Vaginal Antiseptics, Powders, or Jellies by Servex.

You have discovered that Servex affords a most pleasant, efficient method of vaginal hygiene. You have found that you can employ it all times with confidence.

Our powder and Jelly have a definite bactericidal action.

\* \* \* Servex secures the maximum antiseptic results, it provides a method of securing the scientific cleanliness that is so essential.

Suggest that she turn from old fashioned dangerous methods to Servex which is mild, yet performs the task for which it is intended.

Servex Laboratories, Ltd., the originator of the Powder Plan.

Both Powder and Jelly are subjected to rigid bactericidal tests. Avoid the imitator who cannot meet the rigid requirement.

The intelligent modern woman seeks facts. She discards misinformation and "old wives' remedies." Thousands of such women are finding new freedom and a revived zest in life through the use of the modern vaginal powder Servex.

Constant laboratory tests are made to assure a uniform product.

Time Tested and Tried. For ten years Servex Powder has been used successfully by physicians in their practice and by careful women. Powder insufflation (spraying) is now considered not only the most modern, but also the simplest and most efficient method of vaginal care.

Effective distribution of Servex Powder by insufflation.

Physicians know of Servex, and know that it is efficacious.

Servex offers a carefully compounded and tested antiseptic \* \* \*. Recent tests show Servex Jelly superior to other similar jelly products.

The new plunger applicator provides a unique method for the use of jellies. It gives a uniform, exact, constant dosage, with definite distribution, and so avoids under-and-over dosages so often the complaint in blind application of jellies using the old type tube and key method.

Physicians recommend the use of jelly when the secretions are scanty. Powder is advised when secretions are adequate.

The old type and key method gives a varying dosage and too often fails to put jelly in correct place.

The antiseptic action of Servex Powder or Jelly for Marriage Hygiene is complete in itself.

**Servex Douche Powder.** A douche powder for vaginal irrigation designed to Alkalize the vaginal tract—non-poisonous, cleansing, deodorizing.

**Servex Douche Powder.** Will aid in neutralizing the irritated itching, acrid types of vaginal infections.

**Leucorrhoea (Whites)** \* \* \* Servex, because of its hygroscopic and bactericidal action, aids nature to correct these conditions. It stimulates the Natural Secretions, which help to normalize the tissue.

This formula compounded at the request of physicians, for the treatment of Trichomonas, vaginalis and allied infections.

The Federal Trade Commission, from an investigation made, has reason to believe that the foregoing statements are incorrect, exaggerated, and misleading, having the capacity and tendency to mislead and deceive prospective purchasers to the injury of competitors, in that according to scientific opinion furnished the Commission respondent's products will not remedy or cure the physical conditions indicated.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Servex jelly is a vaginal antiseptic or possesses any definite bactericidal action whatever, unless and until the formula is modified so that the preparation will meet competent and reliable test for antiseptic and germicidal properties under the conditions prescribed for its use;

(b) That these commodities are recommended, endorsed, or prescribed by physicians as safe vaginal antiseptics or for use in feminine hygiene;

(c) That Servex Douche Powder will aid in neutralizing the irritated itching, acrid types of vaginal infections;

(d) That Servex affords the most efficient method of vaginal hygiene and can be applied at all times with confidence;

(e) That Servex Laboratories, Ltd., is the originator of the Powder Plan of vaginal hygiene;

(f) That the use of powder is considered the most efficient and effective method of vaginal hygiene;

(g) That Servex Jelly is superior to other makes of vaginal jellies;

(h) That respondent's plunger applicator assures exact dosage in the correct place;

(i) That Servex Jelly and Servex Powder supply complete antiseptic action in themselves for marriage hygiene, or as a contraceptive;

(j) That Servex Jelly is an effective remedy for leucorrhoea (whites);

(k) That Servex Powder is compounded at the request of physicians for the treatment of Trichomonas, vaginalis, and allied infections;

and from making any other claims or assertions of like import.

The respondent hereby further stipulates and agrees in soliciting the sale of said commodities in interstate commerce, to cease and desist from using as a part of its corporate name the word "Laboratories" or the word "Laboratory" or any other word or words of

similar tenor or effect, unless and until it actually maintains a place where scientific investigations are conducted.

The respondent assumes all responsibility for any and all representations appearing in testimonials published by it and stipulates and agrees that it will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 21, 1936.)

01356. **Vendor-Advertiser—Beverage.**—H. J. Laird and G. J. Warren, copartners, trading under the firm name and style of Paraguayan Mate Co., New York, N. Y., vendor-advertiser, is engaged in selling a beverage commonly known as Yerba Mate and designated "Viril-A-Tea," and in advertising represented:

Amazing new discovery restores manhood or money refunded. Men and women get this effective and safe sexual restorative. Stop using harmful tablets. Get the best tonic for weak, run down, starved, and abused glands. Used everywhere. Approved by doctors. Results will surprise you. Send No Money. Write for facts today! (Enclose 3¢ for reply) Mate Co., Dept. 10, 749 Washington Street, New York City.

Yerba Mate \* \* \* unleashes my energy and leaves me without fatigue.

Yerba Mate mitigates thirst, appeases hunger, and reinvigorates the body. It gently incites the nervous system without producing insomnia. Taken by itself, without any other food, Mate keeps up the strength and energy of the individual for days at a time.

It soothes your nerves and makes your mind clear as a bell.

It's the best substitute known for alcoholic drinks \* \* \*.

Mate stimulates body, brain, and nerves and enables you to endure many hardships \* \* \*.

If you feel weak, worn out, and have no ambition, Mate will restore your lost vitality. It is especially recommended for Debility and Neurasthenia. It excites muscular activity, pep you up, makes you feel ambitious. In fact the Jesuit Fathers made disparaging talk on Mate on account of the supposedly "unmoral" effect it had on the natives.

It is generally admitted that glandular weakness is caused by a general run down condition. By taking Mate you curb the loss of your vital force. Chlorophyl, which is one of the prominent elements of Mate, is a red corpuscle builder. Plenty of Red Blood—Youthful Fire and Energy—Pep—Punch and Power.

Chlorophyl, being the green life blood of plants, builds red corpuscles in your body. This amazing vegetable matter fortifies your body against infection and makes aged people, anemics (weaklings), and convalescents feel strong and full of fresh energy. Mate is also a valuable source of Vitamins, so essential to sufferers of Profound Anemia.

For Dyspepsia, Indigestion, and Uric Acid condition. Viril-A-Tea is a great factor in correcting Uric Acid Condition. It flushes the kidneys, cleans out your entire system. A compensator of bad alimentation, and a great aid to digestion.

For rheumatism and other ailments. Because Viril-A-Tea corrects Uric Acid conditions in your system it is a marvelous aid in the cure of Rheumatism, Arthritis, Neuralgia, and other rheumatic disturbances.

The Jesuit Fathers now speak highly of it, knowing what it can do for people who suffer from body and mental ailments.

You are going to be one among the millions of enthusiastic Mate drinkers. You will be delighted with the quick-action results, with the new pep and energy, the vigor and strength that will be yours. You will begin to notice and enjoy

the restorative powers of Mate soon after you start drinking it. You will begin to take on new life, become ambitious, feel like doing things. It will put a sparkle in your eye and make a new person out of you.

There is one thing you must do—Drink Mate Daily. Nothing will correct or cure your run-down condition unless you combat the things that are sapping you of your strength.

I am a coal miner and subject to pains, aches, rheumatism, and a general run down condition. After using one can of your remedy I find it very valuable for all these troubles.

My lack of manhood often made me feel terrible and caused no end of unhappiness in my house. But now I feel like a young man of 25. Your miraculous restorative has made me feel like "fighting a pack of wild cats." My wife also takes it. We think it the most wonderful thing we have ever had. \* \* \* I am 56 years of age.

Why have so many leaders in Public and Private life endorsed Mate? What tonic and restorative power does this wonderful beverage possess? Mate is high in Chlorophyl, the green life giving blood of plants, so essential to plant life \* \* \* in your system it is a red blood corpuscle builder. This amazing vegetable matter fortifies your body, builds up your system and makes a new person out of you. Mate will keep you fit. This beverage which has the endorsement of medical authorities is almost a "cure-all." It is recommended for general run down condition and nervous cases. It builds up your body. Calms and soothes the nerves. It supplies the necessary food for your system.

It has a stimulating effect on mind and body that is absolutely harmless. Take Mate when undergoing mental and physical strain. Take it for a body purifier. It will eliminate the poisons that slow you up, make you feel tired, worn out, pepleless. Take Mate to correct Uric Acid condition. It flushes the kidneys, cleans out your entire system and is a compensator of faulty alimentation. Because it corrects Uric Acid condition it is a marvelous aid in the cure of Arthritis, Neuralgia and other rheumatic disturbances. Take Mate if you suffer Profound Anemia \* \* \* it builds red corpuscles.

Mate—a Blood Builder—such ailments as diseases of the liver, kidneys, stomach, rheumatism, gout, etc., scourages of mankind are practically unknown among the natives of the southern countries of South America. \* \* \* They take Mate constantly several times a day.

More than thirty million South Americans drink Mate regularly and would never do without it. They consider Mate as the most essential food element in their diet.

A great many physicians have prescribed the use of unsweetened Mate with excellent results, particularly in the case of victims of diabetes. \* \* \* Mate is also an aid to the function of elimination and therefore will assist the action of Insulin and the secretion of the pancreas.

Mate, a rejuvenator for the aged. The ailments of old age, such as rheumatism, gout, etc. are the greatest foes of man after they round up the half century mark. Mate will prevent these ills.

The opinion of a few Americans:—Franklin Delano Roosevelt, President of the United States, suggesting some points for reciprocity treaties: "Mate has all the pick-up qualities of coffee, but does not keep you awake. It is an excellent tonic. And something that does not compete with anything we produce." \* \* \* a gentle stimulant, purifier of water, and corrective of many stomach, liver, and kidney troubles. \* \* \* M. Sherman, an attache of the United States Department of Commerce, referring to Mate, stated: "Soldiers have endured all imaginable hardships during forced marches, without any food at all, just sipping frequently and freely the Mate that they carried in their canteens."

Viril-A-Tea

The respondents hereby admit:

1. That the therapeutic properties of Yerba Mate are limited to its effect as a temporary stimulant only;
2. That Yerba Mate has been used as a beverage for many years, particularly in South America.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

1. That Yerba Mate is a new discovery;
2. That Yerba Mate is more than a temporary stimulant, or that it is a "sexual restorative", or that it will—
  - (a) Restore manhood,
  - (b) Unleash energy and leave one without fatigue,
  - (c) Reinvigorate the body,
  - (d) Restore lost vitality,
  - (e) Make one feel ambitious,
  - (f) Curb the loss of or renew vital force,
  - (g) Make one feel like a young man of 25.
  - (h) Keep one fit,
  - (i) Build red corpuscles;
3. That Yerba Mate is almost a "cure-all", or that it is a competent treatment or effective remedy for—
  - (a) Weak, run down, starved, and abused glands,
  - (b) General run down condition,
  - (c) Anemia,
  - (d) Dyspepsia,
  - (e) Indigestion,
  - (f) Uric acid condition,
  - (g) Rheumatism,
  - (h) Arthritis,
  - (i) Neuralgia,
  - (j) "Body and mental ailments",
  - (k) Faulty elimination,
  - (l) "Diseases of the liver, kidneys, stomach",
  - (m) Gout,
  - (n) "Scourges of mankind",
  - (o) Diabetes,
  - (p) Faulty elimination,
  - (q) "Ailments of old age",
  - (r) Debility,
  - (s) Neurasthenia,
  - (t) Faulty alimentation;
4. That Yerba Mate is a general tonic;
5. That Yerba Mate will incite the nervous system or soothe nerves;
6. That this product will keep up the strength and energy of an individual for days at a time without any other food;
7. That it is a substitute for alcoholic drinks;
8. That Yerba Mate will fortify the body against infection or make aged people, anemics (weaklings), and convalescents feel strong and full of fresh energy;
9. That it cleans out the entire system or builds up the system or the body;

10. That it is a body purifier, or that it will eliminate the poisons that slow one up, make him feel tired, worn out, pepless;
11. That Yerba Mate is a rejuvenator for the aged;
12. That it will assist the action of insulin and the secretion of the pancreas;
13. That the said product will "mitigate" thirst or "appease hunger";
14. That the said product is essential in the diet;

and from making any other claims or assertions of like import.

The said respondents further stipulate and agree that the name Viral-A-Tea will be discontinued, and the name substituted will not infer that Yerba Mate will produce any effect contrary to the foregoing agreements.

The respondents further stipulate and agree not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 22, 1936.)

01357. **Vendor-Advertiser—Medicinal Preparation.**—Charles Allen, an individual operating as Allen Medicine Co., St. Louis, Mo., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Allen's Gas Tablets and in advertising represented:

If you suffer from gas disorders, you will find relief in Allen's Gas Tablets. The Allen Medicine Company of St. Louis, has put in tablet form, the ingredients of which have been recognized by the medical profession, in the treatment of stomach disorders.

Allen's Gas Tablets are purely vegetable and are tonic, digestive, and laxative. Allen's Gas Tablets contain no soda, alkaline, or anything harmful to the human system.

The respondent hereby admits:

That the therapeutic benefit to be expected from the use of Allen's Gas Tablets is limited to its value as a laxative;

That certain conditions occurring in conjunction with gastric disturbances are made worse by the use of laxatives.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Allen's Gas Tablets will produce any beneficial effect other than that resulting from the use of a laxative;

(b) That these tablets constitute an effective remedy or a competent treatment for—

1. "Gas disorders", or
  2. "Stomach disorders";
- (c) That this product does not contain anything harmful to the human system;
- (d) That Allen's Gas Tablets are—
1. "Tonic"; or
  2. "Digestive";

and from making any other claims or assertions of like import. (Apr. 28, 1936.)

01358. **Vendor-Advertiser—Cosmetics.**—Harriett Hubbard Ayer, a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a certain preparation designated Eyelash and Eye Brow Grower and in advertising represented:

Makes the lashes and brows long.

A delicate ointment for promoting the growth of strong, silky lashes and brows.

Eyelash and Brow Grower promotes the growth of the lashes.

The respondent hereby admits:

That, according to scientific authority, no product capable of increasing the growth of hair on any part of the body has at the present time been discovered.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That its product will increase the length of eyelashes and eyebrows;

(b) That its product promotes the growth of eyelashes and eyebrows;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees in soliciting the sale of said commodity in interstate commerce, to cease and desist from using the word "Grower" as any part of a trade name for such commodity or any commodity of the same or similar composition.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 27, 1936.)

01359. **Vendor-Advertiser—Insulation Material.**—General Insulating & Manufacturing Co., a corporation, St. Louis, Mo., vendor-advertiser, is engaged in selling an insulating product designated Gimco Rock Wool and in advertising represented:

A constant flame of 1350 (degrees) does not affect the wool.

Reflective insulations depend entirely upon their bright surface for their insulating value. Even a thin layer of dust over this bright surface will reduce their insulating value to practically nothing.

Gimco Rock Wool, which stops the heat loss, \* \* \*

\* \* \* if it is uninsulated, we assure you Gimco Rock Wool will stop the heat loss as effectively as a new roof stops the rain.

It can be laid directly over a gas flame or subjected to the flame of a blow torch without any apparent damage. Rock Wool will not even char.

A thick layer of Gimco Rock Wool, the light fluffy, fireproof insulator, will give your home a positive barrier against the scorching rays of the summer sun \* \* \*.

\* \* \* drafts are eliminated and temperatures are uniform.

The respondent hereby admits:

1. That Gimco Rock Wool will not withstand a temperature of 1350 degrees, or the flame of a blow torch, or of a gas flame without effect;

2. The insulating value of reflective insulation is not materially affected by a thin layer of dust;

3. That Gimco Rock Wool will not "stop" all heat loss from a building or constitute a "positive barrier" against the sun;

4. That not all drafts will be eliminated by the use of Gimco Rock Wool.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Gimco Rock Wool

1. Will withstand a constant flame of 1350 degrees without any effect on the material,

2. Can be laid over a gas flame or subjected to the flame of a blow torch without any apparent damage, or that under such conditions it will not even char;

(b) That a thin layer of dust over the surface of reflective insulations will reduce their insulating value to practically nothing;

(c) That Gimco Rock Wool will "stop" heat loss, or that it will "Stop heat loss as effectively as a new roof stops the rain;"

(d) That Gimco Rock Wool will give a building "a positive barrier" against the rays of the sun;

(e) That all drafts can be eliminated by the use of this insulating material;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 27, 1936.)

01360. Vendor-Advertiser—Cod Liver Oil.—C. L. Smith and E. J. Dwyer, copartners operating as C. L. O. Smith Co., Chicago, Ill., vendor-advertiser, is engaged in selling a cod liver oil designated Kiel-Oil and in advertising represented:

Above all—pure cod liver oil.

Vitamin A, D and E in abundance.

Potency proved by actual biological feeding tests.

Increased production.

Fertility and hatchability of eggs improved.

More livable, healthier chicks.

Rickets prevented and cured.

Uniform complete development assured.

Soft-shelled eggs eliminated, blood spots reduced.

Completion of the moult hastened.

Less mortality.

Greater Resistance to disease.

Improved health, vigor and vitality.

Inspected and tested by a great majority of the State Departments of Agriculture who use Cod Liver Oil, and their published findings of these tests have been of the very highest.

Would you be interested in being able to purchase a 100% "Pure" Cod Liver Oil? Tested and guaranteed to contain 500 units per gram of Vitamin A and 250 units per gram of Vitamin D.

Conforms with all requirements of the United States Pharmacopoea "X." Off in color and odor.



The respondents hereby admit:

That vitamin deficiency in poultry may be due to confinement, lack of sufficient sunshine, or other causes, and the feeding of Kiel-Oil would not result in improvement of the poultry or eggs, unless the poultry is deficient in the nutritional factors which said product contains.

That any excessive supply of Vitamins A and D would be eliminated by the poultry without beneficial results to the poultry or eggs.

That the feeding of said product to poultry cannot be depended upon to afford protection against infections or other diseases which cannot generally be resisted by healthy fowls.

That feeding of Kiel-Oil to poultry cannot be relied upon to cause increased production, improve fertility and hatchability of eggs, produce more livable, healthy chicks, cure or prevent rickets, eliminate or reduce soft shelled eggs and blood spots, hasten the completion of moult, lessen mortality, or give greater resistance to disease.

That Kiel-Oil is off color, odor, and taste, and, therefore, is not a pure cod liver oil, and does not meet the requirements of the United States Pharmacopoea.

That said product does not contain vitamin E.

That the vitamin potency of Kiel-Oil is not determined or proved, with respect to each vitamin, by biological feeding tests.

That Kiel-Oil has not been tested and inspected by a majority of state Departments of Agriculture, and that no such tests have demonstrated Kiel-Oil to be of the highest quality.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the feeding of said product to poultry will increase egg production; increase the fertility and hatchability of eggs; prevent rickets; hasten the completion of the moult; lessen mortality; provide greater resistance to disease; or improve the health, vigor, and vitality of poultry, unless such claims are specifically limited to use in cases where the diet of the poultry is deficient in the vitamins contained in Kiel-Oil;

(b) That Kiel-Oil will "cure" rickets in poultry, assure uniform and complete development of poultry, eliminate soft-shelled eggs, or reduce blood spots in eggs;

(c) That Kiel-Oil contains vitamin E;

(d) That said product is a pure cod liver oil;

(e) That Kiel-Oil has been tested and inspected by a majority of State Departments of Agriculture, or that such tests have demonstrated it to be of highest quality;

(f) That Kiel-Oil conforms to the requirements of the United States Pharmacopoea;

(g) That Kiel-Oil contains any definite number of vitamin A units, unless such number is determined by the tests and standards prescribed by the United States Pharmacopoea;

and from making any other claims or assertions of like import.

The respondents further stipulate and agree not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 27, 1936.)

**01361. Vendor-Advertiser—Medical Preparations.**—Gordon Bannerman, an individual, operating under the trade name of Antiseptic Eye Remedy Co., Cleveland, Ohio, vendor-advertiser, is engaged in selling a medicinal preparation designated "Eye-Res" and in advertising represented:

So if you have a friend with tired, strained, or congested eyes, or perhaps a tearing condition, tell them about Eye-Res, the finest, safest eye remedy known;

A never failing remedy for fatigue caused by motoring, exposure to wind and sun glare, long waking hours, card playing, movies, etc.;

Iris Antiseptic Eyewash Number one is sold with money back guarantee. Relief is never failing. It renews the lustre and sparkle immediately.

By using a few drops of Iris Antiseptic Eyewash Number one before going out in winter weather, you guard against possible infection and keep your eyes sparkling and lovely;

It is harmless, yet effective. Relief is immediate and never failing;

Use only Iris—which has proven that it is the finest remedy of its kind on the market;

To attempt camouflage with mascara or pencilled lashes does not conceal lack of vitality in the eyes;

\* \* \* the tried and proven remedy for tired, aching eyes;

Snow glare and wind often cause congestion;

Eye-Res will keep them clear, clean, and healthy.

The respondent hereby admits:

That according to reliable medical opinion, such a composition would not be antiseptic nor of special merit therapeutically.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Eye-Res is a competent remedy in the treatment of

1. Tired, strained, or congested eyes,

2. Eye fatigue,

3. Lack of vitality in the eyes,

4. Aching eyes,

5. A "tearing condition" of the eyes;

(b) That Eye-Res is antiseptic or that it will guard against infection;

(c) That Eye-Res is of any special merit therapeutically;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 27, 1936.)

**01362. Vendor - Advertiser — Correspondence Lessons.**—International Correspondence Schools, a corporation, Scranton, Pa., vendor-advertiser, is engaged in selling various correspondence courses of instruction, and in advertising represented:

It was not long after we began to teach the languages in this way that our system of instruction was adopted in a very large measure by the United States government for its schools at West Point and Annapolis.

The instruction test of each I. C. S. correspondence course embraces every detail that is necessary to provide a thorough knowledge of the government examination in view, and practically insures one's passing if he studies his course with direction;

We can make you superintendent.

The respondent hereby admits:

That the I. C. S. phonographic system of correspondence instruction in the languages was used to a limited extent, at one time, but is not now, by the United States government in its schools at West Point and Annapolis, for the purpose of aiding students whose work was not up to standard;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise that the I. C. S. "famous phonographic system of correspondence instruction in the languages" is being used by the U. S. Government at its schools at West Point and Annapolis;

(b) That the I. C. S. course of instruction designed to prepare the student for Civil Service examination "practically insures one's passing";

(c) That "we can make you superintendent";

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 29, 1936.)

01363. Vendor-Advertiser—Medicinal Preparation.—M. L. Klein & Co., a corporation, Atlanta, Ga., vendor-advertiser, is engaged in selling a certain medicinal preparation designated "Mentho-Mulsion," and in advertising represented:

If it Fails to Stop Your Cough immediately Ask for your Money Back.

The Proven Remedy for Bad Coughs.

Children's coughs need prompt attention \* \* \* it is dangerous to neglect a cough \* \* \* Mentho-Mulsion made from pure Fig Syrup \* \* \* genuine Beechwood Creosote \* \* \* Menthol \* \* \* and five other important ingredients \* \* \* acts quickly \* \* \* safely \* \* \* and is pleasant to take.

Mentho-Mulsion is a quick, safe, remedy for coughs. Don't let that cough hang on.

\* \* \* And do not let the children hang on to a nagging cough \* \* \* Mentho-Mulsion will stop coughs of children and grown-ups immediately.

Mentho-Mulsion is a mild, sure remedy.

Smokers Cough.

The respondent hereby admits:

That coughs are frequently manifestations of some serious disorders for which such a product would not constitute an adequate remedy, this preparation being of value only in cases of coughs due to colds;

That Mentho-Mulsion contains ingredients which may be harmful if the preparation is taken indiscriminately.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Mentho-Mulsion is a competent treatment or an effective remedy for coughs unless limited to coughs due to colds;

(b) That Mentho-Mulsion will—

1. "Stop" a cough,

2. "Remedy bad coughs", or be of benefit in all cases of "nagging coughs";

(c) That this product is a competent treatment or an effective remedy for "Smokers cough";

(d) That Mentho-Mulsion is "safe";

(e) That Mentho-Mulsion is a "sure" remedy for all coughs;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 24, 1936.)

01364. **Vendor-Advertiser—Cosmetics.**—Arthur Sachs, an individual doing business under the trade name of Eugenia Sachs Laboratories, New York, N. Y., vendor-advertiser, is engaged in selling certain cosmetics designated Saxalur Eye-Lash Grower, Allura Eye-Lash Grower, Allura Creme Mascara, Saxalur Creme Mascara and in advertising represented:

It is within the reach of every woman to have long, lustrous lashes, making the eyes appear like deep pools of enchantment. Eyes that speak must be fringed by long dark lashes that can be yours if you use Allura Creme Mascara. Allura Eye-Lash Grower.

If you have thin and scanty lashes, try Allura Eye-Lash Grower, which will nourish them and promote their growth, thereby enhancing the beauty of your eyes.

The respondent hereby admits:

That, according to scientific authority, there is no known product capable of increasing the growth of hair on any part of the body.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of respondent's cosmetics will grow eyelashes; or increase or promote the growth of eyelashes;

(b) That any of respondent's cosmetics will increase the length of eyelashes;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees in soliciting the sale of said commodities in interstate commerce to cease and desist from

using the word "Grower" as any part of a trade name for such commodities or any commodity of the same or similar composition. (Apr. 24, 1936.)

01365. **Vendor-Advertiser—Medicinal Preparation.**—O. H. D. Co., Inc., a corporation, Wilmington, Del., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Oxy Indian Cough Syrup and in advertising represented:

Use of the term "Indian" as part of trade name of product.

Quick relief from colds and coughs.

Whether your cough is due to smoking or from a cold, you can obtain instant relief with the first dose.

If a cough keeps you awake nights take a dose of Oxy before retiring and you will enjoy sound sleep.

Oxy contains no opiates or habit-forming drugs.

Instant relief from colds and coughs.

The respondent hereby admits:

That, according to scientific opinion, its preparation is not capable of instant or quick relief for colds and coughs of every severity, stage, or cause;

That, due to the fact that its preparation contains alcohol and chloroform, said preparation does contain habit-forming drugs and opiates;

That the respondent's preparation is not of Indian origin.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Oxy will relieve colds and coughs, unless limited to such ailments as are of a mild nature, and to those types of ailments that are definitely known to be within the therapeutic limits of said preparation;

(b) That Oxy will give relief for colds or coughs "instantly" or with the first dose;

(c) That if a cough keeps one awake nights a dose of Oxy before retiring will enable him to enjoy sound sleep;

(d) That Oxy contains no opiates or habit-forming drugs;

and from making any other claims or assertions of like import.

The respondent hereby further stipulates and agrees in soliciting the sale of said commodity in interstate commerce, to cease and desist from designating or describing said preparation as "Indian" unless the label or advertising shall clearly, expressly, and legibly state that the preparation is not of Indian origin in immediate context with the descriptive term. (Apr. 24, 1936.)

01366. **Vendor-Advertiser—Frog Products.**—Albert S. Broel, an individual, trading as American Frog Canning Co., New Orleans, La., vendor-advertiser, is engaged in selling canned frog products, live frogs, and a course of instruction in frog culture, and in advertising represented:

We encourage frog raising because we want to buy more frogs. As originators of canned frog products we use large quantities of frogs every year and this huge demand, together with other markets, has exhausted the wild supply.

I have orders right here in Chicago to deliver 10,000 to 15,000 pounds of frog legs a week at a good price.—Paul Lache, Illinois.

A small town near me last summer had a daily payroll of \$400 from the bullfrog business.—W. M., Florida.

With wild frogs practically exterminated, markets are turning to frog farms to supply their future needs. The shortage of frogs has already caused prices to rise rapidly in every section of the country, thus making larger profits for those who raise frogs.

Doctors recommend frog legs for people afflicted with Diabetes and certain stomach disorders.

The "Broel System" of frog culture is recognized as the most successful in the world.

#### CERTIFICATE OF PROFICIENCY

When you have successfully completed the "Broel System" of frog culture, you are awarded this certificate of proficiency so that you are a qualified bullfrog culturist.

Five Pairs—Nufond Giants—Course Free.

The respondent hereby admits:

1. That the wild supply of frogs is not exhausted nor are frogs practically exterminated;
2. That the markets are not substantially turning to culturists for their supply of frogs necessitating the reliance upon culturists to supply the markets;
3. That frog meat has no therapeutic value in the treatment of Diabetes or any stomach disorder;
4. That respondent's system of frog culture is not recognized as the most successful in the world;
5. That the Certificate of Proficiency awarded those completing respondent's course of instruction does not indicate a qualified frog culturist;
6. That the course of instruction is not free, but is included as a part of the purchase price of the breeder frogs sold by respondent;
7. That the demand for frogs as stated by respondent is not supported by statistics;
8. That evidence has not been furnished to substantiate the advertising claims made with reference to the probable profits to be earned in the industry.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the supply of wild frogs is either exhausted or has been practically exterminated;
- (b) That frog meat has any dietary value in the treatment of Diabetes or any stomach disorder;
- (c) That respondent's system of frog culture is recognized as the most successful in the world;
- (d) That a holder of respondent's "Certificate of Proficiency" is a "qualified" frog culturist;

(e) That the course of instruction is given free so long as said course is furnished only to purchasers of breeder frogs and the cost thereof is included in the purchase price of the breeder frogs;

(f) That the demand for frog meat either generally or in stated localities is greater than actually exists at the time such representation is published;

(g) That the extent of the frog industry generally or in any stated locality is greater than can be substantiated by statistical evidence;

(h) That the market price for frog meat is increasing at a rate greater than can be substantiated by reliable market reports.

and from making any other claims or assertions of like import. (Apr. 24, 1936.)

01367. **Vendor-Advertiser—Medicinal Preparation.**—The Piso Co., a corporation, Warren, Pa., vendor-advertiser, is engaged in selling a medicinal preparation designated Piso's for Coughs and in advertising represented:

Get rid of Coughs Quick!

Combination 2-way Treatment Attacks the Cough and the Cold Symptoms that may have Caused It.

Permanent relief will come only by attacking the trouble at its source and removing it. Piso's is double-acting. It relieves the irritated throat tissues and also relieves internal symptoms.

Don't neglect a Cough End it Quickly.

Many remedies merely suppress a cough but do not attack and remove the cause. Piso's is a pleasant-acting internal medicine and local treatment combined. The minute you swallow it, you feel its soothing effect on the rasping, raw membranes of throat and chest. And in addition to this immediate relief, Piso's goes after and breaks up deep-seated congestion, loosens mucus, vigorously attacks the infection itself. Piso's ends the cough by helping to throw off the cold which causes it.

Safe and effective and just as good for the children as it is for you.

Piso's helps to break up congestion and attacks infection.

America's Foremost Cough Remedy \* \* \*

Because I do a lot of singing, and because people realize how vital it is for me to avoid throat infections, I am often asked just what I do to get rid of those stubborn coughs that come from colds at this time of year. I used to try all kinds of things that I found would ease and suppress coughing, but strangely the cough would hang on in spite of everything. A few years ago, I discovered Piso's and it proved so effective that now I always keep a bottle in my medicine cabinet at home.

Piso's goes to work like any other medicine that doctor's prescribe. Piso's goes after internal symptoms to relieve the cold that caused the cough. It restores normal circulation to the raw tissues of your throat and chest.

Piso's goes after colds just like some internal medicine that your doctor would prescribe. It stimulates circulation, and helps you quickly throw off the cough and the cold that causes the coughing.

Well, I have found the one sure way to treat a cough. That way is to have a bottle of Piso's handy the minute the cough starts.

\* \* \* she had her druggist send over a bottle of Piso's for her little 8-year old son, who had been home from school for 10 days because of a stubborn cough. "Piso's worked almost like magic," she writes, "It helped to stop those terrible night paroxysms, and in two days my little fellow was back at school, his cough and cold both gone for good."

\* \* \* do the things any doctor would prescribe for in treating a bad cough from a cold.

And I can tell you that Piso's is a perfect well-balanced formula—a rich, round, harmonious pleasant-tasting prescription that not only soothes the cough but helps eradicate the internal symptoms of the cold that may have caused the coughing.

It is safe and sure, and will bring you almost instant relief.

Your druggist will tell you there's nothing quite like it for protection against coughs.

To get rid of a cough due to a cold you must get rid of the infection produced by cold germs. This calls for Piso's, for most cough medicines only confine themselves to the throat.

Piso's relieves the coughing instantly. What is more, it stops the cause of the cough-infection in the system.

Nothing stops a cough like Piso's.

Piso's contains no opiates and is safe to take.

Relief is complete with Piso's.

Piso's is more than a soothing agent for coughs. It is a corrective.

Piso's is more than a palliative. It gets to the seat of the trouble.

The respondent hereby admits:

1. That Piso's for Coughs is not an effective remedy or competent treatment for colds or for coughs, and its value in such cases is limited to palliative relief afforded as an expectorant cough mixture in cases of coughs due to colds, minor throat and bronchial irritation;

2. That Piso's For Coughs contains ingredients which may be harmful if the preparation is taken indiscriminately;

3. That Piso's For Coughs does not act in the same manner as other medicines that may be prescribed by doctors.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Piso's For Coughs is a competent treatment or effective remedy for coughs unless limited to its value as an expectorant cough mixture of a benefit in coughs due to colds and minor throat bronchial irritations;

(b) That this product will—

1. Enable one to get "rid" of a cough quickly or at all,
2. "End" a cough;

(c) That Piso's For Coughs is a competent treatment or effective remedy for colds;

(d) That it will break up deep-seated congestion;

(e) That Piso's For Coughs is a competent treatment for infection or will attack infection, or

1. "Get rid" of the infection produced by cold germs,
2. "Stop" infection in the system;

(f) That this product will stimulate circulation or restore normal circulation to the throat and chest;

(g) That it will do the things any doctor would prescribe for in treating a bad cough from a cold, or that it works like any other medicine that doctors prescribe;

(h) That Piso's For Coughs is safe;



- (i) That this product will enable one to avoid throat infection;
- (j) That the use of this product is a sure way to treat a cough;
- (k) That Piso's For Coughs contains no opiates;
- (l) That it will afford protection against coughs;
- (m) That Piso's For Coughs is a corrective;

and from making any other claims or assertions of like import. (Apr. 24, 1936.)

01368. Vendor-Advertiser—Jewelry.—Evelyn Corper, an individual, trading as Keystone Co., and Keystone Service, Philadelphia, Pa., vendor-advertiser, is engaged in selling imitation diamonds and rings and in advertising represented:

Pictorial Representation  
of  
Ring set with stone

Free! Special advertising Offer of facsimile Diamond Free. Send the coupon at once and get *free* this brilliant, glittering  $\frac{3}{4}$ -karat facsimile diamond blazing with blue-white fire from its 24 polished facets. Every one guaranteed perfect and flawless. Only the acid test of direct comparison can tell these glittering examples of the Diamond Lapidary's art from gems costing hundreds of dollars. \* \* \* to introduce them we offer for a limited time to send you one free without any obligation, just to advertise them and prove to you their exquisite beauty and brilliance. Nothing to buy. Nothing to sell. \* \* \* We only hope you will tell your friends about them. We only ask you to send ten cents to help pay advertising and postage. Nothing more to pay—and this deposit will be returned if you tell the facsimile diamond from your most expensive gems. Note: No order will be filled for more than one sample. Safe delivery guaranteed and fully insured by one of America's oldest insurance companies.

Only one facsimile diamond Free to each customer.

Rhodium Finish Rings  
World's Costliest Metal  
Special  
15-day Sale

Only \$1.98

Ladies' Style

Heavy Style for Men is 50¢ extra

To get this special price the customer must furnish the stone, so be sure to return your Facsimile Diamond to be mounted in this exquisite setting, made of Solid Sterling Silver, Genuine Rhodium Finish.

By mass production methods offering only two styles and designs we are able to give you an outstanding value and a true bargain \* \* \* We can offer it to you for \$3.98 (Ladies' ring), or \$4.98 (Men's Style).

#### SPECIAL 15-DAY OFFER

From these prices we will allow you \$2.00 if you return your facsimile diamond to be mounted so that the ring will cost you only \$1.98 (or \$2.48) net. Not another cent to pay.

In other words, your facsimile diamond is now worth \$2.00 to you, provided you send within 15 days while this special offer is in effect.

Much as you will hate to part with your facsimile diamond, you will have to return it for mounting; if you want to save \$2.00, but we guarantee to return exactly the same stone mounted in your ring within 24 hours after your order reaches us.

The respondent hereby admits:

1. That none of respondent's products are given free of charge;
2. That respondent's offer to sell for 10¢ is limited to the imitation diamonds and does not include the mounted ring pictorially represented in respondent's contact advertisements;
3. That the offers made in connection with the sale of respondent's products are not special offers and are not for a limited time nor is the quantity sold to one person limited.
4. That respondent's offer for the sale of imitation diamonds is not merely for advertising purposes nor is the remittance required only to help with advertising and postage costs;
5. That the safe delivery of respondent's products is not guaranteed by an insurance policy carried by the respondent which would indemnify the purchaser in case of nondelivery.
6. That the material with which respondent's rings are finished is not a costly metal and is not the world's costliest metal;
7. That respondent's imitation diamonds are not perfect or flawless and are not blue-white;
8. That respondent's products are for sale to the purchasing public;
9. That respondent's imitation diamonds are not samples and are not examples of the diamond lapidary's art;
10. That respondent's imitation diamonds can be distinguished from expensive gems by means other than the acid test or direct comparison;
11. That her imitation diamonds are not facsimiles of diamonds;
12. That the amount allowed a purchaser of an imitation diamond as a discount on the purchase of a mounted ring is in excess of the actual value of such imitation diamond and the advertised price of respondent's mounted ring is in excess of its actual value and the price at which it is actually sold;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of respondent's products are "free", unless they are sent to applicants without requiring the payment of money;

(b) By pictorial representation, or otherwise, that a ring is included with respondent's imitation diamonds, when the offer applies only to the imitation diamond;

(c) That any offer made in connection with the sale of respondent's products is for a "limited" time, unless a definite time limit is fixed and adhered to by the respondent and orders are refused after the expiration of such time;

(d) That any offer by the respondent for the sale of her imitation diamonds is merely for advertising purposes, or that the remittance required is only to "help pay advertising and postage";

(e) That the safe delivery of respondent's products is guaranteed or insured, unless and until respondent carries insurance that will indemnify the purchaser in case of non-delivery;

(f) That the material with which respondent's rings are finished is a costly metal or the "world's costliest metal";

- (g) That respondent's imitation diamonds are perfect or flawless or blue-white;
- (h) That the respondent has nothing to sell or that there is nothing for the purchaser to buy;
- (i) That any offer made in connection with the sale of respondent's products at the regular price is a special offer;
- (k)<sup>1</sup> That only by acid test or by direct comparison can said imitation diamonds be distinguished from expensive gems;
- (l) That said imitation diamonds are examples of the diamond lapidary's art; and from making any other claims or assertions of like import.

Respondent further stipulates and agrees in soliciting the sale of said products in interstate commerce, to cease and desist from—

- (m) Designating respondent's imitation diamonds as "facsimile diamonds";
- (n) Using the term "karat" to indicate the weight of said imitation diamonds, or otherwise representing or implying that said imitation diamonds are precious stones or gems;
- (o) Placing a fictitious value or price on respondent's mounted rings, or allowing a fictitious amount as a credit for an imitation diamond previously sold by the respondent, when such imitation diamond is returned by the purchaser to be used as a setting for a ring.

and from making any other claims or assertions of like import. (Apr. 27, 1936.)

01369. Vendor-Advertiser—Luck System.—D. A. Prosser, an individual operating as Old Dominion Service, Petersburg, Va., vendor-advertiser, is engaged in selling a scheme recommended for winning money and bringing luck, designated The Magic Star System, and in advertising represented:

Listen To Me And Be Lucky. Good Luck is coming *to you* if you always carry a universal good luck charm;

Do you know it is

Lucky to knock on wood;  
to carry a rabbit's foot;  
to find a horse shoe;  
to throw rice at a wedding;  
if the sun shines on a bride; and

Unlucky to break a mirror;

to walk under a ladder;  
to sing before breakfast;  
to seat 13 at a table;  
to spill salt, or see evil eye;

Keen minds believe in luck. Key to fame and fortune yours. Keep this luck token with you always. Kill the jinx and be lucky;

Statements That Are Scientific Accurate Facts. Magic Star System Information that has been kept from the public;

The Most Accurate Of All Number Systems. All Figured Out And Sure Thing when used correctly. It cannot miss. This is the correct way to the Right Results;

This secret system and formula is a Great Discovery. It tells you Everything there is to know about Numbers. No guesswork;

<sup>1</sup> Matter originally covered by paragraph (j) was not included in stipulation as approved by Commission.

Famous system has been tested and proven. The most up-to-the-minute system yet devised. The facts as you should know them. A secret Formula that everybody don't know. Tells the winning and losing sides and angles to turn percentages in you favor;

We give you scientific calculations and mathematical formulas So Arranged to manipulate and to forecast Winning Results:

This is the regular \$5.00 service reduced to only \$1.00. The Genuine and Original Magic Star. Good for every week. Good for a lifetime;

Free! A pretty Luck Token that looks like Real Gold. It is said to bring you luck in all undertakings. We are starting you off by giving you Free a Good Luck Token with every order for the Magic Star System on numbers. Buy the system and get the Luck Token Free. The Luck Token has 26 accepted Luck Numbers, 13 stars, and 20 phrases.

The Mysterious Hyndu Luck Prophet appears and has the new luck number. This Luck Token is given Free with the Magic Star System;

A system based on the law of averages—with all elements of chance eliminated—Positive in its operation;

A work of enlightenment and pastime, and not an invitation or urge to speculate in any form;

The Magic Star System "turns on the lights" on all numbers on angles which the public has heretofore been kept in ignorance. It eliminates all thoughtless and careless plays; it is absolutely correct in all principles;

The Magic Star System's super-excellence will be instantly recognized as a great and important discovery. A mark of scientific compilation and research;

The Player has at all times the percentages in his favor if the Magic Star System is correctly followed. The only system yet devised that averages the same amount of profit regardless whether you hit daily or monthly. Mathematically exact and scientifically correct. Positive in its operation. An eliminator of possible losses;

The surest thing. The Magic Star System will put odds in your favor;

The Fastest Four: 217—932—739—276. They are the cream of the crop. It will Pay You to tab;

The Fastest Four: 239—238—068—028. Always good in all districts and all systems to play. O. K.;

723—519, here are the real pay-offs. Just like money in the bank;

The way to overcome the element of equilibrium when wagering is, add one risk after each failure and deduct one from the previous risk after each favorable advent;

This caliber of information, coupled with progressive plays, will get the desired results over a period of time. This system is eagerly looked forward to by many people over the entire country who are acquainted with its merits and they continue to subscribe to each and every edition to keep posted on the largest results;

That our Magic Star System will show a profit and Proof that the profits will average just as much as if you had hit every day or 6 days a week. If correctly followed you cannot lose;

The first ten months of 1934 showed a profit of \$1,358.60, with a starting capital of only 60¢;

#### LUCK

#### Love—Money—Success

Get your share. Kill the jinx. Be Lucky at all times. We have what you need and want. If you Want Plenty of Luck get in touch with us. Send a stamp for prices. Write to us today and be Lucky.

The respondent hereby admits:

1. The Universal Good Luck Charm, or Coin, or Token, has no connection with, or influence upon the matter of luck;
2. That the Magic Star System is not scientific, nor the result of research, nor an important discovery, nor is it tested and proven, nor is it correct in all its principles;
3. That the Magic Star System does not in any way eliminate the laws of chance, forecast winning results, or secure results, profits, or winning of any kind, or any amount at any particular time or over any period of time;
4. That the Magic Star System is not based on the law of averages, and does not eliminate all thoughtless and careless play;
5. That the Magic Star System does not tell all there is to know about numbers, and that no number or group of numbers has, or have, any efficacy as "The Fastest Four", "Cream of the Crop", etc.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the Universal Good Luck Charm, or Coin, or Token possesses the virtue of making the carrier lucky, or has any connection with, or influence upon the subject of luck;
- (b) That the Magic Star System is scientific, accurate, correct in principle, based on research, is a new discovery, or has any virtue, or efficacy in connection with eliminating in any way the operation of the laws of chance;
- (c) That the Magic Star System will tell all there is to know in regard to the subject of numbers, or that any number, or group of numbers has, or have, any particular efficacy in any respect as "The Fastest Four", or the "Cream of the Crop", etc.;
- (d) That the Magic Star System in any way promotes the making of a profit at any particular time, or over any period of time;

and from making any other claims or assertions of like import. (Apr. 27, 1936.)

01370. **Vendor-Advertiser—Medicinal Preparation.**—Venus Health Corporation, a corporation, Los Angeles, Calif., vendor-advertiser, is engaged in selling certain medicinal preparations designated Venus Fat Reducing Tablets and V-76 Tablets and in advertising represented:

Has been proved over a period of many months to be everything we claim it to be.

Tablet 76—If you are suffering from indigestion, dyspepsia, headache, sour breath, or faulty elimination.

Most effective in restoring normal bowel activity.

A corrective for faulty elimination.

For Chronic Constipation, Gastritis, Stomach Distress, Bilious Attacks.

Regulator and Normalizer for Gastro-Intestinal Tract.

The nutritive properties tend to correct inflammation and irregularities of the internal organs.

Halitosis—After proper evacuation is brought about by the use of Tablet V-76 it is invariably found that the breath sweetens and is normal again.

A great many users of Tablet V-76 report that a condition caused by mucuscolitis has been relieved almost immediately.

Most satisfactory in cases of gastritis, heart-burn, rash, pimples.

Purchase Tablet V-76 Today and start on the road to Happiness and Good Health.

Has most rejuvenating effect on the intestines and has been known to relieve most acute chronic constipation.

The Venus method is guaranteed to reduce your weight 3 pounds in the very first week.

Start reducing in this drugless, safe and sane way.

If you are 10 lbs or 100 lbs overweight we believe you can reduce to normal by the Venus method.

Have taken one bottle of your Venus Tablets. Have lost nine pounds.

I have used a half-bottle of Venus Tablets and lost 10 pounds.

Have taken only one bottle—lost 9 pounds the first week and five pounds in the second week.

Have lost 17 pounds on one bottle.

Have taken your Venus Tablets for only three weeks and lost 16 pounds.

I have reduced from 255 pounds down to 180 pounds in six months. I am a booster for Venus.

The respondent hereby admits:

That according to reliable medical authority, the therapeutic value of both of respondent's preparations is limited to that of a simple laxative; and that such preparations will not correct the cause or overcome any type of constipation other than a simple, temporary condition.

That neither of such preparations has in itself any effect in causing a loss of weight other than that produced by the continued taking of a laxative.

That the continued taking of a laxative is capable of producing harmful effects and is not therefore either safe or harmless.

That the ingredients of which these products are composed do not afford a competent treatment for chronic constipation or for certain other distressing conditions named; nor are they effective as a regulator or normalizer for the gastrointestinal tract and other serious conditions mentioned.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the V-76 Tablets constitute a competent treatment or an effective remedy for gastritis, stomach distress, bilious attacks, indigestion, dyspepsia, headache, halitosis, heart-burn, rash or pimples;

(b) That V-76 Tablets constitute a competent treatment or remedy for constipation effective beyond the relief of simple or temporary constipation;

(c) That the V-76 Tablets constitute a regulator or normalizer for the gastrointestinal tract, or have nutritive properties which tend to correct inflammation or irregularity of the internal organs;

(d) That by the use of V-76 Tablets conditions caused by mucuscolitis have been relieved;

(e) That V-76 Tablets have been proved to be everything respondent claims for them;

(f) That V-76 Tablets are effective in restoring normal bowel activity;

(g) That V-76 Tablets are safe or harmless;

(h) That V-76 Tablets have any rejuvenating effect on the intestines;

(i) That the Venus Method is either a drugless, or a safe or a sane way to start reducing;

(j) That any overweight person may reduce to normal by the Venus Method,

(k) That any reduction in weight experienced by any person was due entirely to the use of Venus Tablets;

and from making any other claims or assertions of like import. (Apr. 27, 1936.)

01371. **Vendor-Advertiser—Booklet.**—Stephen V. Gimino and Anthony V. Gimino, copartners, operating under the firm name of Elite Publishing Co., New York, N. Y., vendor-advertiser, is engaged in selling a booklet entitled "Collection of Successful Business Plans" and in advertising represented:

One-hundred-and-seven plans for starting a business \* \* \* no risk; start the plans which require no investment.

Statistics prove that the man or woman who starts an independent business, however small, has sixteen times the chance to become a marked success as the man who "accepts a position" on a salary.

The plans are bound together in handsome leatherette-covered book.

These plans are different from starting a store, where you must buy a stock of merchandise at the very start. We could point out hundreds of examples of men and women who have started with nothing but a dollar or two and the right plan, who are now independently wealthy.

Plan 1. \* \* \* "\$5,000 in one year" is the earnings reported by one operator of this unique idea. \* \* \* Certainly this is an uncrowded field, offering almost unlimited possibilities.

I want the opportunity to make \$10,000 a year or more. Can I do it with your plans? Answer: \* \* \* There are many of our plans which are earning more than the amount you mention for the operators. If you are a hard worker, you should find it just as easy to make big money with these plans as to "hold down" a \$25.00 a week job for somebody else.

Approved Plan for Securing Additional Incomes.

Last Saturday I made \$1.00 in less than one hour with Plan 40.

Free Booklet describes 87 Plans for making \$20.00-\$100.00 weekly in home or office business of your own. Elite Publishers.

The respondents hereby admit:

That respondents have no evidence substantiating the statement that the chance for success in an independent business is sixteen times greater than the chance for success in a salaried position or that many people have become independently wealthy through a utilization of any of their plans;

That the plans have not been approved by any person or organization qualified to pass judgment on such matters;

That there is no evidence that anyone has earned \$5,000 to \$10,000 per year by following the plans set forth in the booklet;

That there is no evidence that the average weekly earnings of persons who have followed the plans set forth in the booklet equals the amounts represented in the foregoing advertisements;

That respondents' booklet is not bound in leather;  
That respondents' booklet does not outline any plan for engaging in business without financial risk;  
That the booklet is not free.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the chance for success in an independent business is greater than the chance for success in a salaried position unless such statement is substantiated by authentic statistical data;

(b) That the plans have been "approved";

(c) That the plans do not involve any risk or require any investment;

(d) That said booklet is free unless sent without the payment of money or the rendering of any service;

and from making any other claims or assertions of like import.

The respondents further agree to cease and desist from using the term "leatherette" to describe the binding of the booklet when such binding is not composed entirely of leather.

The respondents further stipulate and agree:

(a) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more persons following respondents' plans under normal conditions in the due course of business.

(b) Not to make unmodified representations or claims or earnings in excess of the average earnings of persons following respondents' plans achieved under normal conditions in the due course of business.

(c) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as" or any equivalent expression any amount in excess of what has actually been accomplished by one or more persons following respondents' plans under normal conditions in the due course of business. (Apr. 28, 1936.)

**01372. Vendor-Advertiser—Lubricant.**—Mrs. Dean Ladd Kidder, Widow and Executrix of the last will and testament of William V. Kidder, deceased, doing business under the trade name of Pyroil Co., La Crosse, Wis., vendor-advertiser, is engaged in selling a graphited lubricant designated Pyroil and in advertising represented:

Pyroil contains a special solvent to remove carbon.

Fig. E.—Rings magnified 167 diameters; 1, untreated metal, run 24 minutes after oiling—surface shows bad scoring. 2, Pyroil treated, 38 minutes after oil was shut off—surface in perfect condition, no scoring.

Pyroil Lubrication Process makes metal self-lubricating.

From the experiments and tests which have been conducted in practice with motor car engines, it would not seem an idle prediction that, with the new lubricant (Pyroil) in our modern motor car engines we should expect to prolong the useful life of our car engines from 50% to 150%. In other words, instead of "trading them in" after a period of a few years and a run of fifty to sixty thousand miles, we should presently find the original owner still "enjoying" his motor car after having run it for one hundred to one hundred and fifty thousand miles.



Pyroil has likewise enabled an automobile to drive continuously for more than 900 miles without any oil whatsoever in the crankcase.

Pyroil Solves Problem of Limited Supply of Oil.

One of the most remarkable tests ever made on a lubricant of this type was carried out some time ago when an automobile engine, after having been run with this form of lubricant for a while, had all lubricating oil withdrawn from the engine crankcase; the car was then driven with a "dry" engine, officially sealed, over a distance of *nine hundred and twenty-two miles*. Temperatures were taken before and after the 922-mile test; and the engine showed no unusual temperature rise, when readings were taken of the various bearings and other parts of the engine.

Another important point about this new lubricant, Pyroil, is that if, through failure of the oil pressure, the shaft and bearing surfaces do come into frictional contact, they will not burn or tear into each other with disastrous results (as with ordinary oil); for the Pyroil heat and dilution proof, friction and wear-reducing, self lubricating surfaces on the shaft and bearings will provide sufficient lubrication to preclude any such disastrous results.

Once Pyroil is rubbed into the bearing surfaces by the action of the motor, it actually penetrates the metal, filling in pores, cracks, and crevices.

The respondent hereby admits:

That Pyroil does not contain a special solvent to remove carbon;

That Pyroil will not produce a perfectly smooth surface where deep scoring has occurred;

That Pyroil will not make engine metal parts self lubricating;

That Pyroil will not more than double the life of an automobile, nor will it increase its usefulness 50% to 150%, nor will the motorist still be enjoying his automobile after it has run 100,000 to 150,000 miles;

That Pyroil, as soon as added, will not permit a motor to run for many miles without oil and without damage to motor parts.

That once Pyroil is rubbed into the bearing surfaces by the action of the motor, it does not actually penetrate the metal, filling in pores, cracks, and crevices.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Pyroil contains a special solvent to remove carbon;

(b) That Pyroil will produce a perfectly smooth surface where deep scoring has occurred;

(c) That Pyroil makes engine metal parts self-lubricating;

(d) That Pyroil will more than double the life of an automobile, or increase its usefulness 50% to 150%, or that the motorist will still be enjoying his automobile after it has run 100,000 to 150,000 miles;

(e) That Pyroil, as soon as added, will permit a motor to run for many miles without oil and without damage to motor parts;

(f) That once Pyroil is rubbed into the bearing surfaces by the action of the motor, it actually penetrates the metal, filling in pores, cracks and crevices;

and from making any other claims or assertions of like import. (Apr. 28, 1936.)

01373. Vendor-Advertiser—Device for Misshapen Ears.—George H. Sanders, Walter C. Schad, and Art Ede, copartners, operating as

Aura Laboratories, New York, N. Y., vendor-advertiser, is engaged in selling a device recommended for correcting protruding ears, known as Aura Primset and in advertising represented:

Protruding Ears? A simple modern device sets them in position immediately. Endorsed by physicians and users as the best method for correcting the disfigurement.

Normal setting can be effected immediately without mechanical appliances, surgery, head bands, discomfort or embarrassment. \* \* \*

A disfigurement easily rectified.

The unfortunate possessor of protruding ears \* \* \* his disfigurement is easily overcome.

Within five minutes after Aura Primset is received \* \* \* his or her ears can be set in normal position to the head and made to stay there. \* \* \*

It eliminates troublesome caps, head bands and mechanical devices and corrects as sure as painful surgery \* \* \* when its use is persevered in, it will, in most cases, train the muscles of the ear to set back normally, thus effecting a permanent relief from the deformity in the oldest cases.

\* \* \* physicians \* \* \* the world \* \* \* endorse it as being "the best known method" \* \* \*

\* \* \* am using Primset \* \* \* my ears are standing out at least half an inch less \* \* \*

Aura Primset is guaranteed to set the ears in a natural position against the head.

It has been of service to all types of classes, children and adults, and has become a vital necessity. To many in the motion picture colony it is an indispensable accessory.

There is not a case of protruding ears to which Aura-Primset cannot be applied and prove of service. Sometimes ears are misshapen as well as protruding and in many of such cases Aura-Primset has been known to help in forming more natural looking curves whilst holding them in position.

Aura Laboratories.

The respondents hereby admit:

That the device sold by respondents consists of adhesive tabs and glue, and, while it may bring upper part of the external ear closer to the head and hold it there so long as the device is applied, permanent relief cannot be had in all cases by the use of this device, but said device is effective as a temporary expedient only;

That many cases of misshapen or protruding ears require surgery for permanent correction;

That the device sold by respondents is not an indispensable accessory to many people in the motion picture colony;

That this device is not endorsed by physicians as "the best known method" of correcting misshapen or protruding ears;

That protruding or misshapen ears is not a disfigurement that is easily rectified or overcome;

That the device sold by respondents does not, within five minutes, set the ears in a normal position to the head and make them stay there, but the relief or correction derived from the use of this device is temporary;

That respondents do not own, operate or maintain a laboratory or laboratories for the manufacture of their product.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the device known as Aura Primset is endorsed by physicians as the best method for correcting misshapen or protruding ears;
- (b) That this device will correct protruding ears or give permanent relief;
- (c) That normal setting of protruding ears is effected immediately by use of this device and without resort to surgery;
- (d) That disfigurement of the ears is easily rectified or easily overcome;
- (e) That within five minutes after Aura Primset is received, his or her ears can be set in normal position to the head and made to stay there;
- (f) That Aura Primset—
  - 1. Corrects as sure as surgery; or
  - 2. Trains the muscles of the ear to set back normally, thus effecting a permanent relief from the deformity in the oldest cases;
- (g) That the use of Aura Primset will reduce the protrusion of the ears by half an inch, or any other definite distance;
- (h) That Aura Primset is—
  - 1. A vital necessity; or
  - 2. Useful to all classes; or
  - 3. An indispensable accessory in the motion picture colony;
- (i) That Aura Primset will prove of service to all types of protruding ears or will help restore misshapen ears in all cases;

and from making any other claims or assertions of like import. (Apr. 28, 1936.)

01374. **Vendor-Advertiser—False Teeth Cleaner.**—Leon M. Nelson, an individual, operating as Nelson Laboratories, Alhambra, Calif., vendor-advertiser, is engaged in selling certain commodities designated as Nelson's Dental Plate Cleaner and Nelson's Dental Plate Brush, recommended for cleaning false teeth, and in advertising represented:

Nelson's Dental Plate Cleaner sterilizes false teeth, etc. Will not scratch or injure plates;

Make up to 150% profit on brush for artificial teeth. Just out. Biggest improvement in 25 years. Make \$2. to \$3. a day extra;

A scientifically compounded antiseptic;

After using it the plates are sterilized;

Improved health;

Unlimited field, big demand—easily sold and 185% profit;

Handle with other lines and make \$2 a day.

The respondent hereby admits:

That said cleaner does not meet the recognized tests of a sterilizer or an antiseptic.

That said product contains ingredients which in some instances might scratch or injure the plate.

That there is no evidence to support the claim that the use of this preparation will improve one's health;

That there is no evidence that the average earnings of respondent's salespersons equal the amounts set forth in the aforementioned advertisements.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Nelson's Dental Plate Cleaner

1. Will sterilize false teeth; or
2. Is a scientifically compounded antiseptic; or
3. Will not scratch or injure the plate;

(b) That using Nelson's Dental Plate Cleaner results in "improved health"; and from making any other claims or assertions of like import.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, stipulates and agrees:

(c) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time salespersons or dealers achieved under normal conditions in the due course of business;

(d) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business;

(e) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business; and

Respondent further stipulates and agrees to cease and desist from using the word "Laboratories" or "Laboratory" in his trade name and advertising until such time as he shall actually own, maintain or operate a laboratory. (Apr. 29, 1936.)

**01375. Vendor-Advertiser—Food Preparation.**—Tayton Co., a corporation, Kansas City, Mo., vendor-advertiser, is engaged in selling a food preparation designated Nutri, and in advertising represented:

Nervous. Don't sleep soundly—just a food picker-over. Thin, frail, gland starved. Science has made a remarkable food discovery for you.

If you are one of those thin, nervous, worrying, can't sleep soundly, frail looking, constipated, draggy, pepleless, half-alive, no keen desire to eat "just pick over your victuals" individuals—don't delay another day! By all means get a can of Nutri.

The remarkable English concentrated discovery \* \* \* a pure food that combines the nerve, gland, blood, tissue, body, and energy building vitamins \* \* \* You will sleep like a log \* \* \* builds red corpuscles.

\* \* \* I had quit hoping to ever gain a pound. I was in Dr. — office one day with my sister. He told me about Nutri. That it was three concentration discoveries combining all seven vitamins and eight minerals in chocolate malt. It was so remarkable I tried it. I started gaining weight and have now gained 14 pounds.

Three concentrating discoveries. To successfully gain the proper weight, doctors and dieticians now know you must have All the Vitamins and Minerals and supplement your calories intake. A deficiency in any one may be the very

reason you do not gain properly, are nervous and lack energy. Now for the first time in history Nutri combines all the seven vitamins \* \* \* and eight minerals.

Made possible by concentration process that has been accepted by the American Medical Association, so you know it is reliable.

Results guaranteed. It is sold under an absolute money-back guarantee \* \* \* Nutri is really a remarkable combination of concentrated flesh and health building foods, vitamins and minerals \* \* \* gain weight or your money back.

One spoonful of Nutri equals one spoonful of best Cod Liver Oil—over 300 Adma units of Sunshine Vitamin D.

The ingredients of Nutri have been accepted by the Committee on Foods of the American Medical Association.

The respondent hereby admits:

1. That Nutri is not an effective treatment for such conditions as:
  - (a) Nervousness,
  - (b) Insomnia,
  - (c) Worry,
  - (d) Frail appearance,
  - (e) Constipation,
  - (f) Lack of appetite,
  - (g) Starved glands.
2. That Nutri does not contain all of the vitamins or minerals necessary to building nerves, glands, blood, tissue, body, and energy;
3. That the gain in weight stated in published testimonials cannot reasonably be expected by the average user of Nutri;
4. That use of the product will not enable one to gain the "proper" weight;
5. That the product is not equal to Cod Liver Oil in content of vitamin D;
6. That the ingredients of which Nutri is composed or the process by which it is manufactured have not been accepted by the American Medical Association;
7. That Nutri is not a new discovery or three concentrating discoveries;
8. That it is not necessary to supplement the ordinary diet with Nutri in order to procure the necessary vitamins and minerals.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the product is an effective treatment for such conditions as nervousness, insomnia, worry, frail appearance, constipation, lack of appetite, starved glands;
- (b) That the average user of the product will gain weight;
- (c) That use of the product will enable one to gain the "proper" weight;
- (d) That the product contains all vitamins or minerals necessary to build nerves, glands, blood, tissue, body, energy;
- (e) That the ingredients of which the product is composed or the process by which it is manufactured have been accepted by the American Medical Association;
- (f) That "results" are guaranteed as distinguished from a guarantee to refund;

(g) That the product is equal to Cod Liver Oil in content of vitamin D, unless and until the vitamin D content is increased to equal the vitamin D content of U. S. P. Standard Cod Liver Oil;

(h) That the product is a new discovery or is three concentrating discoveries; and from making any other claims or assertions of like import. (Apr. 24, 1936.)

**01376. Vendor-Advertiser—Medicinal Preparation.**—Chas. Endorf, an individual, operating under the trade name and style of Enco Products, Chicago, Ill., vendor-advertiser, is engaged in selling certain medicinal preparations designated "Protecto Remedies", and in advertising represented:

Statement re abortifacient properties of Protecto preparations.

Women—Stop Pain and Delay.

Be Regular: End Periodic Delay.

Get sure, Quick Relief.

Many are the methods used for feminine hygiene. Some are worthless so far as Efficiency and Safety are concerned. Others are positively harmful. In presenting the Protecto line of Products for proper feminine hygiene Enco Products assure the greatest possible Efficiency without injurious results. I, who am experienced in the matters of feminine hygiene, recommend these products to you. Their description and their proper application will be found on the following pages.—Evelyn Miller.

Protecto Periodic Tablets are compounded in accordance with the most advanced medical practice of leading physicians and are scientifically compounded and prepared from U. S. P. ingredients, and meet all the requirements of the United States Pure Food and Drug Act.

They are non-irritating, yet they stimulate the menstrual flow. Their action is so mild that you will not be inconvenienced from your home or social duties.

They are not a narcotic, consequently not habit forming. Their use may be discontinued after desired results are obtained. They aid in correcting a faulty condition, not merely alleviating pain. Protecto Periodic Tablets act as a general tonic, relieving congested conditions, pain, and stimulating uterine health.

While no two women respond alike, the average woman does very quickly to Protecto Periodic Tablets. Quick and definite results are the rule rather than the exception. Often obstinate and abnormal cases have responded in 48 hours. Any woman who is suffering from abnormal irregularities of the menstrual functions may be happily and agreeably surprized by using Protecto Periodic Tablets.

Protecto Periodic Tablets are made in double strength and extra special strength. The latter should be used in particularly obstinate cases.

Where menstruation has been suppressed for one or more months, it is desirable to take Protecto Periodic Tablets as directed ten to twelve days before the expected menses. In real obstinate cases treatment from three to four weeks is often required to re-establish the menstrual flow.

Full satisfaction; quick relief and protection is given women when they use our Vagi Tabs and Periodic Tablets or any other of the effective Protecto Products.

Intelligent, modern women who desire to relieve themselves of stubborn periodic delays due to unnatural causes and wish to avoid the needless suffering caused by them will find Protecto Periodic Tablets or Protecto Liquid Relief Compound most reliable and effective products.

Protecto Dysmenorrhea Tablets relieve regular pain at or before the menses. They relax the uterine muscles, thus relieving cramping while assisting in the natural menstrual flow.

They contain no narcotics or habit forming drugs, and are easy and pleasant to take and produce no depressing or harmful effects.

And if you are afflicted every month with regular pain, you naturally will want to take advantage of the quick relief accorded you by *Protecto Dysmenorrhea Tablets*, described on the last page of the booklet.

*Protecto Vagi Tabs* are absolutely Safe. Yet they contain an antiseptic 54 times as effective in killing the bacillus typhosus as carbolic acid. This antiseptic will accomplish in 5 minutes the same degree of sterilization as that produced by bichloride of mercury in 7 hours and phenol in 24 hours. *Protecto Vagi Tabs* excel many antiseptics because they attack invading germ organisms without injury to the surrounding tissue. They do not coagulate the blood serum which increases their penetrating properties and germicidal value. Antiseptics containing phenol, iodine, silver nitrate, or bichloride of mercury are deadly poisons and their continued use has been known to produce disastrous results. *Protecto Vagi Tabs* are non-poisonous and could be taken internally without harmful results. In septic conditions *Protecto Vagi Tabs* act as a deodorant.

*Protecto Vagi Tabs* are made in a thoroughly modern laboratory under the supervision of registered pharmacists.

*Protecto Douche Powder* is Safe in all respects. It is many times more powerful in germ destroying power than poisonous, caustic preparations. It acts more quickly, yet is absolutely harmless to the most delicate tissue.

Its use is extremely valuable in cases of endometritis, leucorrhea, gonorrhea, vaginitis, catarrh, pain, soreness, and other ailments which may result from disorders present in the vaginal tract.

Do you have that constant tired feeling? Are you suffering from nervous debility, general weakness, melancholy, anemia, loss of appetite, malnutrition, or loss of vigor?

*Protecto Vita Tabs* are just what their name implies. They will often restore strength and energy by stimulating the vital functions in the entire system to an increased vigor. They are a general tonic to the body. They assist in building up rich red blood and in promoting the action of the stomach, kidneys, liver, and other vital organs. Their consistent use will aid nature in replenishing those vital elements so necessary to a strong virile constitution.

Many men and women have taken a new lease on life through the use of *Protecto Vita Tabs*. We are sure that you, too, will receive untold benefits.

Losses of from 5 to 10 pounds in weight are often secured in 30 days.

The enclosed booklet is our latest—just off the press. It contains information of great value to women, saving them much money, guarding their health and relieving them of many of their worries.

The respondent hereby admits:

That *Protecto Remedies* are not made under such conditions as would permit it to be stated with scientific accuracy that such remedies are made in a laboratory under the supervision of registered pharmacists; or are compounded in such a manner as to be in accordance with the most advanced medical practice of leading physicians from U. S. P. ingredients to meet all the requirements of the Food and Drug Act;

That *Protecto Periodic Tablets* are classed as emenagogues, and that while they stimulate the uterus, they will not initiate or re-establish menstruation, since this act is a function of the lining membrane of the womb;

That medicinal agents such as *Protecto Remedies* are not adequate remedies for the relief of pain caused by or associated with menstruation (dysmenorrhea), or caused by or associated with the lack of menstruation; nor will such remedies relieve the causative factor;

That Protecto Remedies are not harmless to the most delicate tissue, or non-poisonous, or safe to be taken internally in whatever amount, in all cases, and under all conditions;

That Protecto Remedies are not competent remedies for the treatment of nervous debility, general weakness, melancholy, anemia, loss of appetite, malnutrition, or loss of vigor; nor will they act as a general tonic, or stimulate internal health to any beneficial extent by stimulating vital functions of the body or assisting in building up the blood supply, or promoting the action of the stomach, kidneys, liver, or other vital organs;

That Protecto Remedies do not constitute a competent treatment for obesity and will not result in loss of from five to ten pounds in weight in 30 days, or any specific amount in any particular period of time;

That Protecto Remedies will not accomplish as an antiseptic or germicide in five hours what it takes bichloride of mercury seven hours and phenol twenty-four hours to accomplish; or act fifty-four times as effectively in killing the bacillus typhosus as carbolic acid; or destroy germs many times faster than poisonous, caustic preparations;

That Protecto Remedies are of limited value only and are not extremely valuable in cases of endometritis, leucorrhea, gonorrhea, vaginitis, catarrh, pain, soreness, and other ailments which may result from disorders present in the vaginal tract;

That while Protecto Periodic Tablets might produce abortion in some cases, abortion would not be produced by the use of such tablets in the great majority of cases;

That Protecto Vagi Tabs are not competent to act as a contraceptive;

That the woman whose name appears in the advertising literature of the respondent does not conduct the business of the respondent, or have any connection with the conduct of such business.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Protecto Remedies are made in a laboratory under the supervision of registered pharmacists, or compounded in accordance with the most advanced medical practice of leading physicians, or prepared from U. S. P. ingredients to meet all the requirements of the Food and Drug Act;

(b) That Protecto Remedies will initiate or re-establish menstruation, or that such remedies will assist the natural menstrual flow in simple or stubborn cases, or relieve periodic delay of whatever nature, or due to whatever cause, within whatever period of time, or that such remedies will relieve to whatever extent the worries of women, or solve to any extent the perplexing problem of women;

(c) That Protecto Remedies are a competent or adequate remedy or treatment for the relief of pain associated with menstruation, or associated with the lack of menstruation, or will stop pain, avoid needless suffering, relieve congested conditions, give sure, quick relief, or otherwise be of material help or value for such conditions;

(d) That Protecto Remedies are safe, non-irritating, non-poisonous, and can be taken internally, and are harmless to the most delicate tissue, unless qualified to state that such is not true irrespective of the amount used or taken of such preparations, in all cases and under all conditions;



(e) That Protecto Remedies have any tonic value, or constitute a competent treatment for nervous debility, general weakness, melancholy, anemia, loss of appetite, malnutrition, loss of vigor, or stimulate beneficially to any material extent any of the secretions or functions of the body, thereby increasing or improving the blood supply, or promoting or restoring strength or virility, or improving the action of any of the vital organs, or in any other way helping to improve or promote bodily health or well being;

(f) That Protecto Remedies are a competent treatment for obesity, or will cause any specific reduction of weight within any specified period of time;

(g) That Protecto Remedies will accomplish in five hours what it takes bichloride of mercury seven hours and phenol twenty-four hours to accomplish, act fifty-four times as effectively in killing the bacillus typhosus as carbolic acid, or destroy germs many times faster than poisonous, caustic preparations;

(h) That Protecto Remedies are a competent treatment, or extremely valuable in the treatment of endometritis, leucorrhea, gonorrhea, vaginitis, catarrh, pain, soreness, and other ailments which may result from disorders present in the vaginal tract;

(i) That Protecto Vagi Tabs will act as a contraceptive;

(j) That Protecto Periodic Tablets will produce abortion unless qualified by the statement that such is true in only a limited number of cases;

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees to cease and desist from using a woman's name, or women's names, in his advertising literature unless such woman or women actually conduct the business.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 30, 1936.)

01377. Vendor-Advertiser—Cosmetics.—S. Cheifetz and M. A. Jacobs, co-partners, doing business under the firm name of Lenox Sales Co., New York, N. Y., vendor-advertiser, is engaged in selling certain cosmetics and novelties, and in advertising represented:

Free Gifts.

Send immediately for our free gift plan.

How to get watches, cameras, cocktail sets, 7 pc. bed sets, and many other gifts,

Without Any Cost To You.

Gifts for all at no cost to you.

The respondents hereby admit:

That their commodities are not offered free and without cost to those responding to their advertisements, but that said products are sold to the general purchasing public at their regular market values, or are given in payment for services rendered.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

That any article or premium is a "gift", is "free", or is without cost if the receipt of such article or premium is contingent upon the recipient's furnishing of any money, services, or other valuable consideration.

and from making any other claims or assertions of like import.

The respondents further stipulate and agree not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 30, 1936.)

01378. Vendor-Advertiser—Medicated Wine.—Wroblewski Laboratories, Ltd., a corporation, Brooklyn, N. Y., vendor-advertiser, is engaged in selling a certain wine possessing laxative qualities, designated "Kalwaryjskie Wino Lecznice" and in advertising represented:

If you are suffering from stomach disorders \* \* \* ask for a bottle of Calvareska Medicinal Wine.

\* \* \* best for stomach trouble \* \* \*

Gentlemen: I've been having headaches for sometime and having heard your programs I decided to try a bottle of Calvareska. After using only one bottle I am feeling a great deal better, and I want to thank you sincerely for what Calvareska Medicinal Wine has done for me. I will be glad to recommend Calvareska Medicinal Wine to my friends.

\* \* \* it is made from a scientific mixture of barks and fruit juices, blended by experts to make a pleasant tasting, effective remedy for headaches, and stomach conditions.

What a pity that so many women age while they are still young. They lose, all too soon, that radiant health and vivacity, and in its place comes a listlessness which is far from attractive. Very often this is simply paying the price of that common enemy \* \* \* constipation. Constipation does more than simply undermine health; it often is responsible for many ailments not always attributed to it. For example, stomach disorders, headaches, general weakening of the system, and sluggishness. And very often it is responsible for pimply and blotchy skin, wrinkles, bad breath, and loss of energy. Try the tried and true friend of sufferers from constipation—Calvareska Medicinal Wine.

Sallow, pimply skin, dull eyes and a tired, drawn face, all these are results of constipation, beauty's worst enemy. If you are constipated today, and you want to look your best tomorrow, take Calvareska Medicinal Wine before retiring. The mild but thorough action of Calvareska Medicinal Wine is particularly suited to women's needs.

Kalwaryjskie Medicinal Wine regulates the functions of the stomach \* \* \*

If your cold continues it will weaken your system. You'll get rid of your cold shortly if you use the right remedy at the right time. A cold is from the inside, not from the outside.—therefore it should be treated from the inside. And that medicine is Kalwaryjskie Wino Lecznice. This wine does four things for a person. Aids in faulty elimination—aids in killing the cold by doing away with the fever—does away with headaches and chills—strengthens and builds up your whole system.

Mr. John Maskowski, 254 Wythe Ave., Brooklyn, N. Y. tells us in his letter about Kalwaryjskie Wine the following story: I heard about Kalwaryjskie Celebrated Wine over the radio, I bought it, and after using this medicine, I may safely state, that Kalwaryjskie is the best for stomach trouble.

If you need a stomach remedy, we suggest that you use Kalwaryjskie Wine.

\* \* \* constipation caused through the weakened condition of the bowels and to lack of secretions of the digestive organs \* \* \* helps digestion, increases the appetite, and works as a general strengthener.

I am writing to let you know how good your Kalwaryjskie Wine is. I was very dizzy, and tried everything but it did not help. After using four bottles of Kal-

waryjskie Medicinal Wine I feel fine. I am enclosing \$4 and kindly ask you to send me another four bottles of Kalwaryjskie Medicinal Wine. Thanking you, I am, Mrs. Petryna Adams, 44 Francis St., Ansonia, Conn.

\* \* \* Try to free your system from poisons which gather in your system when you are constipated. These poisons deprive you of your vitality, they make you feel tired, your eyes get that dull, hopeless look, your face is pale, and often it is covered with pimples, blotches, and other blemishes.

The respondent hereby admits:

1. That this wine, by virtue of its bitter qualities, would tend to increase the appetite, and through its contained cascara, act as a laxative, and that reliable medical opinion limits its therapeutic properties to such benefits;

2. That it does not now own and operate an adequate laboratory under the supervision of a competent scientist where experimental or research work is being conducted.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this wine is a competent treatment or effective remedy for—

1. Stomach trouble,
2. Stomach disorders,
3. Headaches,
4. Constipation,
5. Listlessness,
6. General weakening of the system,
7. Sluggishness,
8. Pimply skin,
9. Blotchy skin,
10. Wrinkles,
11. Bad breath,
12. Loss of energy,
13. Stomach conditions,
14. Sallow skin,
15. Dull eyes,
16. Tired, drawn face,
17. Dizziness,
18. Skin blemishes,

(b) That the use of the said wine will prevent loss of health and vivacity;

(c) That the said wine—

1. Strengthens the system in general, or builds up the whole system;

(d) That the said product "regulates" the functions of the stomach, or is a stomach remedy;

(e) That the said Wine—

1. Is a cold remedy,
2. Will "rid" one of a cold,
3. Will "kill" a cold,
4. Will "do away with" fever, headaches, and chills;

(f) That this wine will "correct" a weakened condition of the bowels, or that it will afford any beneficial effect at all where the bowels are in a weakened condition;

(g) That the said wine will free the system of poisons;

and from making any other claims or assertions of like import. (Apr. 30, 1936.)

**01379. Vendor-Advertiser—Cosmetics.**—Madam White Cosmetics, Inc., a corporation, Minneapolis, Minn., vendor-advertiser, is engaged in selling certain cosmetics designated Madam White Cosmetics and in advertising represented:

\* \* \* Made \$20.00 one evening in a small country town. A widow supports sister and herself and is sending her eighteen year old son through college—all from Madam White earnings. Miss John of Dakota made \$35.00 in one day. The same week her earnings were about \$200.00 besides a handsome wrist watch; I am offering you the \$15.95 demonstration set, including sample case, and full training actually free;

I have built a big nation-wide business with my methods. With these methods my distributors and tradespeople have been making in depression times more money than the average professional person makes in normal times;

We cannot say at this time just how many customers we have in your community, but in most communities the number runs into hundreds. We have established a very large list of permanent customers who will not buy any other cosmetics except Madam White's;

\$180.00 in sales the first week single handed. I have sold over \$180.00 worth of merchandise my first week, and all paid for and delivered;

Beautiful Sample Case Included Without Charge. This wonderful outfit \$15.95 value Free;

One of the many features of the Madam White products is that they keep indefinitely. Age does not affect them and they are as pure as the very best of materials will make them;

What an Investment Of \$5.00 Brings You: Independence, Steady Income, Happiness, Pride in Doing Something Worth While. Over 10,000 men and women in the United States can vouch for the foregoing statement.

The respondent hereby admits:

That a cash deposit is required to obtain the \$15.95 demonstration set, which includes sample case and full training;

That agents and salespersons for Madam White products do not make more money in depression times than the average professional person makes in normal times;

That there is not in every community a very large list of permanent customers who will not buy any other cosmetics except Madam White's;

That Madam White products are affected by age and will not keep indefinitely;

That no assurance can be given that any definite amount of goods can be sold by any salesperson within a definite time, regardless of circumstances;

That the figures published as earnings made by respondent's salespersons are not net profits and that they exceed the average profits realized by its salespersons under normal conditions and in the due course of business..

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and

specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the \$15.95 demonstration set, including sample case and full training, is "actually free" to agents or salespersons so long as a cash deposit is required to obtain such outfit;

(b) That agents and salespersons for Madam White products make in depression times more money than the average professional person makes in normal times;

(c) That there is in your community a very large list of permanent customers who will not buy any other cosmetics except Madam White's;

(d) That Madam White products—

1. Keep indefinitely; or

2. Are not affected by age.

(e) That any definite amount of goods can be sold by any salesperson within a definite time, regardless of circumstances;

and from making any other claims or assertions of like import.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, stipulates and agrees:

(f) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time salespersons or dealers achieved under normal conditions in the due course of business;

(g) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished as net earnings by one or more of respondent's salespersons or dealers under normal conditions in the due course of business.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 30, 1936.)

01380. Vendor-Advertiser—Publications.—E. Haldeman-Julius, an individual, trading as Haldeman-Julius Publications, and The American Freeman, Girard, Kans., vendor-advertiser, is engaged in selling subscriptions to the American Freeman Magazine and a booklet entitled "The Rhythm Method of Natural Birth Control" and in advertising represented:

Free Book Explains Rhythm Method of Birth Control. Here is definite information—not why, but How—on the safe, natural method of Birth Control approved by science and the church. Written by Joseph McCabe, and it's free! "The Rhythm Method of Natural Birth Control" describes the Ogino-Knaus method, sensationally successful, entirely natural, which uses no drugs or instruments. The book is complete—it fully reveals How to Practice Birth Control. The Catholic Church has officially approved this method—leading physicians acclaim its success. Given Free "The Rhythm Method of Birth Control" is not for sale. We give it free with one year's subscription to The American Freeman at only \$1.00—and that is the only way to get it.

"The Rhythm Method of Natural Birth Control" \* \* \* fully reveals the facts of Rhythm Birth Control.

The respondent hereby admits:

That the booklet does not fully reveal how to practice birth control nor does it give definite or complete information on a safe method of birth control;

That the booklet does not give a complete description of the Ogino-Knaus method of birth control;

That neither the Pope nor the Bishops of the Catholic Church in the United States acting as a body have given the Ogino-Knaus method of birth control their formal approval, nor have leading physicians acclaimed the method as being successful, nor has the method been approved by science;

That the booklet is for sale;

That the purchase price of the booklet is included as a part of the purchase price of a subscription to the American Freeman Magazine;

That the booklet can be procured by means other than through a subscription to The American Freeman Magazine.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the booklet fully reveals how to practice birth control;

(b) That the booklet gives definite or complete information on a safe method of birth control;

(c) That the booklet gives a complete description of the Ogino-Knaus method of birth control;

(d) That the Ogino-Knaus method of birth control has been officially approved by the Catholic Church;

(e) That the Ogino-Knaus method of birth control has been approved by science or that leading physicians have acclaimed it as being successful;

(f) That the Ogino-Knaus method of birth control is "safe";

(g) That the booklet is not for sale or that it may be only procured through a subscription to The American Freeman Magazine;

(h) That the booklet is free so long as the purchase price thereof is included as a part of the purchase price of a subscription to the American Freeman Magazine;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 30, 1936.)

01381. Vendor-Advertiser—Malted Milk.—Marshak Maltimolac Co., Inc., a corporation, Brooklyn, N. Y., vendor-advertiser, is engaged in selling a certain beverage designated Marshak's Improved Malted Milk and in advertising represented:

Marshak's Improved Malted Milk is quickly digested and provides better nutrition, thus giving added resistance to disease.

Marshak's Improved Malted Milk helps to improve the appetite because it contains Vitamin "B", the appetite-stimulating Vitamin.

\* \* \* pains around the stomach, and other disorders. Avoid these ill after effects by letting your child quench his thirst with a foamy glass of creamy and delicious Marshak's Improved Chocolate Malted Milk.

If you can build up your children with a healthy body and a resistance to disease, you are securing your children with success for future life. Let us help you do it.

Give your children this wonderful health drink three times a day and in a short time you will be surprised at the remarkable difference that you will notice in your children's health.

Marshak's Improved Chocolate Malted Milk is not a medicine, but a health food and it contains many healthful ingredients necessary for building up the body. It also contains that valuable iron ingredient which acts as a wonderful aid for building up the red blood corpuscles in the system.

Three glasses of Marshak's Malted Milk a day will help to build up a run-down condition and a healthy resistance to sickness.

Marshak's Improved Chocolate Malted Milk is really a wonder food.

Adults as well who need additional nourishment in a concentrated form, nourishment that is easily digested and which does build up a healthy body, also find Marshak's Improved Chocolate Malted Milk does this job for them perfectly.

Marshak's Improved Chocolate Malted Milk has already accomplished wonders for thousands of people, both young and old, by its wonderful health-building qualities.

Her children were pale, thin, and anaemic and since she has begun using Marshak's Improved Chocolate Malted Milk for the children, the results are so conspicuous that all the neighbors have asked her how she did it, and there is no trick to it. You can do it and everybody else can do it. Simply give the children three glasses of Marshak's Malted Milk a day and the results will surprise you in a very short time.

Children who catch colds easily are usually pale and anaemic and the reason why they catch colds so easily because they have a low resistance to disease. The only way to overcome that is to build up their resistance and how can you do it? Let us help you. Give your children Marshak's Improved Chocolate Malted Milk three times daily. Before very long, you will see how your children are getting healthier and more robust with that happy lustre in their eyes.

Many mothers have written us how wonderfully Marshak's Improved Chocolate Malted Milk has benefited their children. It has increased their size, weight, and put healthy rosy color in their cheeks.

A survey made by the Board of Education some time ago has proven that a very large percentage of the children in public schools are anaemic which means lack of red blood corpuscles in their system. These children catch colds often and are exposed to various illnesses. To prevent your children from developing to that stage of anaemia, give them daily three glasses of milk prepared with Marshak's Improved Chocolate Malted Milk. The children will appreciate it for its delicious taste and you will be well compensated by the healthful effect it will have on your children.

Drink it tonight before you go to bed and you will sleep as restfully and as sound as you have never slept before.

Marshak's Improved Malted Milk not only makes a delicious chocolate malted drink at home quickly and economically, but it also contains a lot of nourishment and has that wonderful element of "iron" incorporated into the product. Iron has long been recognized as a reliable source for improving the blood and building up a healthy resistance.

My daughter was anaemic and underweight. I had tried many so-called perfect malteds. None of them did my daughter any good. Then my doctor mentioned Marshak's. In 3 weeks she gained 7 pounds and improved the richness of her blood. I recommend Marshak's Improved Chocolate Malted Milk for all children who wish to get healthy and stay that way.

The best and surest remedy for colds, doctors say, is a healthy, strong body. A weakened organism, which has no resistance capacity, is the first to catch cold. An unusually good remedy to give your body the necessary resistance capacity, is Marshak's Improved Chocolate Malted Milk.

The respondent hereby admits:

Most of the serious cases of anemia which are encountered are caused by conditions other than a deficiency of iron in the daily diet, and would not therefore be benefited by administration of this product.

There is no satisfactory evidence that children receiving a reasonably adequate diet have any need for additional nutriment in the form of chocolate malted milk. It is also a well established fact that many serious diseases are caused by infection and well-nourished individuals frequently fall victim to such an infection.

That a lack of appetite may be due to factors other than vitamin B deficiency.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Marshak's Improved Malted Milk will improve the appetite, unless expressly limited to cases in which the lack of appetite is due to Vitamin B deficiency;

(b) That "pains around the stomach and other disorders" may be avoided by drinking Marshak's Improved Malted Milk;

(c) That Marshak's Improved Malted Milk is a "wonder food," or "accomplishes wonders";

(d) That Marshak's Improved Malted Milk, because of the iron contained therein or for any other reason, constitutes a competent treatment or an effective remedy for anemia or will prevent children from developing to any "stage of anemia", unless expressly limited to cases of simple nutritional anemia caused by a deficiency of iron in the diet;

(e) That Marshak's Improved Malted Milk because of the iron contained therein or for any other reason will enrich the blood unless expressly limited to such cases as are caused by a deficiency of iron in the diet;

(f) That Marshak's Improved Malted Milk will provide better nutrition, or give added resistance to disease, or prevent children from catching colds, build up the body, enable one to gain weight, unless expressly limited to children not otherwise properly nourished, due to a deficiency of diet which would be supplied by this product;

(g) That if children are built up with a healthy body and a resistance to disease, their success in future life is "assured";

(h) That adults who need nourishment that is easily digested and which builds up a healthy body, find Marshak's Improved Malted Milk "does this job for them perfectly";

(i) That the drinking of Marshak's Improved Malted Milk will induce sound sleep.

(j) That Marshak's Improved Malted Milk will enable all children to "get healthy and stay that way";

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 30, 1936.)



01382. **Vendor-Advertiser—Medicinal Preparation.**—The Wyeth Chemical Co., a corporation, Jersey City, N. J., vendor-advertiser, is engaged in selling a certain preparation advertised for the removal of corns designated Freezone and in advertising represented:

Now lift off corns and Stop Pain Instantly.

Pain stops like a flash. And soon the corn gets so loose you can lift it right off with your fingers. You'll agree that it's the quickest, easiest way to stop pain and get rid of hard and soft corns, even corns between the toes.

Hard corns, soft corns, corns between the toes, and calluses lift right off! You'll laugh—it is so easy and doesn't hurt a bit!

It works like a charm, every time. Seems like magic!

How to Get Rid of Corns

Just one little drop of Freezone on that aching corn will stop all pain instantly and for good. Then a few more drops of this safe liquid and corn gets so loose you can lift it right off with your fingers, core and all! It's the quickest way known to get rid of hard and soft corns and calluses.

If you want to keep your feet free from aching corns just get a bottle of Freezone from any druggist.

It's the safe way that millions use to get rid of hard and soft corns and calluses.

Two Drops Do the Trick.

Stops Pain Instantly. Corns Lift Off.

A safe, harmless liquid that works wonders.

Freezone loosens corn so you can lift it right off easily with your fingers.

Hard corns or soft—all are quickly ended by Freezone. Calluses, too.

\* \* \* remove every hard corn, or corn between the toes, and the foot calluses, without soreness or irritation.

The respondent hereby admits:

That the removal of corns by any method is not totally devoid of soreness or irritation;

That repeated applications of Freezone and a certain amount of time are necessary to secure the removal of corns;

That Freezone will not bring instantaneous relief from the pain of corns;

That there is no preparation that will prevent the formation of corns.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Freezone will—

1. Remove corns immediately,
2. Relieve pain of corns instantly,
3. "Stop" pain,
4. "Get rid" of corns and calluses,
5. "End" corns,
6. Make pain "stop like a flash";

(b) That "Two drops do the trick", or that two drops will remove any corn;

(c) That Freezone will remove corns without soreness or irritation;

(d) That by the use of this product one can keep feet free from corns;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 4, 1936.)

01383. Vendor-Advertiser—Medicinal Preparation.—E. L. Knowles, Inc., a corporation, Springfield, Mass., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Rub-Ine and in advertising represented:

Deeply penetrating.

You may confidentially expect prompt relief.

Muscular soreness or lameness \* \* \* promptly relieved.

Rub-Ine relieves nasal congestion due to simple head colds, quickly and effectively.

Clears the nasal passages of congestion promptly.

Stiff arm, neck, and back muscles, the after result from automobile driving for long distances or exposure to draughts may be relieved quickly by applying Rub-Ine full strength.

Trainers recognize that Rub-Ine is an excellent muscle conditioner. They use it full strength to remove the stiffness and lameness from tired or strained muscles.

To relieve irritation and itching between the toes, often called athlete's foot.

Rub-Ine's *unusual penetrating power* makes it of great value in every home.

For tired feet, Rub-Ine brings complete foot comfort.

Use Rub-Ine for your more stubborn aches and pains, too. You'll like the quick relief it brings.

Use it for sunburn, mosquito bites, ivy poisoning, bee and wasp stings. It gives you instant relief.

You can depend on it to relieve such summer ailments as aching feet, mosquito bites and the irritation caused by athlete's foot.

Just a few drops on your handkerchief, used as an inhalant, quickly clears the nasal passages and reduces hay fever, irritation.

It hits the spot at once and brings you prompt relief and comfort.

Rub-Ine brings you quicker relief.

Rub out your aches and pains with Rub-Ine.

Nothing else relieves pain so promptly.

The respondent hereby admits:

That its product, as heretofore compounded, is a mild counter-irritant and that the therapeutic value thereof would be limited solely to this class of preparation;

While it is true that some of the ingredients in this preparation will, in a limited way penetrate the superficial layers of the skin, said preparation will not penetrate deeply and is of doubtful value as an effective agent in the treatment of stiff muscles or muscular lameness; it cannot, therefore, be called a muscle conditioner;

That the therapeutic value of this preparation does not place it as a competent remedy in the treatment of rheumatic and neuritis pains, nor as a relief for all of the manifestations of head colds;

That this product may have a cooling and soothing effect on the feet, but should not be alluded to as a substantial remedy for aching feet, since this condition is frequently associated with numerous foot troubles in which this product would have no effective value;

That, though this preparation may be beneficial for many purposes, it would not materially influence or alter the course of hay fever.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Rub-Ine will give quick relief from stubborn aches and pains;
- (b) That Rub-Ine has unusual penetrating powers and will penetrate deeply;
- (c) That Rub-Ine users may expect prompt, quick relief from aches and pains;
- (d) That Rub-Ine is an effective agent for the treatment of stiff muscles or muscular lameness, unless limited to such conditions, due to exposure or exercise;
- (e) That Rub-Ine is a muscle conditioner;
- (f) That Rub-Ine will relieve all the manifestations of head colds;
- (g) That Rub-Ine is a competent remedy for aching feet, and brings complete foot comfort;
- (h) That Rub-Ine is a competent remedy for athlete's foot;
- (i) That Rub-Ine gives instant relief from mosquito bites, ivy poisoning, bee and wasp stings;
- (j) That Rub-Ine quickly "clears" the nasal passages and reduces hay fever irritation;
- (k) That Rub-Ine hits the spot at once;
- (l) That Rub-Ine brings quicker relief than other counter-irritants;
- (m) That nothing else brings quicker relief than Rub-Ine;
- (n) That Rub-Ine rubs out pains and aches;

and from making any other claims or assertions of like import. (May 4, 1936.)

01384. Vendor-Advertiser—Brake Surfacing Compound.—The Rite Product Co., a corporation, Salt Lake City, Utah, vendor-advertiser, is engaged in selling a brake surfacing compound designated Stop-Rite and in advertising represented:

Get a can of Stop-Rite \* \* \* and you can completely resurface your old brakes, making them just as good as a new brake relined would do.

Get a can of Stop-Rite and then you know your brakes will hold.

Stop-Rite will save three-fourths of the cost of relining.

Stop-Rite is guaranteed for 20,000 miles.

Stop-Rite makes old brakes new at one-fourth the cost of relining.

Stop-Rite \* \* \* gives smoother, surer, brakes than new lining.

Stop-Rite will positively save three-fourths of the cost of relining brakes and eliminates frequent brake adjustments.

Stop-Rite \* \* \* eliminates squeaks, and squeals. Prevents slipping and grabbing \* \* \* positively prevents drum scoring \* \* \* gives perfect brakes when hot, cold, dry, or wet, and it won't burn out over a long grade.

The respondent hereby admits:

That the value of the product is limited to a slight extension of the life of brake lining and no other advantage can be expected from its use.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling

its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That said product will make old brakes new or as good as new;
- (b) That said product is more effective than new brake lining;
- (c) That said product will eliminate squeaks, squeals, brake adjustments;
- (d) That said product will prevent slipping, grabbing, drum scoring;
- (e) Inferentially or otherwise that the product will give perfect or sure braking;
- (f) That said product will render brakes serviceable for 20,000 miles or any other definite number of miles in excess of the mileage that has been demonstrated by reliable scientific tests;
- (g) That use of the product will effect a percentage in savings of three-fourths of the cost of relining of brakes or any other definite percentage of savings not substantiated by authentic evidence;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 4, 1936.)

01385. Vendor-Advertiser—Eye Lotion.—A. C. Carlton, an individual operating under the trade name of Putinize Laboratories, San Francisco, Calif., vendor-advertiser, is engaged in selling an eye lotion designated Putinize and in advertising represented:

Putinize Eyedrops \* \* \* gently antiseptic.

Putinize Eyedrops \* \* \* will keep your eyes free from the fatigue and minor irritations your eyes are constantly subjected to.

Putinize Eyedrops are safe.

To keep eyes brilliant and peppy, apply a few drops of Putinize Eyedrops.

Made of harmless drugs.

Putinize Eyedrops \* \* \* restore to your eyes all the lustre that Nature originally gave them.

If you have just bought a new pair of glasses, you may find it uncomfortable to adjust your eyes to them at first. Here's a suggestion that will help: tone your eyes with a few drops of safe soothing Putinize Eyedrops. Your eyes will feel better and your glasses more comfortable.

Putinize Eyedrops, applied morning and evening, will immediately restore natural lustre.

Putinize Eyedrops \* \* \* contain efficient ingredients that tonic the delicate nerves.

Putinize Eyedrops \* \* \* formulated \* \* \* of expensive yet harmless drugs found in no other eye lotion.

Use them to adjust new glasses \* \* \*.

Putinize overcomes fatigue due to overwork, dust, sun, and wind-glare.

Putinize Eyedrops \* \* \* prevent eye irritations due to wind, sun-glare, and overwork.

Used by stars of stage and screen to give glamour to eyes. \* \* \*

Use the eye-lotion preferred by moving picture stars. \* \* \*

The respondent hereby admits:

That the value of the product is limited to its properties as a local anesthetic and astringent and it contains no tonic ingredients nor is it an antiseptic;

That eye strain, so-called, may have a variety of origins and there is no known treatment capable of reaching all of the mechanisms of the eyes;

That the repeated application of certain ingredients such as those contained in the product may give rise to corneal ulcers;

That he does not maintain a laboratory;

That said product is not preferred by stars of the stage and screen;

That other products contain some of the ingredients of which respondent's product is composed.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That said product will keep the eyes "free" from any conditions;
- (b) That said product will overcome or prevent any condition of the eyes;
- (c) That said product will keep the eyes brilliant or peppy;
- (d) That said product will restore original or natural lustre to the eyes;
- (e) That said product is of benefit as an aid in the adjustment of glasses;
- (f) That said product is a tonic or an antiseptic;
- (g) That said product is preferred by stars of the stage or screen;
- (h) That said product is safe or that it is composed of harmless ingredients;
- (i) That said product contains ingredients "found in no other eye lotion";

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees to cease and desist from using the word "laboratories" as a part of the trade name until such time as a laboratory is maintained wherein scientific tests are conducted. (May 4, 1936.)

01386. **Vendor-Advertiser—Cosmetic Preparations.**—Elizabeth Arden Sales Corporation, Elizabeth Arden, Inc., and Florence N. Lewis, an individual, doing business under the trade name of Elizabeth Arden, New York, N. Y., vendor-advertiser, is engaged in selling certain preparations designated Venetian Eyelash Grower and Ardena Eyelash Grower and in advertising represented:

Encourages the growth of thick long lashes.

Eyelash Grower—An ointment which produces luxurious growth of eyelashes and eyebrows.

A wonderful *stimulant* to the lashes giving them a rich glossy appearance.

The respondents hereby admit:

That according to scientific authority, no product capable of increasing the growth of hair on any part of the body has at the present time been discovered;

That neither respondents' products nor their ingredients are imported from Venice, nor are they manufactured according to a Venetian formula.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling

its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That either of respondents' products is a stimulant to the eyelashes;

(b) That either of respondents' products will encourage the growth of either eyelashes or eyebrows, or increase their length;

and from making any other claims or assertions of like import.

The respondents further stipulate and agree in soliciting the sale of said commodities in interstate commerce, to cease and desist from using the words "Grower" or "Venetian" as any part of the trade names to designate said products. (May 5, 1936.)

01387. Vendor-Advertiser—Medicinal Preparation.—Bromo Aspirin Manufacturing Co., Inc., a corporation, Philadelphia, Pa., vendor-advertiser, is engaged in selling a certain preparation designated Bromo Aspirin Capsules and in advertising represented:

Bromo Aspirin Capsules is one mighty fine remedy for common colds \* \* \* hundreds of thousands of families have found out Grippe can be checked and the duration of a cold shortened with this old family doctor's remedy.

Follow the directions and like magic \* \* \* overnight your cold disappears before it begins.

Beware of Influenza and pneumonia \* \* \* prepare \* \* \* to ward off a cold before it takes hold on your system \* \* \* Take two Bromo Aspirin Capsules at the first sign of a snuffle or a cough, and like magic overnight your cold ends before it begins.

Dangerous complications of Common Colds, Pneumonia, Influenza and Grippe. Your safeguard—Bromo Aspirin Capsules.

Bromo Aspirin. It gets right at the source of the trouble \* \* \* breaks fevers \* \* \* relieves headaches and back-aches.

The respondent hereby admits:

That the therapeutic ability of Bromo Aspirin Capsules is limited to such relief as it may afford from discomforts associated with colds and has no value in the treatment of the causes of colds or as a preventive of coughs, pneumonia, influenza, grippe, or complications of colds.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent remedy or treatment for colds, coughs, or grippe;

(b) That said product will prevent pneumonia, influenza, grippe, or complications of colds;

(c) That said product will "end" a cold;

(d) That said product reaches the cause of any ailment;

and from making any other claims or assertions of like import. (May 5, 1936.)

01388. Vendor-Advertiser—Mechanical Device.—R. R. Paul, an individual doing business under the trade name of Wayne Manufacturing Co., Detroit, Mich., vendor-advertiser, is engaged in selling a device designated Wayne Checkwriter and in advertising represented:

## AGENTS

\* \* \* \* \*

WHY NOT MAKE

\$80 a week?

SPECIAL OFFER

\* \* \* \* \*

At \$12.50 the Wayne Does More Than machines costing Hundreds!

Your bank is responsible for the signature on your check, but Not for what is written in the body of the check, and money paid in good faith and without negligence on an altered check cannot be recovered by the maker thereof.

The respondent hereby admits:

That there is no evidence that the average amount earned by respondent's salespersons or agents is as great as the amount represented in the foregoing advertisement;

That respondent does not make a Special Offer to persons replying to his advertisement, but all responding to said advertisement are made the usual and customary offer or proposition;

That respondent's checkwriter cannot do more than machines costing hundreds of dollars;

That an alteration in the amount of a check does not relieve the bank on which it is drawn from legal liability to the maker for the amount paid in excess of the amount for which the check was drawn.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent has a Special Offer to make to persons replying to his advertisement different from his usual and customary offer made such persons;

(b) That respondent's checkwriter does more than machines costing hundreds of dollars;

(c) That the makers of checks cannot recover from banks on which such checks are drawn any over-payment made as a result of alterations;

and from making any other claims or assertions of like import.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, further stipulates and agrees:

Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time salespersons or dealers achieved under normal conditions in the due course of business. (May 5, 1936.)

**01389. Vendor-Advertiser—Correspondence Course.**—National Art School, Inc., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a correspondence course in coloring photographs and miniatures in oil and in advertising represented:

\$20,000 in one year was the astonishing profit from the work of one woman using the famous "Koehne Method" \* \* \* A steady income is possible each week and either full or spare time may be devoted to the work.

No art talent needed.

It is not a tinting or color dabbing process. By the "Koehn Method" the colors in oil tones vivid or soft and delicate go on almost automatically.

Partial scholarship Certificate. This partial scholarship, valued at \$19.00, is issued by National Art School, Inc., to the above and will be accepted as part payment of the regular tuition fee for our complete course in coloring photographs and miniatures in oil by the famous "Koehne Method." This partial scholarship reduces the tuition fee from \$65.00 to only \$46.00, payable in easy payments. There are no extra charges of any kind. This scholarship is subject to acceptance on or before \_\_\_\_\_.

I am sending you our new booklet "Making Money at Home" which explains everything. When you have read it, you will be quick to see that here is a vocation which you can learn in three short months and make from \$15.00 to \$65.00 each week depending entirely upon whether you devote your full time or your spare time to the work.

The "Koehne Method" transforms ordinary photographic prints and miniatures into works of art comparable in appearance to original art work selling upwards to hundreds of dollars. Yet no aptitude for art is necessary, and the average person can become proficient in a remarkably short time.

Our tuition fee for several years past has always been \$65.00, and up to this time no reductions have ever been offered. However, our Board of Directors have now authorized me to issue a limited number of partial scholarships valued at \$19.00. This unusual offer is made only because we feel it will bring our training within the reach of a greater number of people and materially increase our membership. This Partial Scholarship Certificate valued at \$19.00 reduces your tuition fee from \$65.00 to only \$46.00, which you may remit in easy payments of only \$5.00 a month. Be sure to return the Certificate with your enrollment and act promptly, for I am unable to say how soon this reduced tuition fee will be withdrawn.

Coloring in oil by the famous "Koehne Method" requires no aptitude for art or drawing. You can finish your training in twelve short weeks and be ready to earn from \$1.00 to \$3.00 per hour, working either full time or spare time, just as you prefer.

Independence and freedom from job worry can be yours in twelve short weeks.

Special Announcement. The \$19.00 scholarship saving and our easy terms of only \$5.00 per month are still open, but this is probably the very last letter you will receive giving you this extraordinary opportunity.

The "Koehne Method" is so simple and easy to learn that almost anyone without any art talent can in a few weeks turn out artistic work that commands the highest prices.

\$19.00 saving, easy terms, and the complete professional outfit without charge, but only if you enroll now.

To meet present conditions our Board of Directors have authorized an extension for a short time on all scholarships. Your scholarship enables you to enroll at this time for \$46.00. That saves you exactly \$19.00 over what several hundreds have paid for our training.



Increased cost will make it necessary for us to charge for the student's outfit instead of including it with the course as we are now doing—and it's a certainty that our partial scholarship, which saves you \$19.00, and will not be available much longer.

In the face of increasing prices I am positive that it is only a matter of a short time before our \$19.00 partial scholarship offer must be withdrawn, and I am very doubtful about how long we will be able to include this fine outfit at no extra charge. Therefore, there is every reason why you should enroll now.

About the extra money N. A. S. trained men and women can make. \$10.00 and \$15.00 in a week in spare time while learning. Begin within a few weeks after enrolling and the big money making opportunities they are qualified to step into after graduation.

N. A. S. training will insure and protect your future. Once you have learned this fascinating work you will have a trade or profession that you can always count on to more than make you a good living.

The many money-making plans we furnish you as part of your training have been tested under all conditions. They never fail to bring plenty of orders without any canvassing. So no longer is it necessary for you to sit idly by hoping and wishing for something to do to earn money.

Graduates of this institution become specialists \* \* \* No experience is needed nor is any aptitude for art necessary.

Regardless of whether you secure a position in a leading photographic studio or do work at home, this vocation of coloring in oil means independence for you. You are immediately taken out of the class who are job hunting, and always hard up, for when you are trained as the National Art School trains you, your work has but little competition.

Learning to color with oils by the "Koehne Method" is just like having your instructor at your elbow.

National Art School, Inc. \* \* \* being affiliated with a photographic organization which has been in business since 1890, we are widely known to the profession in general.

For your spare time \$1.00 to \$3.00 an hour. \* \* \* It is a vocation that can bring you extra money for your spare time right at home or complete independence for all of your time.

Van Dresser is a portrait painter of the widest and most favorable repute. \* \* \* As a member of the National Art School, Inc., you will be privileged to consult Mr. Van Dresser.

The educational staff is composed of qualified and efficient instructors especially fitted for their work by years of experience in aiding non-resident members.

Leo Marzola is a fine art painter of rare accomplishments. \* \* \* Believes thoroughly in the work National Art Schools are doing. \* \* \* His criticism and advice from members' work have been extremely helpful.

The association of these leading artists with this school further assures every member of the thoroughness of our training.

The respondent hereby admits:

That a student without talent or aptitude for art could hardly be expected to master this course of study.

That, while the completion of this course may enable the student to earn money and aid him in a financial way, it is not the only factor contributing to a steady income, financial independence, freedom from job worry, or the insurance and protection of one's future.

That the saving of \$19, designated as a "Partial Scholarship", is not a reduction in the price of the course but is the net price available at any and all times to any and all persons wishing to take this course.

That conditions, circumstances, and qualifications and other factors might prevent a student from completing this course in twelve weeks.

That, while "Money Making Plans", or the service of respondent's "free employment bureau" or "a letter to your photographer" may aid the student in procuring orders or employment, such service cannot insure either orders or employment.

That the faculty of this school is composed of one active instructor and one "Consulting Director", but a "staff" of instructors is not maintained.

That respondent's course of instruction is not the equivalent of having an instructor at one's elbow.

That the average of earnings of students and graduates of this school, under normal conditions and in due course of business, is less than the amount represented in the foregoing advertisements.

That the method of instruction embodied in this course does not result in colors going on "almost automatically", nor does it transform photographic prints into works of art comparable to original art work worth hundreds of dollars.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That no talent or aptitude for art is necessary to enable the student to master this course;

(b) That the completion of this course will—

1. Enable one to earn a steady income;
2. Give one independence and freedom from job worry;
3. Do work that commands the highest prices;
4. Insure and protect one's future;
5. Become a specialist;
6. Mean independence for students and graduates;

(c) That the "Koehne Method"

1. Is not a tinting or color dabbing process;
2. Enables one to put on the colors almost automatically;
3. Transforms photographic prints into works of art comparable to original art work worth hundreds of dollars;

(d) That the course can be finished in 12 short weeks by anyone and everyone regardless of conditions, circumstances, or qualifications;

(e) That money making plans are furnished the student that have been tested under all conditions and never fail to bring plenty of orders without any canvassing;

(f) That respondent operates a "free employment bureau";

(g) That a letter from our "free employment bureau" to your local photographer opens up the way to you;

(h) That either Van Dresser or Leo Marzola has any connection with this school, or that the student may consult or benefit by the advice or criticism of either of them until either one or both actually have such connection with the school;

(i) That the faculty of this school is composed of more than one person until additional members are added to the faculty;

(j) That learning to color with oils by the "Koehne Method" is just like having your instructor at your elbow;

(k) That the so-called "scholarship" represents a saving in cost to the prospective student when the net amount charged after deducting the value of such "scholarship" is the regular price of the course;

(l) That any offer affecting the cost of the course or equipment incident thereto is special or for a short time or is liable to be withdrawn, unless a definite time limit is fixed after which the regular advertised prices are charged;

(m) That the cost of the course has been reduced unless the reduced price is lower, by the amount stated, than that previously charged by the respondent;

(n) That the respondent is affiliated with any photographic organization.

and from making any other claims or assertions of like import.

Respondent in soliciting students for this course stipulates and agrees:

(o) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active students or graduates under normal conditions in the due course of business;

(p) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's students or graduates under normal conditions in the due course of business. (May 5, 1936.)

**01390. Vendor-Advertiser—Medicinal Preparation.—**The Tonsiline Co., a corporation, Canton, Ohio, vendor-advertiser, is engaged in selling a certain medicinal preparation designated "Tonsiline" and in advertising represented:

Quick Relief for Sore Throat. Why Suffer? Demand the remedy tried and proven friendly to sore throats for forty years. Tonsiline.

If you had a neck as long as this fellow and had Sore Throat all the way down Tonsiline the National Sore Throat Remedy Should Quickly Relieve It.

For Minor Irritations of the Throat and Mucous Membranes of the Mouth and Hoarseness Due to Colds.

The respondent hereby admits:

That Tonsiline is only a palliative treatment for minor irritations of the throat associated with colds or due to inhalation of dust or fumes, and is not a competent treatment for the causes of sore throats and cannot be depended upon to afford quick relief except in cases of sore throat associated with colds or due to inhalation of dust or fumes.

That the extent of the sale of Tonsiline is not such as to entitle it to the designation "National Sore Throat Remedy."

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Tonsiline will afford quick relief for sore throat, unless limited in equally conspicuous terms in direct connection therewith, to sore throat due to colds or the inhalation of dust or fumes;

(b) That Tonsiline is a tried and proven remedy for sore throats, unless limited in equally conspicuous terms in direct connection therewith, to sore throats due to colds or inhalation of dust or fumes;

(c) That Tonsiline is the National Sore Throat Remedy;

(d) That Tonsiline is a competent treatment for sore throats or an effective remedy therefor, unless limited in equally conspicuous terms in direct connection therewith to sore throat due to colds or to the inhalation of dust or fumes;

(e) That Tonsiline is more than a palliative for the relief of sore throat due to colds or the inhalation of dust or fumes;

and from making any other claims or assertions of like import. (May 5, 1936.)

01391. **Vendor-Advertiser—Leather Articles.**—Initial It, Inc., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling various leather articles, such as purses, billfolds, etc., and in advertising represented:

**We Will Pay You \$2.95 Cash for This Coupon.** In accordance with our Free Sample offer we will refund \$2.95 paid for your Ritzi 2-Way Bag sample after you have sent us only 15 orders, or if you prefer we will give you an extra Ritzi 2-way bag instead of the \$2.95 refund. Tear off this coupon now and pin it to your 15th order. We will then send you \$2.95 or another Ritzi 2-way bag as you specify and you keep your 2-way sample Free.

**The King of Key Kariers. Special New Secret. Money Pocket & Free Insurance Bring 1 Minute Sales \* \* \* Free—Key Insurance, Accident Notification Service, and other valuable features.**

\* \* \* you should count on nine out of ten sales.

**Cash for You Every Day—Add \$18 to \$72 to Your Weekly Income—The Initial-It Plan** for introducing this new Bag gives you the easiest and the simplest way to sell that is known. You merely have to show and give a one-minute demonstration. \* \* \* Get it into their hands just once, and the sale is made. No sales talk is needed. Orders are yours without asking when you show the Ritzi 2-Way Bag and quote the amazing low Special Price of only \$3.95. Sales of six or more to a group are frequent \* \* \* You can easily earn \$3.00 to \$12.00 or more daily.

\* \* \* I hate to see your rich territory lie idle, when you can be earning up to \$10 and \$20 a day there right now.

Can you afford to let anywhere from \$18 to \$72 a week slip through your fingers?

\* \* \* this gorgeous new Ritzi 2-Way Bag offers you anywhere from \$18.00 to \$72.00 a week, cash money, in advance on every sale.

\* \* \* some of our salesmen and saleswomen are making 10 to 20 or more sales a day.

\* \* \* I will send you a sample of the Ritzi 2-Way Bag \* \* \* this sample, with complete selling equipment, is furnished to you packed in a beautiful black cloth-covered, velvet-lined display box, on receipt of your "Good Faith" Deposit of only \$2.95. Then as soon as you have sent us only 15 orders—I will refund your deposit of \$2.95 and the Bag will be yours to keep—Free of cost.

The respondent hereby admits:

That in order to procure the sample outfit the salesperson is required to make a cash deposit which is not refunded until he has sold and remitted the price of a specified amount of merchandise.

That no article of value is given "free" but the consideration therefor is the purchase of merchandise.

That prospective sales and earnings of salespersons are exaggerated and not supported by evidence.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Ritzi 2-way Bag or any other article offered to salespersons as a sample outfit, is "free" so long as a cash deposit is required from the said salespersons to procure same, or so long as salespersons are required to sell a definite amount of merchandise to procure the return of the cash deposit;

(b) That any article of value is given "free" to purchasers of respondent's merchandise, so long as such article is included in the price of the commodity bought; and from making any other claims or assertions of like import.

The respondent in soliciting salespersons, or dealers in aid of the sale of such merchandise, stipulates and agrees—

(c) Not to make unmodified representations or claims of earnings or sales in excess of the average earnings of respondent's active full-time salespersons or dealers achieved under normal conditions in the due course of business;

(d) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business;

(e) Not to represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business;

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 6, 1936.)

01392. Vendor-Advertiser—Poultry and Animal Feed.—National Oil Products Co., a corporation, Harrison, N. J., vendor-advertiser, is engaged in selling a certain poultry and animal feed designated Nopco Double X and in advertising represented:

Poultrymen say daily feeding of Nopco Double X the year round—lowers mortality, produces higher hatches, better chick quality, builds healthier, more vigorous birds, and helps keep them that way.

Improves egg quality and grades—smoother thicker shells—improves shell texture—aids production of eggs with firmer whites and better interior quality—helps reduce the number of blood spotted eggs—helps build egg-producing capacity, the result of proper and adequate bone and frame development—helps reduce number of culls when fed from hatching coop and right through the pullet stage. Nopco Double X in any kind of feed balances the feed elements with the result that pullets grow and mature more evenly, increases and maintains egg production.

Our mashers are guaranteed to give you more eggs.

3,000,000 hens proved the value of feeding Nopco Double X vitamin concentrate (U. S. Pat. 1678454) daily by earning \$12.00 extra income per 100 birds through more eggs and better flock health.

Nopco cod liver oil \* \* \* why not reduce mortality, eliminate rickets and crooked breasts, increase egg production, strengthen egg shells, improve hatchability.

Guaranteed for potency \* \* \* eliminates all guess work.

Nopco Double X improves any feed and makes a good feed better \* \* \* remember that Nopco Double X is not a feed but an energizer which experienced poultrymen demand in all of their mashers to help their birds get maximum benefits from the feed ingredients.

Warning \* \* \* There is only one Nopco Double X. Nothing else is or can be exactly like it. Therefore, don't accept anything offered as being the same or like Nopco Double X, because Nopco Double X ranch proved results can only be had by feeding Nopco Double X.

The proper use of these products will assure:

- (1) More eggs per hen per year.
- (2) Stronger shelled eggs and better egg shell texture.
- (3) Increased hatchability.
- (4) Increased vitality and growth of chicks and pullets.
- (5) Lowered mortality.
- (6) Fewer culls.
- (7) Maintenance of a better condition throughout the moult.
- (8) Elimination of guess work in securing vitamin D protection.
- (9) A certain uniform source of vitamin D.
- (10) Complete protection against vitamin D deficiency.

You cannot afford not to use one of the Nopco products, or to buy mashers in which Nopco is included by the feed manufacturer.

Of group results submitted covering mortality 73.7% (combined average) stated Nopco Double X lowered mortality and improved health and vitality of laying hens, pullets and chicks.

Nopco cod liver oil increases egg production eliminates soft shelled eggs, helps to eliminate blood spots, improves hatchability, produces stronger chicks, builds rugged bone structures, promotes growth, reduces mortality, gives better moult conditions, protects against disease.

Nopco Double X is a necessary ingredient in poultry mashers to insure best results and largest profits.

Ordinary liver oils ordinarily mixed in poultry and animal feeds are not high in vitamin A potency. To get sufficient vitamins A and D from them the quantity necessary to use immediately presents two unfavorable factors, I. E., excessive cost and excessive fat. Fish body oils, when used at proper levels, are not economical sources of vitamin D and cannot be looked to as a source of vitamin A because their vitamin A content is very low.

Nopco Double X is a double vitamin energizer because it assures the vitamin D and A your birds need.

The respondent hereby admits:

That many fish livers supply oil, pregnant with Vitamins A and/or D and some fish livers supply far more units of Vitamins A and D per specific quantity of oil extracted than do cod fish livers;

That Cod Liver Oil varies in Vitamin content; and by extracting the vitamin units from one quantity of Cod Liver Oil, the finished or manufactured product known as Nopco Double X is made uniform in vitamin content;

That vitamin deficiency in poultry may be due to confinement, lack of sufficient sunshine, or a diet deficient in Vitamins A and D or other necessary nutritional factors;

That adding Nopco Double X to poultry feed will not result in improvement of the poultry or eggs, unless there exists or is likely to exist in the poultry a deficiency state which the accessory food factors in Nopco Double X will cure or prevent;

That feed containing a sufficient number of the necessary nutritional units will not be improved or made better by adding Nopco Double X;

Adding Nopco Double X or any other liver oil concentrates will not protect poultry or animals against disease due to infections or causes that maintained health or resistance cannot prevent;

Nopco Double X added to feed cannot be relied upon to eliminate blood spots in eggs;

No standard of measurement has been found that will determine the amount of sunshine required to maintain health, condition, and production in poultry.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the feeding of said product will increase the growth of poultry or egg production, or the hatchability of eggs or improve the quality of eggs, or give a better moult, or in any way improve the condition or reduce the mortality of poultry, or other domestic animals, unless clearly represented in connection with such claims that the benefits claimed will obtain only when there is a sub-optional supply of vitamins A and/or D;

(b) That the product alone, when added to feed, produces a balanced diet;

(c) That the product makes a good feed better, or improves any feed, that has an adequate supply of vitamin A and D content;

(d) That Nopco Double X is a necessary ingredient of feeds;

(e) That the product will eliminate soft shelled eggs or blood spots, without regard to cause;

(f) That Nopco Double X eliminates all guess work, and is or can be "guaranteed" for results;

(g) That Vitamin D, as found in Cod Liver Oil and Nopco Double X, is a necessary ingredient of poultry rations under "all conditions";

(h) That eggs with loose watery whites can be "eliminated" from production by feeding a good mash with Nopco Double X mixed as directed;

(i) That ordinary liver oils, ordinarily mixed in poultry and animal feeds, are not high in Vitamin A potency;

and from making any other claims or assertions of like import. (May 6, 1936.)

01393. Vendor-Advertiser—Cosmetics.—Pompeian Co., a corporation, Bloomfield, N. J., vendor-advertiser, is engaged in selling beauty preparations and in advertising represented:

Dryness! How can I stop it? Skip any powder that has zinc oxide in it.

A Blotch! What on earth caused it? Probably a chemical in your powder called bismuth.

What can I do for enlarged pores? Use a powder that doesn't contain starch.

Where on earth did this Scaliness come from? From the zinc chloride in your astringent.

Pompeian beauty preparations contain no damaging chemicals such as bismuth, zinc chloride, arsenic, lead, borax, alum, or zinc sulphate, the causes of Dermersion.

Pompeian Cleansing Cream \* \* \* nourishes \* \* \* It transforms your skin into a miracle of youthfulness \* \* \* Use it daily to keep the skin young.

Nourish your tissues with Pompeian Tissue Cream. This cream contains an exclusive highly penetrating Viannese property.

Pompeian Astringent and Skin Tonic will remove all oiliness.

Two years ago Pompeian alarmed by dermatologists' statements that skin troubles were increasing as the use of cosmetics increased, turned the great Pompeian Laboratories to developing a new line of beauty preparations.

Endless tests were made with all types of cosmetics on all types of women's faces, and Pompeian chemists discovered why the skins of women who use cosmetics age faster. They found out that cosmetic chemicals cause this blotching, coarsening, drying, aging of the skin, and so Pompeian created a new line of beauty preparations pledged to purity. Preparations absolutely free from ruinous chemicals.

Pompeian chemists have done what most cosmetic chemists said couldn't be done—produced a new line of beauty preparations that actually beautify and protect.

Is There a Thief on Your Dressing Table? Pompeian will never let Demersion steal your beauty \* \* \* Pompeian has turned all its activities to scientific research. Its chemists tested all types of cosmetics \* \* \* Then they did what other cosmetic chemists said could not be done. They banished every harmful chemical commonly used in cosmetics.

But remember, this is a limited offer. You must be one of the first thousand women in Pittsburgh to send in.

Pimples never lead to Romance. Pimples are small things but they can raise hob with romance. A clear, velvety, smooth skin wins out every time. When you dip your fingers into a jar of Pompeian Cleansing Cream you find that kind of skin.

The respondent hereby admits:

That Pompeian preparations cannot be depended upon to stop dryness of the skin, or to prevent blotches or scaliness, or to reduce pores; to be effective in the treatment of pimples; to make the skin clear, velvety or smooth; to transform the skin into youthfulness; to keep the skin young; or to remove "all" oiliness or actually "protect."

That certain ingredients or chemicals specified in the foregoing advertisements which are not contained in Pompeian beauty preparations are not always damaging, and that many of such ingredients are contained in but few, if any, of the other cosmetics generally sold in competition with respondent's products.

That there is no preparation known to science which applied externally will nourish the skin or tissues.

That the claims that skin troubles have increased as the use of cosmetics increased, and that the skins of women who use cosmetics age faster, or that the blotching, coarsening, drying, and aging of the skin are caused by cosmetics or ruinous chemicals, are not established by any reliable or scientific proof.

That the Pompeian Co. has not turned all its activities to scientific research, nor banished every harmful chemical commonly used in cosmetics.

That the limit stated in the "Special Offer" advertised was not adhered to.

That respondent's tissue cream is not imported from Vienna or compounded according to a Viennese formula.



In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise, that the use of Pompeian preparations will stop dryness of skin, or prevent blotches or scaliness, or reduce pores;

(b) That any specified ingredients or chemicals not contained in Pompeian beauty preparations are "damaging";

(c) Inferentially or otherwise, that other cosmetics contain any particular ingredient that is not contained in a substantial number of such preparations;

(d) That Pompeian Cleansing Cream nourishes the skin or transforms it into youthfulness or keeps it young;

(e) That Pompeian Tissue Cream nourishes the tissues or contains a Viennese property;

(f) That Pompeian Astringent and Skin Tonic will remove "all" oiliness;

(g) That skin troubles have increased as the use of cosmetics increased; or that the skins of women who use cosmetics age faster; or that the blotching, coarsening, drying and aging of the skin are caused by cosmetics or ruinous chemicals;

(h) That Pompeian beauty preparations actually protect;

(i) That Pompeian will never let the Thief Dermersion steal one's beauty; or that it has turned all its activities to scientific research; or that its chemists have done what other cosmetic chemists have said could not be done, namely, banished every harmful chemical commonly used in cosmetics;

(j) That any offer to purchasers is limited to a stated number unless delivery is refused to all above such number;

(k) That, inferentially or otherwise, one may, by dipping her fingers into a jar of Pompeian Cleansing Cream, find her skin free of pimples, clear, velvety, and smooth;

and from making any other claims or assertions of like import. (May 7, 1936.)

01394. Vendor-Advertiser—Rubber Mats, Etc.—Fabrix, Inc., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling rubber mats and machinery for manufacturing such mats and in advertising represented:

It sells better than steel mats ever sold. It outsells any mat I ever saw or heard of ten to one \* \* \* Fabrix sells to a lot of places that never could be interested in any other mat.

The specifications of the Fabrix Mat are equal to or better than any other mat on the market. The best illustration of this is found in a recent incident when the United States Government requested bids from all Chicago mat manufacturers. The bids had to be submitted with samples. They were opened publicly. Our own factory's bid was just about \$400.00 less than our nearest competitor, and the sample we submitted was superior in every respect to the Government specifications and superior to all of the competitors' mats. In spite of this low price it represented a mark-up which gave us a greater profit than we receive when we sell to dealers.

Your capacity with one outfit is about 160 square feet per day. You can figure for yourself what your profit would be on this capacity if you were making only 45¢ per square feet. Cut it in half and your factory still would earn \$36.00 every working day.

A ten-year old boy can cut uniform strips, as all operations are automatically gauged.

\* \* \* one of our first manufacturers writes: "Can't make mats fast enough. First week brought over 200 orders from \$1.00 to \$10.00 each."

\* \* \* report: "We have orders enough to keep fifteen men busy all the time."

William Eagle writes: "Can't make mats fast enough. First week over 200 orders from \$1.00 to \$10.00 each. \* \* \*

The respondent hereby admits:

There is no evidence that the mats manufactured under a license granted by it have a demand any greater than other mats;

That none of its mats have been purchased by the United States Government, nor do said mats surpass Government specifications;

That the average earnings and the average output of respondent's licensees do not equal the amounts represented in the foregoing advertisements;

That the statements as to the probable market demand for the mats are not supported by evidence;

That the operations of the machines are not automatically gauged.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the demand for respondent's mats is greater than the demand for other mats;

(b) That said mats surpass Government specifications;

(c) Inferentially or otherwise that the United States Government has purchased any of said mats;

(d) That operations of the machines are automatically gauged.

The respondent further stipulates and agrees:

(e) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's licensees achieved under normal conditions in the due course of business;

(f) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's licensees under normal conditions in the due course of business;

(g) Not to represent as the market demand for said mats an amount greater than supported by authentic factual evidence;

and from making any other claims or assertions of like import. (May 7, 1936.)

01395. Vendor - Advertiser — Medical Preparation. — The Reese Chemical Co., Inc., a corporation, Cleveland, Ohio, vendor-advertiser, is engaged in selling a certain medicinal preparation designated Thoxine and in advertising represented:

Absolutely safe even for children.

Coughing stopped in 15 minutes with Thoxine \* \* \* attacks internal cause; harmless \* \* \*

Night cough. End it quick with one swallow of Thoxine and get restful sleep \* \* \* Drives out cold.

Sore throat. Thoxine will relieve sore throat or cough in 15 minutes.

Stops Coughs Two Ways! Acts internally to quickly drive fever and cold out of the system \* \* \* it is safe.

No harmful drugs.

Ends sore throat two ways.

A famous doctor's prescription.

It soothes the throat irritation stopping the cough almost instantly.

The respondent hereby admits:

That there is no generally accepted medical theory as to the cause or causes of cold and no preparation can be relied upon to reach all factors which may be regarded as causative or contributory;

That the therapeutic properties of Thoxine are limited to palliative relief afforded in cases of minor throat irritations and coughs due to colds and it cannot be depended upon as a treatment or remedy in the more serious conditions of which coughs and sore throat may be manifestations;

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Thoxine will drive colds or fevers out of the system;

(b) That Thoxine is a competent treatment or an effective remedy for sore throat unless clearly limited to sore throat due to colds or the inhalation of dust or fumes, or that it—

1. "Ends" sore throat, unless limited to those causes;

2. Will relieve sore throat in 15 minutes, or in any other specified time;

(c) That this product is a competent treatment or an effective remedy for night coughs, unless limited to night coughs due to colds;

(d) That Thoxine is a competent treatment or an effective remedy for coughs, unless clearly limited to coughs due to colds or minor throat irritations, or that it will—

1. "Stop" or "End" a cough, unless clearly limited to coughs due to colds, dust, or fumes;

2. Relieve coughs in 15 minutes, or in any other specified time;

(e) That Thoxine contains no harmful drugs, or that it is "safe" or "harmless", unless qualified by indicating that it is safe or harmless when taken according to directions;

(f) That Thoxine is a "famous" Doctor's prescription;

and from making any other claims or assertions of like import. (May 6, 1936.)

01396. Vendor-Advertiser—Herbal Preparation.—Modern Health Products, Inc., a corporation, Milwaukee, Wis., vendor-advertiser, is engaged in selling an herbal preparation designated "Swiss Kriss" and in advertising represented:

*The Secrets of Nature.* The Swiss, hardy upstanding folk, have conquered those intestinal poisons that clog the system and lower resistance to the breaking point \* \* \* They know how to keep well \* \* \* They have beaten intestinal poisons \* \* \* Nature, that perfect mother of us all, has taught

them. She has healed them through her precious simples, those gentle herbs and wild flowers that may be had for the taking on Switzerland's snow-clad mountains and in her mile-high meadows.

*An Old Folk Custom.* It is the Swiss grandmother who gathers the fragrant herbs, wet with dew, early each summer, a duty that for countless generations has been carried out as an orderly part of life's routine. Guardian of the family's health, with canny knowledge, she picks and cures in the sun the herbs that will keep her family well for the coming year. Staunchly, she knows their tonic goodness will preserve the health of her hardy, mountaineer sons, their apple-cheeked wives, her strong limbed grandchildren. Dried, compounded, a hundred herbs and flowers together, she gives them to the sick, the temporary out-of-sorts, and with beneficent results that have centuries to sustain their worth.

Some years ago, health authorities brought away from Switzerland a formula that has stood the test of a thousand years' every-day use. This formula, known as Swiss-Kriss, is a scientific compounding of Switzerland's tonic herbs and flowers.

Swiss-Kriss \* \* \* is a natural, upbuilding intestinal cleanser.

Swiss-Kriss \* \* \* The Modern Laxative—A century-old health secret of the Swiss mountaineers. A remarkable natural laxative of tonic Alpine-grown herbs and blossoms gathered in the early morning sunshine and carefully prepared to retain natural values \* \* \* A completely new experience in laxatives.

Many people arise in the morning with a puddle in their stomach \* \* \* a puddle of putrified food which remains after the previous meal has supposedly digested. Now, when another meal is eaten, this puddle causes the fresh food to also become contaminated. This will continue for as long as a person has food delay and will cause many of the ills which always accompany intestinal sluggishness.

\* \* \* \* \*

You know their names as well as I do. You can eliminate this puddle in your stomach by using Swiss-Kriss every day.

Swiss-Kriss differs from all other laxatives because it gently stimulates all three eliminative organs—the liver, the bile, and the intestinal muscles.

The respondent hereby admits:

That according to reliable medical authority the major action of the product would be that of a laxative and carminative and its value is limited to the elimination of unnaturally retained fecal material of toxic nature or potentialities. It will not eliminate intestinal poisons of other origins or character;

That the retention of food in the stomach for a period longer than normal is due to some pathological reason and the use of a laxative would not overcome such a condition nor would it materially aid the stomach in evacuating its contents;

That most diseases are of an infectious nature due to some definite pathological organism and no laxative would be of material aid in such conditions or in affording protection from any disease except those temporary conditions that are due to inadequate elimination;

That the product possesses no ingredient known to stimulate the liver or increase the production of bile or to influence the intestinal muscles.

The respondent further admits:

That the product is neither a "modern" laxative nor a "secret" of the Swiss Mountaineers nor was the formula brought from Switzerland by health "authorities";

That the product is not composed entirely of ingredients imported from Switzerland.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product will conquer or eliminate intestinal poisons unless limited to temporary conditions due to inadequate elimination;

(b) That use of the product will enable one to get well or keep well or preserve health;

(c) That said product will either heal any condition; or prevent any condition not directly attributable to inadequate elimination;

(d) That the product will "up-build" the system;

(e) That the product will eliminate the contents of the stomach;

(f) That the product will stimulate the liver or increase the production of bile or influence the intestinal muscles;

(g) That the product is a tonic or that it possesses tonic properties;

(h) That the product is a "modern" laxative or a "secret" of the Swiss people or that the formula was brought from Switzerland by health "authorities";

and from making any other claims or assertions of like import.

The respondent further agrees to cease and desist from representing inferentially or otherwise that the product is composed entirely of ingredients imported from Switzerland. (May 7, 1936.)

**01397. Vendor-Advertiser—Beverage.**—Chocolate Products Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a chocolate drink designated Stillicious and in advertising represented:

Miss Charm has often referred to radiant physical health as the basis of magnetism and charm. Did you know, by the way, that the important Vitamines B and G are valuable for improving the appetite, correcting nervous disorders, aiding digestion, and even quickening mental processes? Now here's a way to get those vitamines without eating distasteful yeast. Just drink a quart of Stillicious each day.

Stillicious is a real beauty good. The generous quantity of the Vitamines B and G improve the complexion, you know, while they are correcting the results of a faulty diet.

Stillicious, it's a elegant new chocolate drink, ceptin it aint no ever day chocolate milk. It's jes natchly bustin' wid vitamines, and I aint nebber taste none, but de doctor man say as how dey makes you vigorful. So I revises you all to get yo'self a bottle of Stillicious and see how it picks you all up dese heah hot days.

Vitamine B \* \* \* necessary for the good health of children \* \* \*

the vitamine without which nerves go to pieces.

Stillicious has the soothing Vitamine B which lets your guests secure a restful night's sleep.

Serve hot Stillicious Yeast Vitamine B Chocolate before bedtime. It contains the anti-nervous Yeast Vitamine B, which is so helpful in providing a quiet, restful night's sleep.

Only in Stillicious Chocolate do you get the valuable Yeast Vitamines B, G, supplying abundant yeast benefits without a trace of yeast taste or odor.

Stillicious contains thirty Sherman units of Yeast Vitamines B and G, the equivalent of three whole yeast cakes in yeast vitamines in every quart of Stillicious Chocolate. You get nine cents extra value. (The cost of three yeast cakes.)

Genuine Stillicious Yeast Vitamine B. Chocolate is the only chocolate dairy drink to contain the valuable Yeast Vitamines B and G.

The calming, soothing, and vitalizing effect of Stillicious comes from the healthful Yeast Vitamines B and G it contains.

Stillicious contains the healthful Yeast B and G Vitamines necessary for the maintenance of life and health at all ages to increase one's resistance against various elements and functional disorders.

The respondent hereby admits:

That the merit of Vitamins B and G is confined to conditions due to a deficiency of such vitamins in the system.

That, according to reliable medical authorities, such ailments as nervous disorders, functional disorders, faulty digestion, bad complexion, and slow mentality are not attributable to deficiency of either Vitamin B or Vitamin G.

That Vitamin B is not known to have any direct sedative action as implied by the aforesaid advertising.

That the use of Stillicious is not the only way to get yeast Vitamins B and G.

That the mere vitamin content of yeast is not the measure of its value, as indicated.

That nothing in the composition of Stillicious will insure or promote radiant physical health or magnetism or charm.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) By inference or direct statement, that radiant physical health, magnetism, and charm are attainable by drinking daily a quart of Stillicious;

(b) That Vitamins B and C are valuable for

1. Correcting nervous disorders;
2. Aiding digestion;
3. Quickening mental processes;
4. Correcting the results of a faulty diet—other than such diet as may be deficient in said vitamins;

(c) That Stillicious is a real beauty food, or improves the complexion, or makes one "vigorous";

(d) That said product "is jes natchly bustin' wid vitamins";

(e) That without Vitamin B the nerves of children go to pieces;

(f) That only in Stillicious Chocolate may one get the yeast Vitamins B and G; or that it is the only chocolate dairy drink to contain Vitamins B and G;

(g) That the calming, soothing, or vitalizing effect of said product comes from the Vitamins B and G it contains;

(h) That the Vitamin B in said product insures a quiet restful night's sleep;

(i) That in every quart of said product one gets nine cents or the cost of three yeast cakes, extra value;

and from making any other claims or assertions of like import. (May 13, 1936.)

01398. Vendor-Advertiser—Medicinal Preparation.—G. Muller, an individual, trading as Rowland Weil & Co., Jersey City, N. J., vendor-

advertiser, is engaged in selling a medicinal preparation designated Mullax Tablets and in advertising represented:

If you suffer with constipation—the tonic ingredients of Mullax Tablets will help bring about proper action and will aid in the correction and not mere relief from this condition.

\* \* \* Mullax Tablets \* \* \* thoroughly effective means to help nature in toning up the muscles of the walls of the intestinal tract.

\* \* \* Correct constipation with Mullax Tablets. Banish constipation. Enjoy excellent health. Mullax Tablets are entirely different from ordinary laxatives, as they are a vegetable tonic laxative to correct and not merely relieve.

The respondent hereby admits:

That the therapeutic action of Mullax Tablets is limited to the relief of temporary constipation and will not correct or banish constipation;

That due to its phenolphthalein content Mullax Tablets cannot be correctly referred to as a vegetable tonic;

That current medical opinion does not regard preparations such as respondent's as being entirely safe or non-habit forming;

That Mullax Tablets are not entirely different.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent treatment or remedy for constipation unless confined to the relief of temporary constipation;

(b) That said product will correct or banish constipation;

(c) That said product is a tonic or a vegetable preparation;

(d) That said product is entirely different;

(e) That said product has any effect on the muscles of the intestines;

and from making any other claims or assertions of like import.  
(May 7, 1936.)

01399. Vendor-Advertiser—Scalp Treatment.—J. W. Marrow Mfg. Co., Inc., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a certain scalp treatment and shampoo designated Mar-O-Oil and in advertising represented:

Mar-O-Oil is entirely different from old-fashioned soap shampoo methods. It is a clear soluble olive oil that rinses out with clear water—no soap, caustic, or alcohol to dim the natural lustre. It is the only shampoo that contains Vitazene—a new tonic discovery that checks dandruff and falling hair, and also normalizes all hair and scalp difficulties.

\* \* \* Restore your hair to its natural softness, color and lustre with Mar-O-Oil \* \* \*

Mar-O-Oil, the All Purpose shampoo, tonic, and dandruff corrective; contains Vitazene, non-alcoholic tonic. Rid your hair of excessive oiliness or dry brittleness \* \* \*

\* \* \* Mar-O-Oil Is Guaranteed to make your hair more beautiful than ever \* \* \*

\* \* \* Rid yourself forever of much stubborn hair and scalp troubles as dry, brittle hair, too oily hair—falling hair, and dandruff. Encourage new beautifully lustrous growth—check falling hair and dandruff—with Mar-O-Oil. No soap, no caustic, or alcohol to dim the hair's natural lustre \* \* \*

\* \* \* the original Mar-O-Oil Soapless Oil Shampoo. A pure olive oil product that dissolves in water—plus the tonic properties of that great discovery—Vitazene—an element which feeds and nourishes the hair and scalp \* \* \*

Now I am going \* \* \* the Mar-O-Oil treatment for dandruff. \* \* \* not only will your scalp feel clean and healthy, but your hair will almost magically take on new life and lustre. \* \* \* try this 5-minute treatment and I'll promise you that your dandruff worries will be over \* \* \*

\* \* \* Mar-O-Oil does not contain a drop of soap. *Thus it is impossible for it to leave this beauty-robbing film deposit on the hair* \* \* \*

\* \* \* The chief cause of darkening, lifeless, straight hair is the use of shampoos which contain alkali—or leave a sticky film deposit on the hair shafts \* \* \* To combat this undesirable condition to restore the hair to girlhood beauty \* \* \* is through the use of Mar-O-Oil Shampoo. \* \* \* Mar-O-Oil does not lather for the simple reason that Mar-O-Oil does not contain a drop of soap. It is utterly and completely free of alkali, and cannot possibly leave a film deposit on the hair \* \* \*

\* \* \* Mar-O-Oil is the largest selling soapless oil shampoo in the world \* \* \*

\* \* \* By actual laboratory tests, Mar-O-Oil has been proved to be 97½% effective as a cleansing agent while other shampoo methods, now in common use, have been found only 5% effective \* \* \*

It brings new-found life and lustre and beauty to your hair \* \* \*

\* \* \* Get a bottle of Mar-O-Oil \* \* \* Then shampoo your hair at least three times in this manner \* \* \* Then pour on Mar-O-Oil heated to blood temperature. Hair, will probably be several shades lighter \* \* \* this shampoo really rids the hair of dirt and oil accumulations. Every trace of dandruff will have vanished, and your hair and scalp will not only be immaculately clean—But It Will Gleam With Life and Lustre. If you will follow this simple treatment Three Times before you have a permanent I'll promise you that your permanent will last months longer.

\* \* \* "My mother had an abscess on the back of her head, and the doctor had to cut all the hair off that spot. When the abscess healed, it left a scar, and also a bare spot where no hair would grow. We heard about Mar-O-Oil and tried it. I have given mother only four treatments, and her hair is coming in thick. I highly recommend Mar-O-Oil to anyone who \* \* \* has any trouble with their hair."

\* \* \* Mar-O-Oil \* \* \* nourishes the hair roots \* \* \*

The respondent hereby admits:

That the component ingredients of this preparation will yield a compound analagous to soap; oils other than pure vegetable oils are present; the advertising claims are not correct that there is no alcohol; no alkali and no caustic in the compound; there is no evidence of the presence of "vitazene", and no such ingredient is known to science.

That this compound contains no olive oil.

That the efficacy of this product in the treatment of dandruff, dry or oily hair and scalp disorders is limited to that of a detergent, there being no medical or other treatment known to medical science that will remove the cause of dandruff or cure that condition.



That there is nothing known to medical science which taken internally or applied externally as a treatment for the hair and scalp will cause the hair of the user to grow or prevent its falling out, or which will cure the condition of baldness of the scalp.

That results from the use of this product are not guaranteed but only a refund of the purchase price is promised.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Mar-O-Oil—

1. Is entirely different from old fashioned shampoo methods;
2. Does not contain some of the ingredients found in soap;
3. Contains no alcohol;
4. Contains "Vitazene";
5. Contains a new tonic discovery that checks dandruff and falling hair, and also normalizes all hair and scalp difficulties;
6. Is a soapless olive oil shampoo;
7. Dissolves and removes all accumulation of dandruff;
8. Gives the scalp "perfect" cleanliness;
9. Will restore hair to its natural softness, color and lustre;
10. "Rids" the hair and scalp of dandruff, dryness or excessive oiliness;
11. Will give you youthful, fascinating hair within ten minutes after using it;
12. Feeds and nourishes the hair and scalp;
13. Is made from pure olive oil;
14. Is 100% soluble in water;
15. Makes the hair four or five shades lighter;
16. Makes a wave last two to three times longer;
17. Combats the alkali found in most water;
18. Is utterly and completely free of alkali, alcohol or caustics of any kind;
19. Will grow hair on bald spots or make the hair come in thick after four treatments or any other number of treatments;
20. Will nourish the hair roots;
21. Corrects all hair and scalp troubles;

(b) That Mar-O-Oil is a competent remedy or possesses any appreciable therapeutic value in the treatment of stubborn cases of dry or oily hair and dandruff or any other scalp trouble;

(c) That a five-minute treatment or any other treatment with Mar-O-Oil will end all dandruff worries;

(d) That the hair "derives triple benefit" from the use of Mar-O-Oil Shampoo;

(e) That by laboratory tests Mar-O-Oil has been proved to be 97½ effective as a cleanser while other shampoo methods now in common use have been found only 5% effective;

(f) That the results from the use of this product are guaranteed;

(g) That you can rub it on a baby's tender skin without having the slightest effect;

and from making any other claims or assertions of like import.  
(May 13, 1936.)

01400. Vendor-Advertiser—Infra Red Apparatus.—W. F. Clark, an individual operating under the trade name of Electrical Research Laboratories, Warren, Pa., vendor-advertiser, is engaged in selling a certain apparatus designated Warren's Infra Red Sitz Bath and in advertising represented:

The Modernized Fountain of Youth;

Marvelously and truly a "Modernized Fountain of Youth" to which you can approach with a full realization that it will render you quick and effective relief and impart an exhilarating feeling of vigorous well being;

Warren's Infra Red Sitz Bath works directly on the entire pelvic region; quickly and effectively aids in ridding your whole system of toxins by giving the seven million pores in your skin a chance to breathe—to purge those pores of the poisonous toxins that clog them and thus aid in restoring physical and mental efficiency;

A fully illustrated brochure has been prepared, describing in detail the workings of this marvelous "Modernized Fountain of Youth"; how it relaxes, soothes and invigorates the genital organs and in restoring the functions that are rightfully yours;

Why should any man suffer the pangs of disappointment resulting from the loss of virility or bodily ill health after reaching the "Forties"; why should any woman tolerate the periodic suffering which she has endured for ages; when quick, pleasant relief is within the reach of all?

Electrical Research Laboratories.

\* \* \* soothes, heals and strengthens the many nerves, which pass close to or through the genital organs.

A therapeutic agent that has no equal.

Regardless of the type of ailment from which any member of the family may suffer—Arthritis, Rheumatism, Gout, Menstrual Pains, Disorganized Periods, Sciatica, Neuralgia, Kidney and Bladder Trouble, Prostate Disorders, Loss of Vitality, Bronchitis, Insomnia, Skin Disorders, Common Colds, Lumbago, Catarrh, Asthma, Alcoholism, Autointoxication—Dr. Warren's Infra-Red Sitz Bath will be found of inestimable value in relieving such troubles.

As a curative agent for life-sapping insomnia, Dr. Warren's Infra-Red Sitz Bath is recognized by authorities everywhere as an outstanding scientific achievement.

Build resistance against influenza and pneumonia with Dr. Warren's Infra-Red Sitz Bath.

The respondent hereby admits:

That the apparatus is used to supply warm moist air impregnated with fumes from volatile oils and that the effects from the use of this apparatus are no more beneficial than those obtained by the use of other methods of promoting heat, particularly a warm bath as can be taken in any ordinary tub, the action of heat in such treatments being to promote an increase in cutaneous circulation;

That in the clinical conditions mentioned, results are limited to palliative relief;

That resistance to influenza and pneumonia cannot be effectively built up by warm baths;

That only nature can "cure" any ailment and human agencies at most may only assist nature;

That the irritating effects of the volatile oils may be contraindicating in acute infections;

That he does not now own and operate an adequate laboratory under the supervision of a competent scientist where research work is being conducted;

That he is not a doctor of medicine and that "Dr. Warren" is the name of a fictitious person.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Warren's Infra-Red Sitz Bath will, regardless of individual conditions, "render \* \* \* quick and effective relief and impart an exhilarating feeling of vigorous well being";

(b) That this apparatus is a competent treatment or effective remedy for any of the following conditions—

1. Arthritis,
2. Rheumatism,
3. Gout,
4. Menstrual pains,
5. Disorganized periods,
6. Sciatica,
7. Neuralgia,
8. Kidney and bladder trouble,
9. Prostate disorders,
10. Loss of vitality,
11. Bronchitis,
12. Insomnia,
13. Skin disorders,
14. Common colds,
15. Lumbago,
16. Catarrh,
17. Asthma,
18. Alcoholism,
19. Auto-intoxication,

or any other condition, "regardless of the type of ailment from which any member of the family may suffer";

(c) That Warren's Infra-Red Sitz Bath—

1. Is a "curative agent",
2. Is a "curative device",
3. Has "curative effects",

or by any other statement, that it effects a "cure" for any condition;

(d) That this device builds resistance to influenza or pneumonia;

(e) That Warren's Infra Red Sitz Bath

1. Works directly on the entire pelvic region,
2. Aids in ridding the system of poisons,
3. Gives the seven million pores in the skin a chance to breathe,
4. Purges the pores of poisonous toxins;

(f) That Warren's Infra-Red Sitz Bath aids in strengthening the genital organs and in "restoring the functions that are rightfully yours";

(g) That "physicians everywhere" are recommending this product;

(h) That Warren's Infra-Red Sitz Bath insures effective rejuvenation for men;

- (i) That this device assures more "pep", regardless of age;
- (j) That this device "strengthens every portion of the pelvic region", or that it soothes, heals and strengthens the nerves which pass close to or through the genital organs;
- (k) That Warren's Infra-Red Sitz Bath is a competent treatment or effective remedy for lack of virility, nor will it "restore" virility;
- (l) That this is a therapeutic agent that has no equal;
- (m) That its applications—
  1. Will not interfere in any way with treatments the patient may be taking,
  2. Tends to aid such treatments,
  3. Acts as a tonic to the system;
- (n) That this device offers quick and certain relief to anyone suffering from any kind of ill;
- (o) That this product is "the modernized Fountain of Youth";

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees, in soliciting the sale of said product in interstate commerce, to cease and desist from the use of the words "Research Laboratories", or "Laboratory" or "Laboratories" in his trade name or advertising literature unless and until he owns and operates an adequate laboratory under the supervision of a competent scientist where research work is being conducted.

The respondent further stipulates and agrees in soliciting the sale of said commodity in interstate commerce to cease and desist from using the word or title "Dr." or "Doctor" in the name of his product or in his advertising literature, or otherwise representing that respondent's business is conducted by a physician. (May 13, 1936.)

**01401. Vendor-Advertiser—Food Preparation.**—Pankoka Products, Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a food preparation designated Pankoka and in advertising represented:

To enjoy and retain glowing Health, abundant Strength, amazing Endurance, eat or drink regularly Pankoka.

Exclusively Processed Chocolate Body Builder.

Indispensable for the human body. It contains the essential vitamins and minerals missing from the daily diet.

Feeds nerves, generates blood, builds bone.

As a natural energy stimulant it fills "young bodies" with plenty of reserve to fight off the 101 common ailments of children.

As a regulated scientific mixture it has just enough ingredients to properly balance all diets.

Unbelievable benefits quickly derived. Tireless Energy—Greater Strength—More Endurance—Sound Sleep \* \* \* are some of the many benefits you will notice.

Increased energy, rugged, sturdy health, general improvement in physical and nervous condition is speedily apparent.

Special Offer Expires August 15th \* \* \* We have arranged a special offer, good for one month only. \* \* \*

The conditions most frequently mentioned, which Pankoka has helped are the following:

Gain in Vitality	Gain in Energy
Gain in Ambition	Restores Appetite
Gain in Endurance	Calms Nervousness
Gain in Strength	It helps assimilation of food.
Promotes Sleep	It promotes mental alertness. * * *

Pankoka, a sugarless sweet chocolate sweetened with saccharine.

The respondent hereby admits:

That the essential vitamins and minerals are not missing from a properly constituted daily diet and the nutritional factors contained in the product are not lacking in such a diet;

That the product does not contain all of the vitamins, minerals, or vegetable substances necessary to a proper functioning of the human body;

That it is impossible for any one mixture of food materials to overcome the deficiency that may exist in all diets;

That there is no satisfactory evidence that vitamin D is concerned in the formation of muscle or tissue other than bone;

That the value of the product is limited to that of a common food and as such it would not provide a reserve sufficient to be of value in the treatment of the ailments of children;

That according to the formula submitted to the Federal Trade Commission the product contains sugar and does not contain saccharine;

That the process by which the product is manufactured is not exclusive;

That the limit stated in the advertised "special offer" was not adhered to.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product will balance all diets;

(b) That said product is of benefit in effecting:

Increased vitality,  
Increased ambition,  
Increased endurance,  
Increased strength,  
Increased energy;

(c) That said product is effective in:

Promoting sleep,  
Restoring the appetite,  
Calming nervousness,  
Promoting mental alertness;

(d) That said product will aid in the assimilation of food;

(e) That the daily diet is lacking in essential mineral and vegetable substances or vitamins;

(f) That said product contains all of the necessary vitamins or mineral or vegetable substances;

(g) That said product provides the reserve necessary in the treatment of the ailments of children;

(h) That said product will afford a general or normal improvement of the physical or nervous condition;

(i) That said product will enable one to retain health, strength or endurance;

(k)<sup>1</sup> That the process by which the product is manufactured is "exclusive";

(l) That said product is indispensable to the human body;

(m) That said product generates blood or builds bone;

(n) That said product is sugarless or that it contains saccharine;

(o) That any offer made in connection with the sale of the product is for a limited period of time unless a definite period of time is fixed and all offers to purchase thereafter are refused;

and from making any other claims or assertions of like import. (May 13, 1936.)

01402. Vendor-Advertiser—Cosmetics.—Frank Spors, an individual operating as Spors Co., Le Center, Minn., vendor-advertiser, is engaged in selling cosmetics designated Hollywood Star Face Powder and in advertising represented:

Money back if you can't make at least \$15 a day.

Hollywood Star Face Powder.

Hollywood Star Perfume

The respondent hereby admits:

That there is no connection between the products sold by respondent and Hollywood;

That the products sold by respondent are not used by cinema stars who have their headquarters at Hollywood;

That the average earnings of salespersons selling respondent's products under normal conditions and in due course of business are less than the amount represented in the foregoing advertisement.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially by the use of the names "Hollywood Star Face Powder" and "Hollywood Star Perfume" for respondent's products, that there is a connection between these products and Hollywood or that these products are used by cinema stars who have their headquarters at Hollywood;

and from making any other claims or assertions of like import.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, stipulates and agrees:

(b) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time salespersons or dealers achieved under normal conditions in the due course of business.

Respondent further stipulates and agrees to cease and desist from using the names "Hollywood Star Face Powder" and "Hollywood Star Perfume", or any other similar misleading names, to designate his products. (May 15, 1936.)

<sup>1</sup> Matter originally covered by paragraph (j) was not included in stipulation as approved by Commission.

01403. Vendor-Advertiser—Medical Preparation.—Indo-Vin, Inc., a corporation, Cincinnati, Ohio, vendor-advertiser, is engaged in selling a preparation recommended for the treatment of stomach, liver, kidney and bowel troubles designated Indo-Vin and in advertising represented:

Taken shortly after meals, Indo-Vin works with the food you eat, cleaning your system of old toxic poisons through its great action upon the stomach, liver, kidneys and bowels.

It acts within 10 minutes to stop acid risings, bloat and belching and will bring out awful gases and impurities (frequently from the first dose) which may have been inside of you for a long time, contaminating your food and inner-organs.

It is a food-supplement and medicine combined. Its ingredients mix with the food you eat, thus helping nature in her work of cleansing the system of old, toxic poisons.

But thousands have already discovered the wonderful cleansing effect of the new mixture of nature's plant juices, called Indo-Vin, which has diuretic action on the filtering tubes of the kidneys, cleansing these important organs as they were never cleansed before, relieving such agonizing afflictions as back pains, swelling ankles, and lower limbs, stiffness in the back, etc.

Indo-Vin will cleanse your bowels (gradually—not drastic or severe) as they were Never Cleansed Before and tone them into better daily action.

By its natural cleansing action, Indo-Vin often puts a stop to the skin eruptions that are caused by impurities.

This new medicine (Indo-Vin) has helped 85 or 90 per cent of the people who have taken it.

#### Medical Help of a New Kind.

Every person who suffers can have a liberal introductory bottle of the medicine.

Indo-Vin is taken after meals and mixes with the food in one's stomach, helping to throw off poisons that foster stomach troubles.

It helps to eliminate the old bile from your liver and increases fresh bile flow thus relieving sick headache, dizzy spells and lazy, drowsy feelings.

It will clear up skin eruptions caused by the impurities in the organs and will overcome the sallowness or "muddiness" that is due to sluggish liver and will put Rosy Glow into your cheeks.

Indo-Vin will make you Look, Act and Feel like a Different Man or Woman, years younger than your real age.

It acts within minutes to relieve gas pains, sourness, and bloating in the stomach.

New Kind of Medicine \* \* \* Re-energizes your body.

Indo-Vin stimulates assimilation.

Boneset, a stimulant.

Angelica Root, a stimulant.

The Medicine So Many Need. Works with the Food in Your Stomach. A Formula Doctors Respect.

The respondent hereby admits:

That this medicine is primarily a tonic laxative, supplemented with stomachic, carminative and cholagogic ingredients; and its therapeutic properties are limited to those of a general tonic laxative.

That there is no diuretic ingredient in the preparation to activate or affect the functions of the kidneys.

That adequate treatment of some of the serious conditions mentioned in the above advertising claims is such as to exceed the therapeutic possibilities of this preparation.

That the stimulating, cleansing and rejuvenating claims made for this product are greatly exaggerated.

That said medicine has no food value, is not a new kind of medical help, and has not been approved by physicians.

There is no evidence as to the percentage of persons who have been benefited by its use.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Indo-Vin has helped any definite number or percentage of people who have used it;

(b) That Indo-Vin is—

1. A new kind of medical help;
2. Made from a formula doctors respect;
3. A food supplement;

(c) That Indo-Vin will—

1. Stop acid risings;
2. Help to throw off stomach poisons;
3. Help to eliminate old bile from the liver, or relieve sick headache;
4. Cleanse your bowels as they were never cleansed before;
5. Clear skin eruptions caused by impurities of the organs or overcome sallowness or muddiness in the complexion, or put a rosy glow into one's cheeks;
6. Make one look, act and feel years younger than his real age;
7. Relieve gas pains, sourness and bloating in the stomach within any specified time;
8. Reenergize the body;
9. Relieve distress after eating;

(d) That any definite number of doses of Indo-Vin will remove the gases and impurities from the system;

(e) That Indo-Vin stimulates assimilation;

(f) That either Boneset or Angelica Root is a stimulant;

(g) That Indo-Vin produces direct action or otherwise influences the functioning of the kidneys;

(h) That every person who suffers may expect benefit from the use of this product;

and from making any other claims or assertions of like import.  
(May 15, 1936.)

**01404. Vendor-Advertiser—Cosmetics, Medicines, Incense, etc.—**  
Richard Smile, an individual, operating under the trade names of Hindu Laboratories, Hindu Laboratories of Incense, Hindu Perfume Co., and Oriental Incense Co., Chicago, Ill., vendor-advertiser, is engaged in selling cosmetics, medicinal preparations and incense and in advertising represented:

Hindu Laboratories—Main Office, Bombay, India—Nimola Wonderful Hindu Herb Life Tonic.

Recommended for Diseases of the Blood, Nerves, Kidney and Liver, Biliousness, Constipation, Indigestion, Stomach Troubles, Sick Headaches, Gout, Rheumatism, LaGrippe, Weakness, General Disability and run down system.



When the blood does not circulate properly the limbs become stiff and paralytic, and rheumatism sets in—so a few doses of Hindu Herb Life Tonic will bring fine results.

Disability and weakness will be relieved by a few doses.

One of the chief ingredients of this Hindu Life Tonic is a stomach remedy of value.

Smile's Hindu Pine Balm—The Hindu Home Remedy for a hundred uses—Used for coughs, cold in the head and chest, sore throat, tonsillitis, asthma, headache, toothache, neuralgia, Bronchitis, catarrh, hay fever, pleurisy, inflammation and congestion of any kind.

Soothing and relieving for stiff joints, rheumatism, backache, sore tired feet.

Highly recommended for Piles and Painful Menstruation.

Unexcelled for influenza and pneumonia.

Wonderful for whooping cough and croop (spasmodic).

Hindu Laboratories of Incense—Hindu Lucks-Me Incense to \* \* \* bring success and prosperity.

Said to create an atmosphere of success, prosperity, and happiness.

We also make \* \* \* Drawing Incense, showing lucky numbers on the ashes when burnt \* \* \* Also spiritual and holy oils \* \* \* Holy and Blessed Incense.

Oriental Mfg. Co.

Pagoda Incense \* \* \* delicately perfumed with the best grades Aromatic and other Oriental products and ingredients.

Oriental Incense Mfg. Co.

Hindu Perfume Co.—Tissue Builder Cream—Hair Grower Pomade—Hindu Pain Killer Liniment—Hindu Lucky "13" Holy Oil—Hindu Vegetable Oil Soap.

The respondent hereby admits:

That according to reliable medical authority there is no cream that will build tissue, nor is there any medical or other treatment known to medical science that will make hair grow;

That the products advertised and offered for sale are not imported from India, or any part of the Orient, nor are they Hindu products;

That none of the various brands of Incense offered for sale are made from lucky herbs, flowers and spices; nor will they, or any one of them, create an atmosphere of success, prosperity and happiness, or show lucky numbers on the ashes when burnt;

That neither the said Nimola Wonderful Hindu Herb Life Tonic, nor Smile's Hindu Palm Balm could be accepted as a competent remedy in the treatment of the various pathological conditions mentioned in the said advertising;

That the respondent does not own or operate a laboratory nor maintain an office in Bombay, India.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Nimola Wonderful Herb Life Tonic is a competent treatment or an effective remedy for disease of the blood, nerves, kidney and liver, biliousness, constipation, indigestion, stomach troubles, sick headache, gout, rheumatism, LaGrippe, weakness, general debility, or run down system;

(b) That the use of said preparation would bring results when the limbs become stiff or paralytic;

(c) That Smile's Hindu Pine Balm is a competent treatment or an effective remedy for coughs, cold in the head or chest, sore throat, tonsillitis, asthma, headache, toothache, neuralgia, bronchitis, catarrh, hay fever, pleurisy, inflammation or congestion, piles, painful menstruation, influenza, or pneumonia;

(d) That the use of said preparation would be soothing or relieving for stiff joints, rheumatism, backache, sore tired feet, whooping cough or croup;

(e) That any of respondent's various incenses will either bring or create an atmosphere of success, prosperity or happiness, or will show lucky numbers on the ashes when burnt;

(f) That respondent maintains an office in Bombay, India;

(g) By the use of the word "grower", or any similar term, that respondent's hair promade will cause hair to grow;

(h) That by the use of the words "Tissue Builder" or any similar term that any cosmetic cream sold by the respondent will build tissue;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees in soliciting the sale of his said commodities in interstate commerce, to cease and desist from including as a part of his trade name or as a part of the name of any of his products the terms "Hindu", "Oriental", or any other geographical term implying that such commodities are imported from said localities, until such be the fact.

The respondent further stipulates and agrees in soliciting the sale of his said commodities in interstate commerce to cease and desist from the use of the word "Laboratories" as a part of his trade name until he does operate a laboratory as the term is ordinarily understood and accepted. (May 15, 1936.)

**01405. Vendor-Advertiser—Cosmetic.—Irresistible, Inc.,** a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a cosmetic designated Irresistible Lip Lure and in advertising represented:

Use the lure that has always won love for famous, enchanting women \* \* \*  
 Irresistible Lip Lure \* \* \* melts deep into your lips.  
 Lipstick in four gorgeous permanent shades.

The respondent hereby admits:

1. That Irresistible Lip Lure has not always won love for famous enchanting women.

2. That Irresistible Lip Lure will not melt deep into the lips, or that it will penetrate the skin surface at all.

3. That Irresistible Lip Lure will have no permanent effect upon the lips.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Irresistible Lip Lure has always won love for famous women.

(b) That Irresistible Lip Lure will melt deep into one's lips, or that it will penetrate the skin surface at all.

(c) That Irresistible Lip Lure will produce four gorgeous permanent shades, or will have any "permanent" effect on the lips. (May 15, 1936.)

01406. Vendor-Advertiser—Medicinal Preparation.—International Laboratories, Inc., a corporation, Rochester, N. Y., vendor-advertiser, is engaged in selling a certain medicinal preparation designated *Moone's Emerald Oil*, and in advertising represented:

Says Dangerous varicose veins can be reduced at Home.

Reduce those Dangerous Swollen Veins. Home Treatment for varicose, swollen veins.

People who want to reduce varicose veins or simple swellings in a few days should not hesitate to try a bottle at once. It is so powerful that a small bottle lasts a long time.

If you or any relative or friend is worried because of varicose veins or hunches, the best advice for home treatment that anyone in this world can give, is to get a prescription known as *Moone's Emerald Oil*.

So penetrating and powerful is *Emerald Oil* that it helps *dissolve* simple swellings due to strain and *causes them to disappear*.

Germicide.

Antiseptic.

Varicose veins are quickly reduced and distressing eczema goes quickly.

Piles too respond as well as other simple swellings.

For years it has been used for boils, *ulcers*, abscesses, and *open sores*, and with most pleasing success.

Where ulcerated conditions exist the oil dressing acts as an antiseptic keeping the surfaces clean and sweet and assisting Nature to heal the broken places.

For bruised or broken surfaces: *Emerald Oil* is antiseptic when used as a quick application, and is highly effective when used as a wet dressing in continued contact with open wounds of minor kind.

Varicose Ulcers—Old Sores—Healed at home.

No enforced rest. No operations nor injections. The simple *Emerald Oil* home treatment permits you to go about your daily routine as usual—while those old sores and ulcers quickly heal up and your legs become as good as new.

Nothing so good to swiftly stop Fiery Eczema.

Here's a powerful oil—an antiseptic oil and a highly concentrated oil that you can depend on to put to flight the most obstinate case of eczema.

\* \* \* No more crippling pain. Just follow directions and you are sure to be helped.

The respondent hereby admits:

That the antiseptic value of *Moone's Emerald Oil* as now formulated is limited to a mild inhibitory effect, and it is not of sufficient strength to meet the requirements of a germicide or antiseptic without qualification as those terms are generally understood;

That the therapeutic value of *Moone's Emerald Oil* for varicose veins, boils, ulcers, sores, piles, and skin disorders, is palliative and not systemic, and its efficacy in such cases is limited to results produced by its analgesic, counter-irritant and stimulating properties.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling

its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Moone's Emerald Oil is antiseptic or germicidal, or in this respect is more than a healing agent exercising mild inhibitory powers against germ growth, unless the formula is so modified that the preparation will meet the recognized standards for antiseptics or germicides;

(b) That following use of the preparation the user will have "no more crippling pain", or through the use of any words of similar meaning convey to the public mind a finality of result without recurrence from the same or other causes;

(c) That "dangerous" varicose veins can be reduced at home by the use of Moone's Emerald Oil or from otherwise recommending it for cases that have reached a stage where nothing but surgical attention will relieve;

(d) That Moone's Emerald Oil is of any benefit in the treatment of boils, ulcers, old sores, open sores, piles or skin disorders other than such benefit as may reasonably be expected from a wet dressing exercising such inhibitory effect upon germ or fungus growth, or producing such stimulation or affording such palliative relief as are consistent with the known therapeutic properties of this preparation;

(e) That Moone's Emerald Oil will "dissolve" simple swellings in a sense other than the help it gives Nature to reduce such simple swellings through its penetrative and counter-irritative nature;

(f) That there is "nothing so good", or through the use of descriptive wording make extravagant claims that extend beyond what may be accepted as legitimate trade puffery;

(g) That Moone's Emerald Oil has an exaggerated quickness of effect in conditions for which it is recommended, such as reduction of varicose veins "in a few days";

(h) That as a treatment for reducing varicose veins, Moone's Emerald Oil positively excludes in all cases need for treatment of an operative nature;

and from making any other claims or assertions of like import. (May 26, 1936.)

01407. Vendor-Advertiser—Hair Bleach.—Lechler Laboratories, Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling a certain product for bleaching hair designated "Lechler's '569' Hair Lightener", and in advertising represented:

Lighten your hair without peroxide.

Careful, fastidious women avoid the use of peroxide because peroxide makes the hair brittle.

Lechler's Instantaneous Hair Lightener requires No peroxide.

This is the only preparation that also lightens the scalp. No more dark roots.

#### HEALTHY SCALPS

The medical profession will vouch for the fact that the antiseptic action of '569' Instantaneous Hair Lightener insures freedom from dandruff, and a clean healthy scalp.

"Of Course \* \* \* It's Antiseptic a new '569' fan writes—'Before using '569' Instantaneous Hair Lightener my scalp always had a scaly substance similar to dandruff. Since the first application my scalp has been beautifully clean.'"

The respondent hereby admits:

1. That the bleaching effect of this product is produced by the action of hydrogen peroxide upon the hair, such hydrogen peroxide being released when the preparation is applied according to instructions;
2. That this preparation will not prevent dark roots;
3. That this is not the only preparation that lightens the scalp;
4. That this product does not constitute a competent treatment or effective remedy for dandruff.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling it said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Lechler's "569" Instantaneous Hair Lightener will lighten hair without peroxide, does not require peroxide, or by direct statement or reasonable implication, that it does not contain hydrogen peroxide;
- (b) That by the use of this product, one will have no more dark roots;
- (c) That this is the only preparation that lightens the scalp;
- (d) That "569" Instantaneous Hair Lightener is a competent treatment or effective remedy for a scalp condition commonly known as dandruff, or that
  1. It insures freedom from dandruff,
  2. It insures a clean healthy scalp,
  3. One application will keep a scalp beautifully clean.

and from making any other claims or assertions of like import. (May 26, 1936.)

**01408. Vendor-Advertiser—Medicinal Preparation.**—Mantho-Kreoamo, Inc., a corporation, Clinton, Ill., vendor-advertiser, is engaged in selling certain medicinal preparations designated M-K Liquid Rub and M-K Cold Remedy, and in advertising represented:

Changeable weather brings on rheumatic \* \* \* aches and pains in back, shoulders, arms and legs \* \* \* you should have a bottle of M-K Liquid Rub \* \* \* which athletes and athletic directors say is the fastest, most effective rub on the market. \* \* \* It contains more pain-chasing, pain-easing \* \* \* ingredients \* \* \* goes deeper than any rub \* \* \* a double action rub, different from any other. A counter-irritant and analgesic combined.

Get a bottle of M-K Liquid Rub, that remarkable double action liniment with its ten pain-chasing, soothing, deep penetrating ingredients which act quicker than anything you've ever tried.

When the pain of muscular rheumatism, lumbago, shoots and twinges through your body \* \* \* This new scientific rub \* \* \* penetrates deep down to the affected parts and the pain goes out almost like magic.

M-K Liquid Rub goes down to the seat of the trouble.

If you suffer from \* \* \* athlete's foot \* \* \* simple headache, colds in the head \* \* \* try M-K Liquid Rub.

Don't trifle with colds. Don't trifle with unknown remedies. Get a bottle of M-K Cold Remedy, that famous liquid remedy of a noted doctor who for over seventeen years never lost a case of lobar pneumonia.

The reason M-K Cold Remedy is so good for deep-seated chest colds, bronchitis, colds on the lungs, is because a noted physician discovered how to combine three important cold remedies into one formula.

Get a bottle of M-K Cold Remedy and let it help you get rid of colds.

Do you know that 100,000 people die annually from pneumonia? Many of these cases start with a common cold, so don't take chances. Colds are very dangerous. If you ever have a cold, do this one simple, easy thing—get a bottle of M-K Cold Remedy.

\* \* \* M-K Liquid Rub contains so many effective soothing pain relieving ingredients. No. 1 is a \* \* \* local anesthetic with remarkable power of controlling inflammation \* \* \*.

The respondent hereby admits that:

The efficacy of M-K Liquid Rub in the treatment of rheumatic aches, muscular rheumatism, lumbago, athlete's foot, headaches, colds, aching joints, pains in the arms, legs, hands or feet, and inflammation is limited to the palliative relief afforded by the analgesic and counter-irritant action of the preparation;

The efficacy of M-K Cold Remedy in the treatment of colds, coughs, bronchitis, chest colds, colds on the lungs, or complications of colds is limited to the symptomatic relief afforded in those conditions;

M-K Cold Remedy is not a combination of cold remedies.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That M-K Liquid Rub is a competent treatment or an effective remedy for rheumatic aches, muscular rheumatism, lumbago, athlete's foot, headaches, colds, aching joints, and pains in the arms, legs, hands or feet, unless such representations are limited to the palliative relief afforded by the analgesic and counter-irritant action of the preparation;

(b) That M-K Liquid Rub goes to the seat of any trouble;

(c) That M-K Liquid Rub goes "deeper".

(d) That M-K Liquid Rub will "control" inflammation;

(e) That M-K Cold Remedy is a competent treatment or an effective remedy for colds, coughs, bronchitis, chest colds, colds on the lungs, or complications of colds, unless such representations are limited to symptomatic relief;

(f) Inferentially or otherwise that M-K Cold Remedy will prevent pneumonia;

(g) That M-K Cold Remedy is a combination of cold remedies;

(h) That M-K Cold Remedy will "rid" one of colds;

and from making any other claims or assertions of like import. (May 26, 1936.)

**01409. Vendor-Advertiser—Medicinal Preparation.**—Sterling Wiener, an individual trading as Weiner's Nu-Way Laboratories, Evansville, Ind., vendor-advertiser, is engaged in selling a certain medicinal preparation designated P. D. Q. Cough Control, and in advertising represented:

PDQ Cough Control acts instantly \* \* \* for quick relief, colds, asthma, catarrh, sore throat, etc.

Most of you know that coughs, colds, and sore throats are in many cases forerunners of more serious illness. So don't let a cough, cold or sore throat get a good start on you. Get a bottle of the famous PDQ Cough Control.

With the temperature constantly changing it is necessary for you to keep a bottle of the famous PDQ Cough Control \* \* \* in order to get the jump on the cough, cold or sore throat that might develop after a change in temperature.

The respondent hereby admits:

That the therapeutic action of the product is limited to its expectorant properties and as such it would only act as a palliative treatment for minor irritations of the throat associated with colds and would not control coughs;

That the product would be of little value in the relief of asthma or catarrh;

That the product has no value as a preventive of complications of colds;

The respondent further admits that there is no evidence that the product acts instantly.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent treatment or an effective remedy for coughs unless such representations are limited to relief of the coughs which may result from colds;

(b) That said product is a competent treatment or an effective remedy for colds unless such representations are limited to relief of the coughs which may result from colds;

(c) That said product is a competent treatment or an effective remedy for sore throat unless such representations are limited to the relief of minor throat irritations and sore throat due to colds;

(d) That said product is a competent treatment or an effective remedy for asthma or catarrh;

(e) That said product will prevent coughs, colds, sore throat of the complications thereof;

(f) That said product will "control" coughs;

(g) That said product acts "instantly";

and from making any other claims or assertions of like import. (May 26, 1936.)

01410. Vendor-Advertiser—Medicinal Preparation.—Vladimir Mohnach and Michael Homa, copartners, operating under the firm name of The Remasol Co., Philadelphia, Pa., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Remasol, and in advertising represented:

New and remarkable remedy.

Remasol—something new, something different—safe and effective.

Who wants to be ignored or disliked just because of pimples? There is no reason for these conditions to exist any longer. With our modern treatment to assist you, you can destroy pimples more safely and quickly than with anything you've ever known.

Yes, we know that you will be amazed by the almost magic work of Remasol. Remasol will not harm. An effective skin lotion for the treatment of pimples.

Remasol Lotion is composed of medical agents above reproach in their action and effects. A better lotion in point of high standards of ingredients and of perfect compounding can hardly be made.

We guarantee that there is nothing in Remasol Lotion that will harm the skin, but that there are remedies therein which will produce gratifying results.

Medical men admire the simplicity of its makeup and endorse the efficacy yet harmlessness of its ingredients.

A product capable of doing what others have failed to do. It will rid your face of pimples safely and quickly.

Remasol will restore again that good, clear and natural appearance. If it fails, it won't cost you a penny.

Get an early start and assure yourself quick relief as well as a normal complexion.

Harmless to the most sensitive skin.

Get rid of pimples and disfiguring skin eruptions.

Are skin disorders curable? Learn how you can be easily relieved of painful embarrassment. Remasol acclaimed by thousands.

Then, too, Remasol a-l-o-n-e is capable of eradicating facial disturbance.

Get rid of blotches, blackheads, eruptions or other common skin disorders. Try Remasol \* \* \* A smooth, clear, healthy skin will be yours when you associate yourself with the quality of this most reliable skin lotion.

Remasol Skin Lotion. The new marvelous aid \* \* \* an odorless liquid \* \* \* is a mild astringent, antiseptic in action. Being harmless, even to the most sensitive skin, it can be used safely and very effectively in the treatment of pimples and other disfiguring skin eruptions.

The respondents hereby admit:

That the ingredients composing Remasol are not such as to constitute this product a competent treatment for pimples, blackheads or other skin eruptions, or skin disorders;

That Remasol is an astringent and as such could not be deemed harmless to the most sensitive skin;

That the efficacy of Remasol in producing a smooth or healthy skin or a normal complexion is limited to that of an astringent;

That no endorsements of Remasol by Physicians have been produced by the respondents.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Remasol is either a competent treatment or an effective remedy for, or will rid the skin of pimples, blackheads, and other skin eruptions, or skin disorders;

(b) That Remasol will produce a smooth, clear, healthy skin, or assure a normal complexion;

(c) That the use of Remasol will relieve the embarrassment caused by skin disorders;

(d) That Remasol is a new and remarkable remedy, works like magic, is something different, or is capable of doing what other preparations can not do;

(e) That Remasol is composed of medical agents above reproach in their action and effects; or is harmless to the most sensitive skin, or that its harmlessness is "guaranteed".



(f) That medical men admire the simplicity of the makeup of Remasol or endorse its efficacy or its harmlessness,

and from making any other claims or assertions of like import. (May 26, 1936.)

01411. Vendor-Advertiser—Food Product.—The Quaker Oats Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a cereal designated "Quaker Oats", and in advertising represented:

The term "Oatmeal-Vitamin" is applied to Vitamin B.

Keep fit on oatmeal, the great protective food that is rich in the *nerve-nourishing* Vitamin B that *combats nervousness, constipation*.

Jimmy Cagney's favorite recipe for Oatmeal Bread.

Jimmy Cagney and Pat O'Brien find Oatmeal Great Training Food for Flying Adventures.

Jimmy Cagney and Pat O'Brien, costarred in Warner Brothers' new aviation picture, "Devil Dogs of the Air", found out just how valuable oatmeal is as an energy-supplying food during the making of that movie. \* \* \* To keep fit, both included plenty of oatmeal in their diets every day, and Quaker Oats gave them the pep and energy so necessary for their adventurous roles.

Jimmy and Pat discovered *why* Quaker Oats keeps them on their toes all the time, too. \* \* \*. *Since most foods lack a sufficient amount of the yeast Vitamin B*, a food that does contain an abundance of it is necessary in everyone's diet. *As a source of this vital substance, Quaker Oats is winning thousands of new friends.*

James Cagney \* \* \* Trains on Oatmeal because of its Yeast-Vitamin B.

He chooses oatmeal as the perfect training food because it is rich in the yeast-vitamin B \* \* \*.

Pat O'Brien, featured film star, appearing with James Cagney, in Warner Brothers' newest picture, "Devil Dogs of the Air", has two favorite uses for Quaker Oats—first, as an energizing, nerve-nourishing food; second, as the principal ingredient of his pet delicacy—oatmeal cookies.

The respondent hereby admits:

That, although oatmeal is considered a food of high dietary value, it is not the only protective food that is rich in the nerve-nourishing Vitamin B, which combats nervousness and constipation;

That certain foods other than Quaker Oats have a sufficient amount of the yeast-vitamin B;

That Vitamin B is not the "oatmeal" vitamin

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Quaker Oats is the only protective food that is rich in the nerve-nourishing Vitamin B, that combats nervousness and constipation;

(b) That most foods lack a sufficient amount of the yeast vitamin B present in Quaker Oats;

(c) That Vitamin B is "oatmeal vitamin";

and from making any other claims or assertions of like import. (May 26, 1936.)

**01412. Vendor-Advertiser—Medicinal Preparation.**—A. H. Smith, an individual trading as Three Threes Sales Co., Sumner, Miss., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Three Threes Pellagra Remedy, and in advertising represented:

333 Pellagra Treatment has cured a great many cases of pellagra.

333 Pellagra Treatment is a scientific compound that supplies blood and needed iron, gives strength to the body, increases weight, aids digestion, regulates bowels, gives vitamins to the blood, increases appetite, rids body of pellagra.

Our treatment supplies the vitamins found in foods that cure and prevent pellagra.

We believe that if we can get one week's treatment before expected death we can cure any case of pellagra and guarantee it.

I am well and can work every day. Your treatment sure did cure me. A. C. Dixon.

333 Treatment is prepared from the prescription of our own practicing physician who has made a life study of the disease and has used his own knowledge as well as the experience of others in compounding this treatment that absolutely cures. Each pellagra sufferer taking the 333 Treatment receives the benefit of our medical adviser's personal interest in each case until permanently cured.

Take this Treatment according to directions and you can rest assured that you will get well of Pellagra.

The respondent hereby admits:

That according to reliable medical authority the product will have but limited beneficial effect upon cases of pellagra and cannot be depended upon as a cure or competent remedy or treatment for that condition; and does not contain sufficient nutritional or therapeutic ingredients to render it of material value in supplying iron or vitamins to the blood, increasing weight or strength, aiding digestion, regulating the bowels, or increasing the appetite.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said product is a competent treatment or an effective remedy for Pellagra;

(b) That said product will prevent or cure Pellagra;

(c) That said product will prevent death;

(d) That use of the product will enable one to "get well";

(e) That said product will "rid" Pellagra;

(f) That said product is effective in:

(1) Supplying iron or vitamins to the blood;

(2) Increasing weight or strength;

(3) Aiding digestion;

(4) Regulating the bowels;

(5) Increasing the appetite;

(g) That the product is guaranteed;

and from making any other claims or assertions of like import.  
(May 26, 1936.)

01413. Vendor-Advertiser—Medicinal Preparation.—Bio-Products, Inc., a corporation operating as Vitalin Products, Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation recommended for the treatment of indigestion, dyspepsia, and stomach constipation, etc., designated "Vitalin Tablets," and in advertising represented:

Vitalin supplies the body with those important mineral elements and vitamins, the lack of which, as definitely proved time and again, is responsible for loss of vigor and vitality, and frequently leads to many of the most serious diseases.

Vitalin Tablets are *absolutely free from drugs*. They are a true food tonic supplement, derived from pure vegetable and herbal matter, definitely known to contain those all-important vitamins as well as the important minerals, calcium, iron and copper, which are absolutely essential to body well-being.

Vitalin—A Biochemic Food Supplement. 60 tablets. A food supplement containing those important mineral elements known to be of value in assisting the body metabolism and the coordination of function between brain, nerve and muscular tissues. These elements are contained in Pure Organic Form Only.

Vitalin—not a medicine Vitalin is a bio-chemic food supplement in highly concentrated form and contains those important mineral elements and vitamins essential for the proper nourishment and functioning of the system. It helps purify and enrich the blood stream, thereby aiding every vital process of the body, bringing improved digestion, assimilation and elimination. It will be found of greatest value in bringing back health and preventing disease.

MEN! Have that strength and vigor every man wants. Regain that virility and vitality that marks you as a real man! Enjoy again the activities of youth, as you can, when you have health—vim—strength.

WOMEN! Develop that charm and grace and beauty that is the essence of true womanhood and which perfect health alone can give. Say goodbye to aches and pains and that tired, "worn out" feeling.

Nervous exhaustion—weakness and debility—indigestion, constipation, and various other forms of so-called "deficiency diseases"—nervousness, acid stomach, auto intoxication, biliousness, sick headaches, bladder and liver trouble—all who suffer from these conditions may be helped back to health by a knowledge of Biochemistry. Vitalin, a Biochemic Food Tonic supplies the body with those valuable mineral elements and vitamins, lack of which cause those dread deficiency diseases.

Vitalin contains the active principles of those all-important vitamins which help protect the body against infection and various forms of ill health.

Vitalin contains the minerals which are known to give endurance—the minerals which are necessary for the preservation of youthful energies—the elements that help the body to heal itself—that alkalinize and combat acidity—that act as a "cleanser" for the system—that help to renew worn-out cells and aid the body to function. These valuable mineral elements are contained in Vitalin—in pure organic form—absolutely free from drugs of any kind.

Vitalin helps maintain the normal alkalinity of the body, thereby neutralizing the acidity which is the basic cause of so many ailments. Thus toxemia, auto-intoxication, self-poisoning, is effectively combatted.

For growing children, Vitalin supplies those important vitamins now known to be necessary for proper growth and development. Furthermore, by helping to build up the vitality, Vitalin aids the body to develop an immunity against the

many diseases to which growing boys and girls are peculiarly susceptible. Vitalin helps make good, rich nourishing blood. It helps grow good, sturdy bodies and sound, decay-resisting teeth.

Ten different plant growths are used in the compounding of Vitalin in order to provide all of the different mineral elements and vitamins Vitalin contains.

Many physicians have commented upon the fact that few of the thin, anemic and underweight people we see are found, upon medical examination, to have anything organically wrong with their system. There is a great array of these underweight people trying by various means to discover why they cannot build firm, well-rounded bodies.

Science has discovered the cause of these conditions and pointed the way to robust strength and shapely bodies. Scientists in Bio-Chemistry have discovered that many cases of nervousness, indigestion, lack of sleep, lack of appetite, and other causes of loss of weight are quickly cleared up and overcome when your body gets *All* the important vitamins and minerals.

The respondent hereby admits:

The evidence is not conclusive that Vitalin supplies the body with all of the important mineral elements or vitamins required for the attainment and maintenance of good health;

According to the weight of scientific authority, Vitalin does not directly:

Soothe and relax tired nerves; Restore waning vital powers;

Supply organic elements necessary to aid digestion;

Furnish the minerals required to cleanse the system and counteract toxins;

Supply the elements necessary to purify the blood stream;

Show favorable results after only one day's treatment;

Preserve youthful energies; Alkalinize and combat acidity;

Help to renew worn-out cells and aid the body to function;

Induce sound and restful sleep; Overcome toxemia;

Develop immunity against disease; Aid digestion, assimilation and elimination;

Restore strength and energy to the weak, listless and spiritless;

Vitalin is not, according to the weight of scientific authority, a competent remedy in the treatment of nervousness, indigestion, constipation, auto-intoxication, coughs, colds, bad complexion, pimples, boils, impure blood, acid stomach, biliousness, sick headaches, bladder and liver trouble, toxemia, tooth decay or skin eruptions;

Good health is not always assured by proper diet; there are many infections and contagious diseases;

Vitalin cannot be depended upon to restore lost manhood or develop charm, grace or beauty in women.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vitalin is a competent remedy in the treatment of indigestion, dyspepsia, acid stomach, bad complexion, pimples, boils, acidosis, auto-intoxication, nervousness or biliousness unless limited to those conditions when they are due to improper diet, hyper-acidity or mineral or vitamin deficiency;

(b) That Vitalin is a competent treatment for coughs, colds, impure blood, aches or pains;

(c) That Vitalin contains, supplies or offers the mineral elements or vitamins necessary or required to:

1. Prevent loss of vigor or vitality or avoid the cause that leads to the most serious diseases;
2. Attain good health;
3. Soothe or relax tired nerves or restore waning vital powers;
4. Aid digestion or combat acidity resulting from faulty eating habits.
5. Cleanse the system or counteract the toxins in the intestines or colon of those who suffer from constipation;
6. Help purify the blood or beautify the skin.
7. Promote alkalinity or help give immunity against infection;
8. Prevent deficiency diseases;
9. Give endurance;
10. Preserve youthful energies;
11. Act as a cleanser for the system;
12. Help renew worn out cells;
13. Provide the proper nourishment or functioning of the system;
14. Aid every vital process of the body or bring improved digestion, assimilation or elimination;
15. Help in maintaining the normal alkalinity of the body or in neutralizing acidity;
16. Assist the body in metabolism or the co-ordination of functions between brain and nerve and muscular tissues;

(d) That for growing children Vitalin supplies the vitamins necessary for proper growth or development or helps to build vitality;

(e) That most users of said product have experienced almost immediate improvement;

(f) That by the use of said product the body will function in a way one cannot realize;

(g) That acidity is the greatest cause of colds or kindred ailments;

(h) That Vitalin offers those vitamins and mineral elements so frequently lacking in the diet;

(i) That it is possible for the users of said product to observe favorable results in a single day's treatment or any definite period of time;

(j) That a full thirty day treatment for \$1.00 is less than the cost of the ingredients;

(k) That acidity is the basic cause of toxemia, auto-intoxication or self-poisoning or that said ailments are successfully combatted by the use of said product;

(l) That toxemia is the prime cause of headaches, biliousness, sluggish liver, nervousness or sleeplessness;

(m) That said product contains in any significant quantity the 16 mineral elements and all the vitamins necessary to give health to the body;

and from making any other claims or assertions of like import. (June 5, 1936.)

01414. Vendor-Advertiser—Correspondence Course.—The McFadden Institute of Physical Culture, Inc., a corporation, Wilmington, Del., vendor-advertiser, is engaged in selling a correspondence course in physical culture, and in advertising represented:

You can be sick or vital. Take your choice \* \* \* The physical culturist \* \* \* has learned how to be strong, vital, immune to most disease, and happy. You can join this flourishing fellowship. Not only can you, by securing

a good, useful, and scientific education, be strong, vital, and happy yourself, but you can be a teacher, a lecturer or a professional physical culturist and help others to gain the great benefits of good health.

\* \* \* Vitality can be secured only through a good scientific health education. We teach you how to be vital \* \* \* no one wants to be sick so everyone is going to the Physical Culturist.

You can have a beautiful body. Learn at home by scientific methods how to be strong, vital, healthy.

*Let this famous teacher help you to secure vitality, personality, power and health.*

\* \* \* Definitely decide today that you are going to be powerful, magnetic, efficient and successful, and get started on a scientific health education which will bring many more opportunities your way.

The most widely beloved man of our times, the great Barnarr McFadden, wants you to learn the secrets of health so that you may overcome whatever obstacles may stand in your path; to make a success in your chosen field and to earn the income to secure the luxuries of life.

You too can be attractive, popular, successful, and happy. Be what *you* want to be, strong, well formed, graceful, envied, happy and healthy. This matter is entirely in your own hands.

Assure yourself that you will not have rheumatism at forty, heart trouble at fifty, hardening of the arteries at sixty or general senility or breaking down of the body at seventy \* \* \*.

The respondent hereby admits:

That, according to scientific opinion, persons taking respondent's correspondence course can not assure themselves that they will not have rheumatism, heart trouble, hardening of the arteries, or general senility or breaking down of the body;

That respondent's course cannot be relied upon to make its students vital, attractive, successful, happy, strong, well-formed with beautiful body, graceful and magnetic, even though its teachings may have such a tendency; nor can it be relied upon to enable them to overcome whatever obstacles may stand in their way.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's correspondence course will assure its students that they will not have rheumatism, heart trouble, hardening of the arteries, or general senility or breaking down of the body;

(b) That respondent's correspondence course will make one vital, attractive, successful, happy, strong, well-formed with beautiful body, graceful and magnetic, and able to overcome whatever obstacles that may stand in one's way;

and from making any other claims or assertions of like import. (June 5, 1936.)

01415. Vendor-Advertiser—Food Product.—General Mills, Inc., a corporation, Minneapolis, Minn., vendor-advertiser, is engaged in selling a cereal designated "Wheaties", and in advertising represented:

\* \* \* But the whole wheat, from which Wheaties are made, contains nearly *twice* the body-building protein and a greater percentage of minerals than even such commonly used foods as corn and rice.

Coach Hardy: Jack himself is in a pinch right now. His mother has simply got to have this operation, and there's only one way he can get the money to have it done. So you'll be doing Jack a mighty big favor if you join his stamp club right away. And the quicker you join, the better it will be for Jack and his mother.

Announcer: Thank you, Coach Hardy. I know that every boy and girl who heard your message feels the same way about the whole thing as you do. And all you have to do to *get the 55 stamps* is: send in just a nickel—5 cents—and a sales slip from your grocer, showing the purchase of Wheaties. Just send your letter to Jack Armstrong, care of Wheaties, Minneapolis, Minnesota, before midnight, February 24th.

The respondent hereby admits:

That whole wheat does not contain, on the average, twice the body building proteins of corn, since the protein content of both is subject to natural variations and corn may contain about two-thirds of the protein content of wheat;

That the characters, "Jack Armstrong" and "Jack Armstrong's Mother", impersonated and referred to in respondent's radio broadcasts are fictitious persons; that the representation that "Jack Armstrong's Mother" was ill and in need of a surgical operation was imaginary and not founded upon fact; that none of the proceeds from the sale of respondent's product or from the sale of stamps in connection therewith was used or intended to be used to defray the costs of a surgical operation or other medical attention nor was any such surgical operation or medical attention dependent upon the sale of respondent's products or stamps.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That whole wheat from which Wheaties is made, contains nearly twice the body-building protein of corn;

(b) That any person is in need of a surgical operation or other medical attention;

(c) That any of the proceeds from the sale of Wheaties or any other product will be used to defray the costs of a surgical operation or other medical attention for a fictitious person; or that any such surgical operation or medical attention is dependent upon the sale of Wheaties or any other product;

and from making any other claims or assertions of like import. (June 5, 1936.)

01416. Vendor-Advertiser—Hair Treatment.—William T. Drouillard, trading as No-Gray Laboratories, Toledo, Ohio, vendor-advertiser, is engaged in selling an application for the hair designated "No-Gray", and in advertising represented:

No-Gray will prevent any head from turning gray, or, if already gray, will restore it to its original color;

No-Gray is turning the heads of the nation. You can't get gray, stay gray or have dandruff if you use No-Gray \* \* \* No-Gray is not a dye.

The respondent hereby admits:

That according to scientific authorities, there is no known preparation that will prevent hair from turning gray, or that will restore hair, already gray, to its natural or original color.

That said product has no therapeutic properties that would prevent one from having dandruff.

That No-Gray is a hair dye.

That respondent neither owns nor operates a laboratory.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That "No-Gray" will prevent hair from turning gray or from staying gray, or restore gray hair to its natural or original color;

(b) That you can't have dandruff if you use No-Gray;

(c) That said product is not a dye;

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees to discontinue the use of the word "Laboratories" in his trade name or trade names until such time as he shall in fact operate a laboratory. (June 5, 1936.)

**01417. Vendor-Advertiser—Medicinal Preparation.**—N. M. Markwood, an individual trading as Anti-Pelade Co., Erie, Pa., vendor-advertiser, is engaged in selling a medicinal preparation designated "Anti-Pelade", and in advertising represented:

Anti-Pelade—a guaranteed cure for alopecia areata, or falling of hair in blotches. Guaranteed to reproduce hair to natural color.

A guaranteed remedy for alopecia areata. Guaranteed under the Pure Food and Drug Act of June 30, 1906, Serial Number 11100-A-3/4.

Three years ago I became a sufferer of alopecia areata and I tried every remedy which I came across, but without any success. The photographs which I enclose show the condition of my head last June, when I purchased a jar of Anti-Pelade and began treatment. It is not only gratifying to you, but also to me to know that a complete cure was brought about by one jar of your Anti-Pelade.

His mother wrote us in February and started to use Anti-Pelade in March. We quote from a letter written in April: "I had my doctor examine him again, and he said it was the worst case of alopecia areata he ever saw. But today we can see the fine white fuzz for the first time." At intervals the mother reported a better growth of hair, until in August she writes, "I would like to report on my son's condition. I have used six jars of Anti-Pelade and it has brought his hair out and it has grown about one inch long."

Have used most of one jar on a customer, and the hair has begun to grow out on the bald spots. He has been having the treatment about two weeks, and one more jar ought to effect a cure.

\* \* \* Anti-Pelade \* \* \* It cured one very bad attack and two lesser attacks of alopecia areata for me in the past three or four years. It has cured a number of friends, too, to whom I recommend it, never failing in a single case.

Sometime ago I was greatly distressed to find that my hair was coming out in spots, and I had a big spot on the back of the head about two inches in diameter entirely bald, and there were about a dozen other spots varying in size from a dime to a half dollar. The efficacy of Anti-Pelade in treating this condition was brought to my attention and after a faithful use of this excellent remedy my hair was completely restored \* \* \* When the hair began to grow on the spots it came in perfectly white, but gradually assumed the normal color.

Anti-Pelade is the only guaranteed treatment for alopecia areata.



The respondent hereby admits:

That there is nothing known to medical science which, taken internally or applied externally as a treatment for the hair and scalp, will cause the hair of the user to grow or which will cure the condition of baldness of the scalp. The cause of alopecia areata is, however, attributed to an organism which a proper germicide may kill, thereby permitting nature to reproduce and replace the hair lost;

That the Government Agency charged with the administration of the Food and Drug Act has not approved the product;

That the product is not guaranteed.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product is a competent treatment or an effective remedy for any type of baldness, unless such representations are limited to alopecia areata;

(b) That the product will grow or cause the growth of hair;

(c) That the product will restore or reproduce hair;

(d) That the product will cure any condition of the hair;

(e) That the product is guaranteed;

and from making any other claims or assertions of like import.

The respondent further agrees to cease and desist from representing inferentially or otherwise:

(f) That the Government Agency charged with the administration of the Food and Drug Act has approved the product. (June 25, 1936.)

**01418. Vendor-Advertiser — Medicinal Preparation.**—Biovegetin Products, Inc., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation recommended for the treatment of stomach ulcers, colitis, etc., designated Vegemucene or V. M. Tablets, and in advertising represented:

Revolutionary new Drugless Treatment for various Gastro-Intestinal Ailments, for Stomach and Duodenal Ulcers and Inflammations, for Irritable Colon and for acid Stomach (Hyperacidity).

This product we now offer you who are afflicted with any of the many forms of stomach ailments here reported—you who suffer from peptic ulcers—ulcers of the stomach or the duodenum—you who are afflicted with ulcerative colitis—with hyperacidity or "acid stomach"—with stomach disorders of various kinds—with gas—with heartburn—with belching, bloating and a feeling of general distress and discomfort after eating.

Mr. M. \* \* \*, a patient of mine who had suffered from gastric ulcers for ten years, was completely relieved from all symptoms within one month by V. M.

V. M. Tablets Cause Increase in Bile Secretions \* \* \* Among the many striking facts uncovered by laboratory and clinical research with V. M., is the fact that the taking of these tablets cause an increase in bile secretions.

Male—39 years old. Symptoms of ulcer for seven years. Had a penetrating duodenal ulcer \* \* \* Placed on V. M. Tablets and soft diet and had immediate relief from pain with some discomfort in moving and slight constipation. However, soon felt so well that he left hospital without operation, though he

originally came in to be operated on. Total duration of V. M. Treatment, four weeks, with complete relief of symptoms.

Mrs. W. \* \* \*, diagnosis of non-specific ulcerative colitis, confirmed by an eminent proctologist, also gastro-enterologist, supported by X-ray and laboratory findings. Symptoms—marked tenesmus, diarrhea 12-18 movements daily, bloody stools and mucus. I placed her on V. M., two tablets every three hours, for a period of one month. She made a splendid recovery and is pursuing her daily work as a teacher.

Through the kindness of a friend, a doctor, I learned of the tablets you have for ulcer. Having tried them I am convinced of their healing qualities.

**The respondent hereby admits:**

The claims that V-M Tablets will be effective in the treatment of gastro-intestinal ailments, stomach and duodenal ulcers and inflammations, irritable colon, acid stomach, peptic ulcers, colitis, gas, heartburn, belching, bloating, and distress after eating, or that it will increase bile secretion, have not been definitely established by scientific research.

That the demulcent action of its major ingredient may be partially counteracted by the irritant effect caused by its other ingredients.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vegemucene or V. M. Tablets is a competent remedy in the treatment of gastro-intestinal ailments, stomach and duodenal ulcers and inflammations, irritable colon, acid stomach or hyperacidity, peptic ulcers, colitis, gas, heartburn, belching, bloating or a feeling of general distress and discomfort after eating;

(b) That Vegemucene or V. M. Tablets will—

1. Completely relieve gastric ulcers of ten years' standing; or
2. Safeguard the patient against conditions that may lead to ulcers of the stomach; or
3. Increase bile secretions;

(c) That Vegemucene or V. M. Tablets—

1. Will give complete relief in four weeks, or any other definite time, to a case of stomach ulcer of seven years' standing and save the patient from an operation; or
2. Induce a splendid recovery in one month from non-specific ulcerative colitis; or
3. Does not irritate the walls of the stomach or intestines or duodenum;

and from making any other claims or assertions of like import. (June 12, 1936.)

**01419. Vendor-Advertiser—Medicinal Preparation.**—Joe Anderson, an individual doing business under the trade name of The A. & O. Co., New Bern, N. C., vendor-advertiser, is engaged in selling a certain medicinal preparation designated "A. & O", and in advertising represented:

- Opens the head and lets you breathe freely.
- Checks fever.
- Opens bowels.
- Relieves bodily discomfort.

Quicker and safer than pills and salve.

Unconditionally guaranteed.

Gives quick guaranteed relief.

For instant relief take A and O.

Relieves the most stubborn colds when all other treatments fail.

Acts instantly and thoroughly.

Restores the system to normal order.

Reliable for adults and children.

A and O starts giving relief from the first dose.

Even the most stubborn colds respond to A and O.

Also recommended for children's colds.

For colds and coughs due to colds, there is absolutely nothing else that acts as quick and thoroughly as A and O.

A and O soothes and heals irritated membranes, clears the nasal passages, opens the head, checks fever and clears the digestive tract.

Colds tear down the system, subject you to influenza, pneumonia and serious lung troubles.

Relieves a cold in 24 hours.

The respondent hereby admits:

That his preparation formerly contained a therapeutic agent which could not be regarded as safe when administered indiscriminately to children by a person having no special knowledge of such drug, and therefore this preparation as thus compounded could not be considered safer than pills and salve.

That there is no known combination of medicines that can relieve a cold in 24 hours;

That respondent's preparation cannot be guaranteed to give instant and thorough relief;

That it is extravagant to claim broadly that this preparation checks the fever or opens the head and bowels;

That there is no assurance that this preparation would protect a patient from the influenza or pneumonia, or other complications of a cold.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Opens the head and lets one breathe freely;

(b) Checks fever, unless limited to feverish conditions accompanying or due to colds;

(c) Opens the bowels;

(d) Relieves bodily discomfort and restores the system to normal;

(e) Give instant, guaranteed or thorough relief;

(f) Relieves the most stubborn colds when other treatments fail;

(g) Starts giving relief from the first dose;

(h) Heals irritated membranes, clears the nasal passages, clears the digestive tract;

(i) Is quicker and safer than pills and salve;

(j) Relieves a cold in twenty-four hours;

(k) Protects one from influenza, pneumonia or serious lung trouble;

and from making any other claims or assertions of like import.

(June 12, 1936.)

**01420. Vendor-Advertiser—Dream Book.**—Martin Stern, an individual doing business under the trade name of the Occult Co., New York, N. Y., vendor-advertiser, is engaged in selling a certain book entitled *Black Herman's Dream Book and The Secret System*, and in advertising represented:

Free "A Message From the Grave."

The Key to Daily Success.

Thousands of people all over the world have benefited by the uncanny Accuracy of Black Herman's Predictions.

Black Herman really knew advice from him was a Sure Thing and now at Last the Secret System that he used in his Private Consultations and gave to his Disciples on his Death Bed is available to everyone who needs it. And absolutely Free—If You Act at Once.

It contains the Secrets of Black Magic that have seldom been revealed.

Just mail \$1.00 today for Black Herman's Dream Book and receive his famous Secret System Absolutely Free.

A Message From the Grave! Only Now \$1.00, value \$6.00.

The Missing Key to Success.

Black Herman's Dream Book.

The Super Master-Key Book.

That tells you the things you want to know. The Secret Guide to Success in all walks of life, Happiness, Health, and Wealth. This is the Great Life Work of the World's Greatest Magician, Black Herman, Containing the Key to the Mysteries of the Ages, Instructions in the Lost Art and Forbidden Knowledge, and the World Famous Secret Dream interpretations of Black Herman himself.

Thousands of people were amazed at the uncanny accuracy of these interpretations while the Great Wizard was alive and Now At Last they are actually made available to the general public for the first time due to the great foresight and rare generosity of the Great Master himself. He spent a Life Time searching for mysteries on every land and gathering material for his book, his Life Work, which he finished on his Death Bed.

Black Herman reveals the Past, Present and Future in accordance with those Mysterious Sciences of Kabalism, Astrology and Numerology. He reveals the Secrets of the Ages and the Knowledge of the Ancients. No Secret was too deep or too difficult for Black Herman. He mastered the Magic of all the lands and learned to give Luck and Assistance to those who need it whether it be in Love, Health, Business Policy, or Jobs. Black Herman could banish Worry, Fear or Misery; and made an unhappy person the Happiest in the World.

Black Herman was a Master of Magic and a Scholar in Legerdemain. In every Age there is one Great Magician. But throughout all the Ages, never was there one to equal the Great Black Herman. He was Supreme Master of the Art of Magic and the Mysteries of the Occult.

Never in the History of the Occult has such a tremendous book, containing so much valuable Secret Information and Knowledge been offered to the General Public and for so Low a Price. This is more than a Dream Book. It is a Super-Guide to the Inner Secrets of Legerdemain and Black Magic. This Book contained the Secrets that Magicians seldom reveal. Facts you want to know. Interpretations, instructions, and Inside Information on subjects that will help you and that you have always wanted. Now At Last it is here. Available even to you if you act Quickly.

Act at Once. The regular publishing price is \$6.00 but for introductory purposes only, the price will be reduced for you to the small sum of \$1.00. This

price is made to only a select few and for a limited time only. So Take Advantage of this Opportunity Now. Mail Your Dollar Today and Start Benefiting at Once. Order Now.

Black Herman's Pupil. Satan the Devil Once the Supreme Master of Mysteries now Studies the Mighty Powers of the Great "Herman" Supermaster of the Lost Art.

The respondent hereby admits:

That the book "Black Herman's Dream Book" and "The Secret System" does not contain information or the means by which one may gain sufficient knowledge of black magic, Kabalism, numerology, astrology, or any of the so-called mystic arts, to enable him to attain success in love, health, business or otherwise; nor was the supposed author of the book, Black Herman, the World's greatest magician, or a magician of any kind whatsoever.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the product offered for sale is a message from the grave, or a key to success, that has benefited thousands of people all over the world;
- (b) That the respondent's product contains any secrets of black magic;
- (c) That the respondent's book is a "secret" guide to anything; or that success in all walks of life, happiness, health and wealth may be had by following its advice;
- (d) That Black Herman was the world's greatest magician or a magician of any kind, or that respondent's book is an authentic work of Black Herman, or contains the "mysteries" of the ages, instructions in the lost art and forbidden knowledge, or the world famous secret dream interpretations of Black Herman himself;
- (e) That the respondent's book is capable of revealing the past, present, or future in accordance with the mysterious sciences of Kabalism, astrology and numerology, or in any other way;
- (f) That respondent's book reveals any "secrets" of the ages, or any knowledge of the ancients not commonly available;
- (g) That Black Herman mastered the magic of all the lands or any magic whatsoever, or had the power to give any luck and assistance to those who need it, whether it be in love, health, business policy or jobs;
- (h) That Black Herman had the capacity to banish worry, fear or misery, or to make an unhappy person the happiest in the world;
- (i) That Satan, the Devil, is the pupil of Black Herman, and studies the mighty powers under the tutelage of the great Herman, supermaster of the lost art;
- (j) That \$6.00 is the "regular" price of said Dream Book, or that \$1.00 is a special offer or reduced price;
- (k) That Black Herman's Secret System is given absolutely free;

and from making any other claims or assertions of like import. (June 12, 1936.)

01421. Vendor-Advertiser—Cosmetic.—Frances Denney, a corporation, and Anthony De P. Denney, John D. Denney, Anne Denney Fleming, William F. Denney, Jr., copartners doing business under the

firm name of Denney & Denney, Philadelphia, Pa., vendor-advertisers, are engaged in selling a cosmetic designated "Eyelash Grower," and in advertising represented:

Eyelash Grower. Feeds the roots, of the lashes, making them healthy and vigorous so that they grow long, lustrous and silky.

Promotes the growth of the lashes, making them long, lustrous and silky.

It has healing properties, and will overcome reddened rims and granulated lids.

The respondents hereby admit:

That, according to scientific authority, there is no known product capable of increasing the growth of hair on any part of the body, or capable of feeding the roots of hairs;

That the therapeutic properties of respondents' product are limited to the palliation or treatment to relieve the pain and suffering due to such conditions as granulated lids.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondents' product will feed the roots of eyelashes;

(b) That respondents' product will increase the growth or length of eyelashes;

(c) That respondents' product will make eyelashes vigorous, or will make them healthy unless specifically limited to its effect in inducing softness and flexibility.

(d) That respondents' product is a competent treatment or an effective remedy for granulated lids; or anything more than a palliative or treatment to relieve the pain and suffering due to such conditions as granulated lids;

and from making any other claims or assertions of like import.

The respondents further stipulate and agree in soliciting the sale of said commodity in interstate commerce, to cease and desist from using the word "Grower" as any part of a trade name for such commodity or any commodity of the same or similar composition. (June 16, 1936).

01422. Vendor-Advertiser—Correspondence Course.—Don L. Baxter, an individual operating under the trade name of Major Kord, Del Rio, Tex., vendor-advertiser, is engaged in selling a correspondence course in piano instruction, and in advertising represented:

LEARN TO PLAY

PIANO BY EAR

No Notes—No Scales—No Exercises!

If you can whistle, sing or hum—you have Talent! Let a popular radio pianist train your hands in Thirty Days. Ten Lesson Method sent postpaid for \$1.00 or pay postman \$1.00 plus postage. Nothing More to Buy. Be your own Teacher!

Results Guaranteed. Accordion charts included free.

Major Kord, Dept. M-9, Del Rio, Texas.

The respondent hereby admits:

That respondent's system uses letters of the alphabet instead of musical characters to indicate musical sounds;

That the time required to learn to play depends upon the capacity of the individual and the time devoted to practicing;

That respondent does not in fact guarantee results, but guarantees to refund the purchase price if the buyer is not satisfied;

That the course is confined to a few simple instructions in the art of playing chords, octaves, melodies, etc.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That there are no notes, no scales or no exercises accompanying the course;

(b) That use of the course will enable one to play a piano in any specified period of time;

(c) That "results" are guaranteed;

and from making any other claims or assertions of like import. (June 8, 1936.)

**01423. Vendor-Advertiser—Books.**—Ace Feature Syndicate, Inc., a corporation, New York, N. Y., vendor-advertiser, is engaged in selling books, and in advertising represented:

6-volume sets of famous authors. \* \* \* Beautiful 6-volume sets of selected latest works of famous authors, printed on good paper. \* \* \* Richly bound in red and gold fabricated leather, with edges beautifully marbled in full color.

The respondent hereby admits:

That said books are not bound in leather.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

That said books are bound in leather;

and from making any other claims or assertions of like import. (June 23, 1936.)

**01424. Vendor-Advertiser—Jewelry.**—A. S. Thomas, an individual operating under the trade name of Santa Fe Watch Co., Topeka, Kan., vendor-advertiser, is engaged in selling watches, watch chains and necklaces, and in advertising represented:

We are holding prices Down, forcing them Down. We are selling high-grade watches at moderate on "Direct To You" prices. *By eliminating the middleman,* by handling gigantic orders we are able to give you your watch at a saving of from \$15 to \$25.

\* \* \* Your Choice. A Beautiful Gold Chain or Strand of Navarre Pearls, with *every* Santa Fe Special while this offer lasts.

No. 154. This handsome curb link chain made of heavy high quality stock, either white or green gold, given FREE with any watch man's or lady's for a limited time. Order by number; specify white or green gold.

\* \* \* Now you may buy the "Santa Fe Special" \* \* \* at a distinct saving of a third to one-half of the prices demanded for other makes of time pieces which have never measured up to the standard of the "Santa Fe Special".

Wear watch or diamond 30 days free \* \* \*.

The respondent hereby admits:

That some watches are manufactured by others for respondent with respondent's trade name placed thereon while other watches carrying the manufacturer's trade name are purchased from such manufacturers and resold by respondent;

That respondent's watches are not sold at a saving of one-third to one-half of the amounts which may be charged by other distributors for watches of equal quality;

That respondent's necklaces are not composed of pearls formed by natural processes in the shells of Mollusks nor did the items, of which such necklaces are composed, originate in the Navarre region of Europe;

That the watch chains offered in connection with respondent's sale of watches are not composed wholly of gold;

That the offer in connection with respondent's sale of watches was not limited to a definite period of time;

That respondent does not allow a prospective purchaser to wear any of respondent's products free of charge; such products are either mailed to a prospective purchaser wherein, before delivery, the initial payment plus postal costs is required, or shipment is made by express wherein, before delivery, the initial payment plus express charges is required.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) By use of the words "direct to you" or any word or combination of words that the prices charged for respondent's watches are the prices at which such watches would ordinarily be sold by a manufacturer direct to the public;

(b) That respondent has eliminated the "middleman";

(c) That respondent's watches are sold at a saving of any amount from the prices charged by other distributors for watches equal in quality to respondent's, unless supported by factual evidence;

(d) That any offer is for a limited time unless a definite time limit is set and all offers to purchaser received thereafter are refused.

The respondent further stipulates and agrees to cease and desist from:

(e) Using the word "pearl" to designate or describe necklaces not composed of pearls which are formed by natural processes in the shells of Mollusks;

(f) Using any geographical term to designate or describe any article not imported from the country or region indicated by said geographical term;

(g) Using the word "gold" alone to describe any item not composed wholly of gold;



(h) Representing that any article may be worn "free" for any stated time unless such article is furnished without requiring the prospective purchaser to make any payment before the expiration of the period stated;

and from making any other claims or assertions of like import.  
(June 23, 1936.)

01425. Vendor-Advertiser—Medicinal Preparation.—William Carroll, an individual, New York, N. Y., vendor-advertiser, is engaged in selling a medicinal preparation designated "Pepzt Ointment" and in advertising represented:

A Real Gland Stimulant to Restore Vigor, Strength, and Power to the most abused glands of the human System.

Men Why Use Powerful Internal Stimulants that might injure or become habit forming drugs, when Pepzt a pleasing external application will help increase and strengthen infirm or wasted glands. As the glands are strengthened, the nerves vitalized the circulation restored, the whole system is invigorated.

Pepzt Ointment is not to be confused with similar ointments on the market that give you only temporary false whipped up pep.

You can not fail to benefit by using Pepzt as it has proved effective in cases where habit forming drugs have failed and whatever else you yourself have used you have found the right ointment at last.

Strengthens the muscles, contracts the ducts, revives the glands and nerves, increase the sensitiveness when deadened.

Pepzt does bring results Quick and lasting.

I am doing this as I am sure you will benefit by the end of six weeks, (if you follow directions). This offer is good for 30 days so send your order as soon as possible.

You Can Quickly Renew Pep, Vigor and Natural Power when glands weaken from overwork, dissipation, worry, etc.

The respondent hereby admits:

That according to the weight of scientific opinion, the therapeutic value of this preparation is limited to its effect as a lubricant and emollient.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling the said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Pepzt Ointment constitutes a competent treatment or an effective remedy for weakened glands, or that it will—

1. Stimulate and/or restore vigor, strength and/or power to glands;
2. Be of value in strengthening infirm or "wasted" glands;
3. "Revive" the glands;
4. Renew pep and/or natural power when glands weaken;

(b) That Pepzt Ointment will vitalize the nerves, restore circulation or invigorate the whole system;

(c) That this preparation produces more beneficial results than "similar ointments on the market that give you only temporary false whipped up pep";

(d) That one "can not fail to benefit by using Pepzt";

(e) That whatever else anyone has used, this is the right ointment;

(f) That Pepzt brings results, quick and lasting or otherwise;

(g) That this preparation—

1. Strengthens muscles;
2. Contracts ducts;
3. Revives nerves;
4. Increases sensitiveness when deadened or otherwise;

(k) That anyone will benefit by using this ointment by the end of six weeks, or in any other given time;

and from making any other claims or assertions of like import. (June 23, 1936.)

**01426. Vendor-Advertiser—Medicinal Preparation.—**Knight Laboratories, Inc., a corporation, Minneapolis, Minn., vendor-advertiser, is engaged in selling a certain medicinal preparation designated Phen-Ocin, and in advertising represented:

Remember—Phen-ocin—spelled P-H-E-N-O-C-I-N—does the work of two or three aspirin. Quicker—safer—and Phenocin never nauseates.

Prompt relief for simple colds, neuralgia, neuritis, aches and pains.

Phenocin is not a new product but an improvement on present products.

Phen-ocin—The Improved Anodyne

The need for a more rapidly acting, safer and more satisfactory sedative and analgesic in medical practice has been evident for a long time.

While Phen-ocin has marked superiorities over any similar product, it has been developed along familiar and thoroughly proven lines. The formula is an improvement of existing formulae, not an experiment.

\* \* \* relaxes muscles and quiets nervousness. Its benefits are obtained more rapidly than possible in other anodynes and also without unpleasant or dangerous after effects.

Phen-ocin disintegrates much faster than similar tablets, giving relief far more quickly.

Phen-ocin's quinine content does not nauseate, cause gastric disturbances, or leave a bitter after taste.

The Miracle Pain Tablet

It does not depress the heart.

You can safely sponsor Phen-Ocin for the relief of functional pains and discomforts peculiar to women.

Phen-Ocin is useful in the treatment of Painful Menstruation, contains no Narcotics or habit forming drugs, and should reduce fever.

Phen-ocin is valuable in the relief of rheumatic pains, \* \* \* dysmenorrhea.

As an alleviating remedy in acute febril conditions, such as colds, common and epidemic, influenza and tonsillitis Phen-ocin is very effective.

Knight Laboratories offer Phen-ocin for the approval of the medical profession as a safe, prompt and effective sedative \* \* \*

\* \* \* safely prescribed with no danger of harmful after effects or habit formation.

The respondent hereby admits:

That according to the weight of scientific authority, an article of this composition does not constitute a competent treatment or an effective remedy for neuritis, all forms of aches and pains, colds, influenza, rheumatism, and/or tonsillitis;

That the severe pain incident to disease and other conditions which may be manifested at these periods would not be materially relieved by this form of medication;

That this combination of drugs is frequently used, and there are many preparations on the market made up in practically the same manner;

That a preparation of such composition may, under certain conditions and circumstances, depress the heart;

That the advertiser does not now own and operate an adequately equipped laboratory under the supervision of a competent scientist where experimental or research work is being conducted.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Phen-ocin is a competent treatment or an effective remedy for—

1. Neuritis,
2. All forms of aches and pains,
3. Influenza,
4. Colds,
5. Rheumatism,
6. Tonsolitis,
7. Fever;

(b) That this product is a competent treatment or an effective remedy for conditions causing severe pain associated with menstruation, or that Phen-ocin will relieve pain incident to menstruation unless limited to the milder forms of pain;

(c) That Phen-ocin is "The Miracle Pain Tablet", or by the use of any other terminology, by direct statement or reasonable implication, that the product will relieve all aches or pains;

(d) That Phen-ocin is materially different from many other similar preparations on the market, or that it is—

1. An improvement on present products or existing formulae,
2. The improved anodyne,
3. More rapidly acting, safer and more satisfactory sedative and analgesic,
4. Possessed of marked superiorities over any similar product,
5. More rapid in action than possible in other anodynes, or that it disintegrates much faster than similar tablets, giving relief far more quickly;

(e) That Phen-ocin will not depress the heart;

(f) That Phen-ocin is "safe", or—

1. Without danger,
2. Without unpleasant or dangerous after effects;

and from making any other claims or assertions of like import.  
(June 23, 1936.)

01427. Vendor-Advertiser—Medicinal Preparation.—The Siticide Co., Inc., a corporation, Commerce, Ga., vendor-advertiser, is engaged in selling a certain medicinal preparation designated "Siticide", and in advertising represented:

A new preparation known as 'Sit-i-Cide', being a liquid, thoroughly penetrates the skin, going into every pore, crevice and wrinkle where parasites hide, and kill every one of these parasites with one application, in thirty minutes.

Sit-i-Cide is immediately effective in destroying parasitic itch (scabies).

The respondent hereby admits:

That while the product Sit-i-Cide would have some value in treating scabies or itch, provided it is properly administered and is accompanied by proper hygienic measures, any therapeutic claims made for it should be limited to scabies;

Furthermore, the thoroughness and speed of its action are exaggerated in the foregoing advertising claims.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling the said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said preparation will kill the itch, without distinctly stating in immediate connection therewith that scabies itch only is meant;

(b) That said preparation will go into every pore and wrinkle where parasites hide, or that they do "hide" in such apertures;

(c) That said preparation will kill every one of the parasites causing the itch, immediately, or within any specified time;

and from making any other claims or assertions of like import.

And the respondent further stipulates and agrees in the advertising and sale of said product in interstate commerce, to cease and desist from using an unqualified headline which is too comprehensive or inclusive even though the claim may be modified in the text. (June 23, 1936.)

**01428. Vendor-Advertiser—Medicinal Preparation.**—J. F. Kesinger, an individual operating under the trade name of Argotane Laboratories Co., Memphis, Tenn., vendor-advertiser, is engaged in selling a certain medicinal preparation for the treatment of indigestion, constipation, etc., designated "Argotane," and in advertising represented:

One of the greatest authorities in the world, after making hundreds of tests announced that drugs as a rule do not stimulate the liver. His opinion is now generally accepted.

Now many physicians are prescribing what we prescribe in this pamphlet.

The factors in Argotane are now employed in ten millions of tablets prescribed by modern doctors. Modern medicine is turning to this new method.

Instead of a brief relief comes a permanent change in condition. The bile resumes its normal flow. Countless conditions due to lack of bile, quickly disappear. Few modern discoveries have brought so much good to so many. Now Argotane.

It derived the secretion from livers of beef cattle, then purified and contracted it, creating into small tablets, each of which represented part of this liver secretion and combined certain other helps needed to quickly overcome conditions caused by lack of bile. The result is called Argotane.

The results are real, quick and enduring.

The results come in a natural way. And they endure.

It means relief from intestinal indigestion, due to lack of bile.

It means flooding the intestines with an antiseptic provided by nature to combat germ development.

\* \* \* The bowels move in a natural manner and the results of indigestion disappear. The attacks of germ poison diminish or cease. Troubles which may have existed soon disappear. Serious conditions may be warded off or corrected.

It is estimated that three-fourths of all people, of every age, can be greatly benefited by the use of Argotane. And to countless people, that change will alter life's entire complexion.

To correct intestinal digestion, take one Argotane tablet exactly three hours after meals.

Many thousands of men and women have turned to "Argotane" for the relief of stomach disorders due to improper flow of bile \* \* \* the most famous stomach treatment ever formulated.

They have regained their vitality, pep and good health.

Argotane \* \* \* has been endorsed by physicians everywhere, and physicians themselves, in their own prescriptions, make use of the factors employed in Argotane.

Argotane \* \* \* the most famous stomach treatment ever formulated.

This wonder medicine \* \* \* Thousands of physicians have prescribed Argotane as an indication of its real worth. Members of the medical profession have not hesitated to give their endorsement of this scientific 5 grain tablet a real laboratory product.

Malaria sufferers, take Argotane. Its tremendous health-giving qualities will tone your system up, giving you new vigor and vitality. Made from the liver of beef cattle and bile acids.

Argotane is designed to go right to the root of your trouble by toning up the liver, and producing the sufficient amount of bile necessary for health.

Endorsement by physicians and laymen alike recommend the use of Argotane for stomach trouble, indigestion, dizziness, constipation and similar ills.

If you are suffering from loss of vitality, it will help you too.

Are you one of the many unfortunate people in this area who suffer from malaria.

If you are we strongly recommend Argotane as a treatment. It's beneficial action in stimulating the flow of bile tones up the system and gives new health, energy and vitality \* \* \* the best treatment available. Malaria sufferers

\* \* \* do this right away.

It is prescribed by physicians everywhere and endorsed by millions.

Argotane is a 5 grain tablet manufactured from the liver of beef cattle and bile acids and is designed to go right to the root of the trouble by toning up the liver and producing sufficient amount of bile necessary for health.

Stomach trouble, fainting spells, colic attacks, dizziness and many other disorders respond to the Argotane treatment.

There is a great deal of malaria in this territory. Argotane is a very effective remedy for the treatment of this malady.

If you are suffering from malarial condition why not try Argotane.

Argotane, the powerful constructive stomach tonic. Advanced medical authorities assert that auto-intoxication is the foundation of most of the ills and diseases to which the human flesh is heir. Argotane was designed especially to overcome this condition. It cleanses the entire system, it enables the stomach to digest and assimilate its food, and overcomes the great exciting cause of disease—weakness.

A tired, dragging feeling of the body, or sluggish mind and dull memory, intense nervousness, headaches, stomach troubles, poor circulation, imperfect digestion and despondency are symptoms of auto-intoxication. Argotane has proven an unailing source of comfort to those suffering from these troubles.

It cleanses the system of its impurities, stimulates the liver and produces the proper amount of bile necessary for normal health.

It is also one of the best preventatives.

Sick headaches, lumbago, jaundice, general stomach derangement and a train of symptoms which in the acute form pass under the medical term biliousness. Now Argotane was especially designed to create the normal flow of bile, thereby producing the health giving stream of pure blood and as a result proper digestion, giving fiber and muscle, luster and sparkle to the eye, cleanness of color to the complexion and activity and brilliancy to the brain.

The respondent hereby admits:

That it is not generally correct to state that drugs as a rule do not stimulate the liver since certain drugs possess such efficacy;

That, according to reliable medical opinion, the therapeutic value of Argotane is limited to its laxative action, and its ability to increase the flow of bile into the small intestine, and it would have no substantial value in the treatment or prevention of pathological conditions not directly due to constipation or insufficient bile;

That "many" physicians are not prescribing said preparation, nor has it been endorsed by physicians everywhere, nor by millions, nor has it received the categorical endorsement of physicians for use in connection with stomach trouble, indigestion, dizziness, and similar ills;

That said preparation is not the most famous stomach treatment ever devised, the best medicine on the market, nor is modern medicine turning to this preparation;

That said preparation is only partly manufactured from the liver of beef cattle and bile acids;

That said preparation contains ingredients having laxative or cathartic properties;

That respondent does not own, maintain or operate a laboratory in connection with the manufacture of said preparation.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That drugs as a rule do not stimulate the liver;

(b) That Argotane is a competent treatment for malaria, stomach trouble or stomach disorders, auto-intoxication, indigestion, dizziness, loss of vitality, nervousness, colic attacks, headaches, poor circulation, despondency, gall stones, or "kindred disorders", or that said preparation has any therapeutic value in the treatment or prevention of such disabilities other than its laxative or bile stimulating properties;

(c) That Argotane has proved an unfailing source of comfort to those suffering from a tired, dragging feeling of the body, sluggish mind and dull memory, intense nervousness, headaches, stomach troubles, poor circulation, imperfect digestion, and despondency, unless qualified to include only such of the foregoing diseases or disabilities as may be caused by conditions in regard to which said preparation has therapeutic value;

(d) That Argotane—

1. Is an effective treatment for malaria;
2. Is a stomach tonic;
3. Overcomes auto-intoxication;
4. "Corrects" intestinal indigestion;

5. Will benefit anyone suffering from loss of vitality unless caused by improper flow of bile;
6. Will prevent gall stones or stomach disorders;
7. Produces results that are "real, quick and enduring";
8. Diminishes or stops the attacks of germ poison;
9. Benefits three-fourths of all people of every age;
10. Produces permanent results;
11. Tones the system or gives new vigor and vitality;
12. Cleanses the entire system, and enables the stomach to digest and assimilate its food;
13. Is one of the "best" preventives unless it is stated just what it prevents;
14. Causes "countless" conditions, due to lack of bile, to disappear;
15. Causes the bowels to move in a natural manner;
16. Causes the attacks of germ poison to diminish or cease;
17. Wards off or corrects serious conditions;
18. Causes troubles to disappear; or
19. Goes right to the root of the trouble by toning up the liver and producing sufficient amount of bile necessary for health;

(e) That Argotane stimulates the liver, floods the intestines with an antiseptic provided by nature to combat germ development, is a scientific bile treatment, or by creating a "normal" flow of bile, produces a health giving stream of blood, resulting in proper digestion, fiber and muscle, luster and sparkle to the eye, cleanness of color to the complexion, and activity and brilliancy to the brain;

(f) That "many" physicians are prescribing Argotane, that said preparation has been endorsed by physicians everywhere, or endorsed by millions; that endorsements of physicians and laymen alike recommend the use of Argotane for stomach trouble, indigestion, dizziness, and similar ills, unless limited to such of these ailments or disabilities as may be caused by an improper flow of bile;

(g) That Argotane is the most famous stomach treatment ever formulated, or is the best medicine on the market, or that modern medicine is turning to this new method;

(h) That Argotane is manufactured from liver of beef cattle and bile acids, unless qualified to state that it is only partially manufactured from such sources;

(i) By implication or direct statement that Argotane does not contain ingredients having laxative or cathartic properties;

and from making any other claims or assertions of like import.

Respondent further stipulates and agrees to cease and desist from using the word "laboratory" or "Laboratories" in his trade name until such time as he actually owns, maintains or operates a "laboratory", or "laboratories". (June 25, 1936.)

01429. **Vendor-Advertisers—Medicinal Preparation.**—John F. Ketels, Jane L. Ketels, Barbara Jane Ketels and John Lindsey Ketels, copartners, operating under the firm name of Amber-O-Latum Laboratory, Portland, Oreg., vendor-advertisers, are engaged in selling a medicinal preparation designated Amber-O-Latum Chest Ointment, and in advertising represented:

Amber-O-Latum was originated primarily as an external treatment for chest colds. The beneficial effects of external applications to relieve congestion which causes or accompanies a cold on the chest is fully conceded.

Amber-O-Latum contains ingredients that penetrate quickly to a deep seated chest cold and break it up over night.

Amber-O-Latum is intended for the relief of pain and other symptoms of deep seated inflammation.

We \* \* \* recommend it \* \* \* to break deep seated chest colds, croup, pleurisy pains and other forms of congestion and inflammation. \* \* \* The well known oils and balsams incorporated in a lanolin base penetrate to the affected parts quicker than any other known remedy.

Amber-O-Latum gives positive relief \* \* \* helpful in drawing out congestion.

There is only one sure, safe and dependable preparation that will give you almost instant relief and that is Amber-O-Latum.

\* \* \* Relieve your little ones from a sudden attack of croup or perhaps a chest cold \* \* \* get a jar of Amber-O-Latum \* \* \* positive relief is assured.

"Just a cold" \* \* \* what will it lead to? The first signs of influenza, pneumonia and other dangerous diseases are often mistakes for "just a cold." You can't always avoid a cold but you can escape danger by treating it properly. A cold is an inflammation of the mucous membrane which settles upon the point of least resistance and when that happens to be the chest there is great danger of pneumonia or influenza \* \* \* Amber-O-Latum will overcome the cause of a cold and break up any chance of it developing into something more serious.

Amber-O-Latum \* \* \* for \* \* \* pleurisy pains. Amber-O-Latum a chest ointment \* \* \* for \* \* \* colds, croup and other forms of congestion and inflammation.

#### The respondents hereby admit:

That the efficacy of respondents' preparation in the treatment of chest colds, inflammation, croup, pleurisy pains and congestion is limited to the palliative relief afforded by the counter-irritant action of the preparation;

That the product will not prevent pneumonia or influenza;

That there are other products as effective and as quick in action as respondents'.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product is a competent treatment or an effective remedy for chest colds, inflammation, croup, pleurisy pains or congestion unless such representations are limited to the palliative relief afforded by its counter-irritant action;

(b) That said product will "break up" chest colds, croup, pleurisy pains, congestion or inflammation;

(c) That the product is quicker or more effective in its action than all other preparations;

(d) That the product will give positive relief;

(e) That said product will overcome the cause of a cold or prevent complications of colds;

(f) Inferentially or otherwise that the product will prevent influenza or pneumonia;

and from making any other claims or assertions of like import. (June 25, 1936.)



01430. **Vendor-Advertiser—Cleaning Solution.**—Solarine Co., a corporation, Baltimore, Md., vendor-advertiser, is engaged in selling a certain cleaning solution designated "Jumbo", and in advertising represented:

- Removes all Stains and Odors.
- Kills Bacteria on Tableware.
- Kills Germs.
- Disinfects burns, cuts, scratches, insect bites.

The respondent hereby admits:

A product of this composition cannot be depended upon to kill all germs including their spores or to dispel all odors;

No product can disinfect the skin, since its structure is such that the product applied cannot come in contact with all the microorganisms which may be present.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Jumbo—

1. Removes all odors,
2. "Kills germs" or "kills bacteria", or by any other direct statement, or reasonable implication, that it will kill all germs including their spores;

(b) "Disinfects burns, cuts, scratches, insect bites", or by any other statement, that this product will disinfect the skin;

and from making any other claims or assertions of like import.  
(June 25, 1936.)

01431. **Vendor-Advertiser—Correspondence Course.**—V. D. Angerman, an individual operating under the trade name of Franklin Publishing Co., Chicago, Ill., vendor-advertiser, is engaged in selling Twenty-five Lessons in Hypnotism, and in advertising represented:

Hypnotism. 25 Easy Lessons 25¢. Learn the secrets of Hypnotism—that strange, subtle power which enables you to make others love you; overcome bashfulness; strengthen your memory, mind and will power; realize your ambitions; develop a strong magnetic personality, and gain control over others. These magic secrets explained in 25 easy lessons. Complete course 25¢. Satisfaction guaranteed.

The respondent hereby admits:

That hypnotism does not enable you to make others love you; overcome bashfulness; strengthen your memory, mind and will power; realize your ambitions; develop a strong magnetic personality, and gain control over others;

That, while the twenty-five lessons advertised and sold by respondent may aid one to master the science of hypnotism, said science cannot in every instance be mastered in twenty-five lessons, regardless of intellectual or educational qualifications.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the secrets of hypnotism can be learned in twenty-five easy lessons, regardless of the intellectual or educational qualifications of the student;

(b) That the science of hypnotism—

- (1) Enables you to make others love you;
- (2) Overcomes bashfulness;
- (3) Strengthens memory, mind, and will power;
- (4) Enables you to realize your ambitions,
- (5) Develops a strong magnetic personality;
- (6) Enables you to gain control over others;

(c) Satisfaction guaranteed;

and from making any other claims or assertions of like import. (June 25, 1936.)

**01432. Vendor-Advertiser—Instruments.**—Henry Bergman, an individual, Springfield, Mo., vendor-advertiser, is engaged in selling instruments for locating gold and silver, and in advertising represented:

Gold and Silver Locator, \$5.00 postpaid. 30 days free trial. Write Henry Bergman.

This instrument is for locating gold or silver only, and will reach a long distance and to a great depth.

With each instrument is included complete directions for operating, and one piece each of gold and silver to use as cut-offs while operating.

I will send it to you postpaid and allow you a 30-day free trial. If you are not satisfied return the instrument and the two cut-offs postpaid, to me within 30 days of date you received the instrument, and I will immediately refund the \$5.00 by P. O. money order.

If you are in need of an instrument to locate gold or silver, do not hesitate to give Bergman's gold and silver locating instruments a trial.

It works perfect (100%) for me. I'm sitting on top of the world, so to speak.

"I have been informed of you \* \* \* that you have the best instruments for locating buried treasures and hidden treasures."

"I was talking with Mr. ———, and he told me about his gold and silver instrument he ordered from you. I am enclosing \$5.00 for which send me instrument for locating gold and silver."

"I tried it on a gold watch chain and ring. It worked in a circle over it. I have some nuggets and gold ore. I thought it was gold. I have been using the forked stick for metal for about six months. I located my well on my farm with the forked stick four years ago."

"Those gold nuggets and ore, the locating instrument works something fine. The only way I can stop it is to put the cut-off on it. Then it will stop. I have taken it out to my farm once. I found a nugget and some quartz."

"Received the gold finder and have tried it out. It works good for me. A friend took me yesterday up to Gold Creek to see if it would point out a place where he knew there was gold. It located it exactly, swinging in a circle over the place and at the same time a little sideways toward quartz deposit."

"I have got one of your mineral rods and it works very well."

"The gold instrument I received from you last November I have had great success with it."

"I got one of your Gold and Silver Locating Instruments and it works fine for me. I have tested the instrument thoroughly and know it will work."

The respondent hereby admits:

That according to the weight of scientific opinion, neither of said devices has any value for the purposes claimed in the advertisement.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of said instruments, of either of them, would enable one to locate gold or silver nuggets, silver ore, quartz, buried or hidden treasure;

(b) That said instruments, or either one of them, will reach a long distance, to a great depth, or work perfectly;

and from making any other claims or assertions of like import. (June 29, 1936.)

01433. **Vendor-Advertisers—Beverage.**—Arthur W. Bechtold and Emanuel Nussbaum, copartners, trading under the firm name and style of Bavarian Herb Co., Forest Hills, N. Y., vendor-advertisers, are engaged in selling a certain beverage known commonly as Yerba Mate and designated Bavarian Herb Tea, and in advertising represented:

Bavarian Herb Tea, However, Gives Satisfactory Results Safely and Pleasantly. People who have for years struggled under the burden of heavy, unsightly layers of fat and its attendant peril to their health are flocking in increasing numbers to the safe and sane method of reducing, recommended by the Barvarian Herb Tea Co.

No matter what you have tried in the past, no matter what you have seen or heard, here is a method that will give you *results at very little cost*.

Every day counts. If you want to reduce excess flesh, be rid of fat, improve your health, enjoy greater comfort, vitality, ease, and increase your attractiveness \* \* \* sign and mail the coupon to us today.

As this will make the third box I have taken, I have lost between 8 and 10 pounds.

I've lost over 25 lbs. now in the last eight weeks.

I have already lost 5 lbs. with the sample which has done me so much good that I am going to inform my friends about it.

Here's one harmless treatment that helps relieve that overweight condition, resulting in a firm, attractive figure—in just a few weeks! Bavarian Herb Tea has made reducing a simple easy matter. No unnecessary exercising, diets or harmful drug—Non Laxative—no unnatural methods. The ugly fat seems to "roll off." Double Chin, Hip Fat, and Bulging Waist Line vanish to improve the health and increase your physical charm. It's quick—it's easy and absolutely safe.

Take Off as much as 5 lbs. a week.

Bavarian Herb Tea.

A Safe Common-Sense Method to Reduce Excess Weight.

All you are to do is to drink Bavarian Tea two or three times a day.

Get Rid of Fat.

Delightful tasty tea helps take off excess weight from arms, legs, stomach, neck and hips.

The respondents hereby admit:

That according to the weight of scientific opinion, whatever therapeutic action this product may have is similar to that of tea or coffee, slightly stimulating in nature, and due to its caffeine content, but would be of no effect in reducing the weight of the user:

That neither this product nor any of its ingredients are imported from Bavaria.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this beverage will have any appreciable effect in causing a reduction of weight, or will—

1. Give results at very little cost, or at all,
2. Reduce excess flesh,
3. Rid one of fat,
4. Improve one's health,
5. Enable one to enjoy greater comfort, vitality, and ease,
6. Increase one's attractiveness, or
7. Help relieve an overweight condition, resulting in a firm, attractive figure in just a few weeks, or at all;

(b) That this is the safe and sane method of reducing, or will cause one to reduce at all;

(c) That this product will enable one to lose any definite amount of weight in any specified time, or at all;

(d) That this product has made reducing a simple, easy matter;

(e) That by using this product ugly fat seems to "roll off", or that Double Chin, Hip Fat and Bulging Waist Line vanish;

(f) That all one has to do to reduce is to drink this product two or three times a day, or in any other amounts;

and from making any other statements, claims, or representations of like import. (July 1, 1936.)

01434. Vendor-Advertiser—Elastic Belt.—The Weil Co., Inc., a corporation, New Haven, Conn., vendor-advertiser, is engaged in selling a certain belt designated Weil Belts or Weil Rubber Reducing Belt, and in advertising represented:

I have reduced my waist eight inches with the Weil belt;

In ten days your waist line will be three inches smaller,

Three inches of fat gone or no cost;

Reduce your waist three inches in ten days;

The massage-like action does it;

You will be completely comfortable as its massage-like action gently but persistently eliminates fat with every move;

Don't be embarrassed any longer with that 'corporation' for in a short time only the admiring comments of your friends will remind you that you once had a waist line;

Read this straight-from-the-shoulder guarantee of a reputable business firm:  
The Weil Belt Will Reduce Your Waist 3 Inches in 10 Days Without Diet or Special Exercise, or Your Money Will Be Immediately Refunded!

We *know* it will reduce you *more* than 3 inches;

Do you want to take off that 'bay window'? To build up those sagging abdominal muscles? To increase your pep and vitality? To improve your carriage? All without drugs, diet or any effort on your part?

Without effort on your part this live rubber belt *gently kneads the fat away* with every move you make. You are made into a new man safely, quickly, comfortably!

You not only appear inches smaller the first time you wear the Weil Belt; you actually are *becoming smaller* every minute you have it on;

#### GUARANTEE!!

If, after wearing the Weil Rubber Reducing Belt for 10 days, it has failed to reduce your waistline by 3 inches actual measurement, we guarantee to refund the full purchase price (plus return postage) immediately upon the receipt of the belt.

THE WEIL COMPANY

JOSEPH A. WEIL, *President*.

Test the Weil Belt for 10 days at our expense;

Many declare their waistlines have been reduced as much as 9 inches;

The belt imparts a constant, gentle massage-like action to the abdominal region, kneading off the fat, stirring up the circulation, rejuvenating flabby tissues;

Having one of your Reducing Belts for two years and lost forty pounds;

It has reduced my waistline very much and also my weight from 230 lbs. to 180 lbs., a reduction of 50 lbs.

I wore one of your belts for seven months and reduced from 44 inches to 36 inches;

My waist measure has reduced 6 inches and I have reduced in weight from 206 to 184 lbs.

The other Belt reduced my weight 26 lbs. and my waist measure  $4\frac{1}{2}$  inches in six weeks;

Many enthusiastic wearers write that it not only reduces fat but it also supports the abdominal walls and keeps the digestive organs in place.

The respondent hereby admits:

That according to the weight of scientific opinion, while negligible results may be secured from massage, no method of massage is competent to reduce weight or measurements of the body, or any part of the body, to any material extent;

That the action of the belt upon the person wearing such belt is not sufficient to constitute an effective massage;

That wearing the appliance sold by the respondent compresses the body underneath, and being made of rubber engenders heat that results in an increase in perspiration causing a reduction in weight in proportion to the weight of the perspiration excreted;

That use of the appliance sold by the respondent results in temporary reduction of size or weight, but the size and weight returns if the girdle is not worn continuously, or diet, drugs or exercise observed to prevent fat building;

That use of the appliance would not have any appreciable beneficial effects upon bodily health.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the Weil Belt will effect lasting reduction in weight or measurement;
- (b) Generally that the Weil Belt will effect any definite reduction in weight or measurement within any definite time;
- (c) That wearing said belt will knead or melt fat away without diet, drugs or exercise;
- (d) That the action of the belt upon the person wearing the same constitutes an effective massage, or does more than approximate a massage action;
- (e) That reduction in weight is due to massage;
- (f) That said belt will rejuvenate flabby tissue, or build up sagging abdominal muscles;
- (g) That said belt will stir up the circulation to any appreciable extent;
- (h) That said belt will increase pep and vitality, or otherwise improve the health;

and from making any other claims or assertions of like import. (July 2, 1936.)

01435. Vendor-Advertiser—Reducing Device.—Rolette Co., a corporation, Chicago, Ill., vendor-advertiser, is engaged in selling a fat reducing device designated Rollette, and in advertising represented:

Roll your fat away.

\* \* \* Rollette \* \* \* makes it possible for you to rid yourself of unsightly pounds of fat and have a beautiful slender form.

\* \* \* Takes off fat quickly from any part of your body without strenuous diets, dangerous drugs, exercise.

Leaves the flesh firm and gives a natural healthy glow to the skin.

Makes you feel years younger.

A few minutes a day rolls fat away.

Take off many inches from the spots where you want to reduce most.

\* \* \* An effective scientific principle for reducing.

\* \* \* Receiving the approval of physicians everywhere.

Two or three minutes' massage on each part to be reduced is sufficient.

For headaches and to promote sleep.

For constipation.

Massaging the back and spine relieves nervous tension, brings relaxation and if administered just before retiring, helps you to fall asleep quickly.

With this Rollette \* \* \* you can take off fat healthfully.

For \* \* \* stomach distress \* \* \* nervousness.

Women use it to get back their graceful figures.

One lady I reduced in 9 treatments about 10 inches thru the abdomen and 7½ inches thru the shoulders.

"I have reduced my waist line several inches by the use of this massager."  
 \* \* \* You can gain an attractive figure. Rollette will do it for you.

Automatically massages the parts you want to remove.

\* \* \* Breaks the fat tissues, hardens the muscles.

\* \* \* Relieves muscle aches and pains.

\* \* \* Literally rubs away unsightly bulges and flabby flesh.

\* \* \* It stimulates the intestines and the liver.

\* \* \* Poisons are eliminated from the body, constipation disappears, a torpid liver functions properly, you lose fat and gain health \* \* \*

In a week you should notice the fatty spots reducing and in thirty days, five to six inches off the waist and proportionate losses in other parts are easily possible.

All this without diets, drugs or exercise.

Users report four to six inches off the waist line in thirty days, and proportionate losses in other places.

\* \* \* it picks up your flesh and kneads it; breaks up fat tissues, stirs up blood circulation, aids oxidation or melting of fat \* \* \*

"I purchased a massager four weeks ago and in that time have reduced my hips four inches, and my waist line 2½".

Rollette gets right at the seat of this evil.

Just roll this patented device over the fat places and watch them disappear.

"It has reduced my waist line 5" which was 28" back to 23", my hips 36" back to 33".

The respondent hereby admits:

That according to scientific opinion the use of said device alone would have no significant effect in weight reduction nor in the relief of headaches, constipation, stomach distress, nervousness, and will not promote sleep;

That said device is not approved by physicians generally, and does not constitute a scientific principle for reducing;

That said device will not act as a stimulant for the intestines, or liver, nor aid oxidation or melting of fat.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the use of said device alone will cause a reduction in fat or weight;
- (b) That by the use of said device any substantial reduction in weight can be effected without diet;
- (c) That the use of said device will make it possible for one to have a beautiful slender form;
- (d) That the use of said device alone
  1. Makes one feel younger;
  2. Takes off many inches from the spot where one wants to reduce most;
  3. Takes off fat healthfully;
  4. Breaks up the fat tissues or hardens the muscles;
  5. Relieves muscle aches and pains;
  6. Rubs away unsightly bulges and flabby flesh;
  7. Gets at the seat of the evil;
  8. Eliminates poisons from the body;
  9. Rolls one's fat away;

(e) That said device is a competent treatment or an effective remedy for headaches, constipation, stomach distress, nervousness, or will promote sleep;

(f) That said device is receiving the approval of physicians everywhere;

(g) That said device alone constitutes a competent effective principle for reducing;

(h) That two or three minutes' massage at a time will enable one to gain an attractive figure;

(i) That said device "automatically" massages;

(j) That by the use of said device it is possible to reduce the waist line, or other parts of the body, any definite number of inches in any specified period of time;

(k) That said device stimulates the intestines or the liver, or aids oxidation or the melting of fat;

and from making any other claims or assertions of like import.

The respondent further stipulates and agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement, it being understood that when publishing testimonials in which appear representations that reductions in fat or weight have been accomplished by the use of said device, the respondent will also publish in direct connection with such testimonials a statement to the effect that the writers had undoubtedly dieted or exercised in addition to using the device in order to bring about the reductions claimed. (July 2, 1936.)

01436. **Vendor-Advertiser—Ladies' Apparel.**—Milton R. Ney, a corporation, Washington, D. C., vendor-advertiser, is engaged in selling Ladies' Fur Coats, fur trimmed coats, and other apparel, and in advertising represented:

Ladies' fur coats—

Sealine

Hollander—Dyed Sealine

Ladies' fur trimmed coats—

Marmink

Jap-Weasel

Foxine

Blue Fox (Dyed)

Manchurian Wolf

Beaverette

Sealine

The respondent hereby admits:

That its ladies' coats are not trimmed with the furs of the animals designated in its advertisements, but that said furs are from animals other than those designated and are dressed and dyed to simulate or resemble the furs of the animals indicated in its advertisements;

That its Sealine coats are made of dyed coney.

In a stipulation filed and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and specifically stipulates and agrees in soliciting the sale of and selling its



said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Describing the furs from which respondent's coats and collars are made in any other way than by the use of the correct name of the fur as the last name of the description; and respondent agrees that when any dye or blend is used simulating another fur, the true name of the fur appearing at the last word of the description will be immediately preceded by the word "dyed", or "blended", compounded with the name of the simulated fur:

(b) Using any geographic term to describe a fur unless such fur actually comes from the region indicated or implied;

and from making any other claims or assertions of like import. (July 7, 1936.)



## DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

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### FEDERAL TRADE COMMISSION v. C. J. OZMENT, ETC.

No. 396

(Circuit Court of Appeals, Eighth Circuit, February 10, 1936)

Consent decree affirming Commission's order in 15 F. T. C. 103 requiring respondent to cease and desist from making various misrepresentations in connection with the offer and sale of a correspondence course of instruction for positions in the Government service, as in said order and decree below set forth.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. Richard P. Whiteley*, assistant chief counsel and *Mr. James W. Nichol*, special attorney for the Commission.

#### DECREE

The Federal Trade Commission, petitioner herein, having filed with this court its application for the enforcement of an order to cease and desist issued by it against the respondent, under date of May 11, 1931, under 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" (38 Stat. 719, 15 U. S. C. A. Sec. 45); and said petitioner, having also certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including agreed statement of facts in lieu of testimony, and the report of said petitioner; and respondent having subsequently filed his answer to said application for enforcement, in which answer respondent stated he was not willing to contest said application for enforcement or the proceedings based thereon, and in which answer said respondent consented that this court might, upon said application and respondent's answer thereto, and upon the pleadings, agreed statement of facts in lieu of testimony, and proceedings set forth in the transcript aforesaid, make and enter its decree affirming said order to cease and desist and commanding respondent, his agents, representatives, and employees to comply therewith—

*Now, therefore, it is hereby ordered, adjudged, and decreed,* That said order to cease and desist, issued by the Federal Trade Commission, petitioner herein, under date of May 11, 1931, be and the same hereby is affirmed.

*And it is hereby further ordered, adjudged, and decreed,* That respondent, C. J. Ozment, his agents, representatives, and employees, do cease and desist from making statements and representations in advertisements in newspapers, magazines, and periodicals, and in letters, printed circulars, pamphlets, booklets, and other advertising literature, circulated and distributed in connection with the offering for sale and sale in interstate commerce of courses of instruction for positions in the Government service of the United States, as follows:

(1) That the salaries established for the positions are higher than they actually are and that the positions are available to persons over 50 years of age when such is not the fact.

(2) That the examinations for all positions for which respondent offers courses of instruction are to be held immediately or within a short time, when such is not a fact.

(3) That civil service examinations are held at almost all towns and cities of 3,000 population upward, and that it is not necessary for anyone to go far in order to enter such an examination, when such is not the fact.

(4) That examinations for United States Government stenographers and typists are announced to be held in almost all large cities throughout the United States about every 60 days, when such is not the fact.

(5) That there are good Government positions available, and that in the larger cities there are thousands and thousands of such places, when such is not the fact.

(6) That appointments to the position of forest ranger are available and that it is not necessary to be a resident of the State within which the forest ranges are located in order to secure appointments to such positions, when such is not the fact.

(7) That railway mail clerks immediately upon appointment are allowed to travel with allowances for meals or hotel or other expenses, and that they are off duty half the time with full time pay, when such are not the facts.

(8) That the respondent agrees to refund the full tuition paid by applicants or subscribers without specifying the time in which such money will be repaid.

*And it is hereby further ordered, adjudged, and decreed,* That the respondent, C. J. Ozment, shall, within 60 days after the service upon him of a copy of this decree, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with and conformed to this decree.

UNITED STATES EX REL. MILLS NOVELTY CO. ET AL.,  
AND NATIONAL ASSOCIATION OF COUNTER FREEZER  
MANUFACTURERS v. FEDERAL TRADE COMMISSION,  
AND INTERNATIONAL ASSOCIATION OF ICE CREAM  
MANUFACTURERS, INTERVENOR

Law No. 86326

(Supreme Court of the District of Columbia, March 20, 1936)<sup>1</sup>

Petition for writ of mandamus, to compel Commission to take jurisdiction of certain matters originally alleged in certain paragraphs of its complaint against International Association of Ice Cream Manufacturers, Docket 2346, and thereafter stricken therefrom on respondents' motion in said cause, and to compel the Commission to reinstate such paragraphs, denied from Bench by Justice Cox on ground that, (a) petitioners had not established sufficient right or interest in the proceeding to entitle them to ask for the writ, and, (b) Commission's acts complained of were acts within its discretion and not reviewable.

*Pollard & Bergeron, Mr. William E. Leahy, Mr. William J. Hughes, Mr. Harry W. Bank, and Mr. Harvey J. Srebnik*, all of Washington, D. C., for petitioners.

*Mr. William T. Kelley*, Chief Counsel, *Mr. Martin A. Morrison*, Asst Chief Counsel, and *Mr. Wilbur N. Baughman*, Special Attorney, all of Washington, D. C., for Federal Trade Commission.

*Mr. Ellsworth C. Alvord* of Alvord & Alvord, and *Mr. Adrian F. Busick* of Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for International Association of Ice Cream Manufacturers, intervenors.

Commission's complaint in International Association of Ice Cream Manufacturers et al., Docket 2346, which charged respondents with a combination and conspiracy to restrain and stifle the competition presented through the operation of counter freezers alleged, among

<sup>1</sup> Appeal by petitioner to the Court of Appeals for the District of Columbia on June 11, 1936, was dismissed on November 5, 1936.

Various steps in the history of the proceeding in question are described in the Commission's 1936 Annual Report, at p. 83, as follows:

"Members of this association, on October 2, 1935, filed with the Supreme Court of the District of Columbia a petition for writ of mandamus, praying that the court issue a rule directing the Federal Trade Commission to take jurisdiction of certain allegations originally made in its complaint against the International Association of Ice Cream Manufacturers (charging unlawful restraint of competition in the ice cream business), and subsequently stricken out, on motion of a respondent.

"Subsequent developments have been: Filing by the Commission of its answer, return, and motion to dismiss the petition; filing, by International Association of Ice Cream Manufacturers, of a motion for leave to intervene; filing of a motion to strike the Commission's answer and motion to dismiss by the National Association of Counter Freezer Manufacturers, the joinder of issue by the Commission thereon, and subsequent action of the court in granting this motion only insofar as it related to the Commission's motion to dismiss; filing of an amended answer by the Commission; granting of the motion of the International Association for leave to intervene; filing, by the original petitioners, National Association of Counter Freezer Manufacturers, of a demurrer to the amended answer of the Commission and the answer of the intervenor, and denial, March 20, 1936, of the petition for writ of mandamus."

other things, as a part of such combination and conspiracy, in the paragraphs subsequently stricken and unsuccessfully sought to be restored in the instant proceeding by mandamus, namely, subparagraphs (g), (k), and (l) of paragraph 5, the sponsoring on the part of respondents of hostile legislation and threat thereof and unfriendly action through State and city officials. (Statement by compiler.)

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ROBERT HOFELLER, TRADING AS BOB HOFELLER  
CANDY COMPANY *v.* FEDERAL TRADE COMMISSION<sup>1</sup>

No. 5547

(Circuit Court of Appeals, Seventh Circuit. March 25, 1936)

UNFAIR METHODS OF COMPETITION—WHAT CONSTITUTES—SALES BASED ON LOT OR CHANCE.

Competitive method, which employs device whereby amount of return is made to depend upon chance, is contrary to public policy (Federal Trade Commission Act, Sec. 5, 15 USCA, Sec. 45).

UNFAIR METHODS OF COMPETITION—IN GENERAL.

What constitutes unfair methods of competition is question of law for court.

FINDINGS—WHERE SUPPORTED BY EVIDENCE—EFFECT.

Findings of Federal Trade Commission are to be accepted if supported by evidence.

UNFAIR METHODS OF COMPETITION—PREREQUISITES TO COURT ACTION—COMPETITIVE ELEMENT, ACTUAL OR POTENTIAL—EFFECT, SPECIFICITY AND SUBSTANTIALITY OF, ON.

Dominant factor in determining unfair methods of competition which Federal Trade Commission can prohibit is element of competition, actual or potential, and specificity and substantiality of effect of such unfair methods upon such competition.

UNFAIR METHODS OF COMPETITION—LOTTERY SCHEMES—CANDY SALES TO CONCESSIONERS—WHERE INFERIOR AND DEAR AND POTENTIAL "STRAIGHT CANDY" COMPETITORS DEPRIVED OF POSSIBLE BUSINESS.

Distributor's sales to concessionaires of candy so packed as to be a lottery or gift enterprise held "unfair competition" which Federal Trade Commission could prohibit, where candy in lottery packages was inferior in quality, quantity given was negligible in view of price charged, and distributors of straight candy were deprived of possible business.

(The syllabus, with substituted captions, is taken from  
82 F. (2d) 647)

Petition by Robert Hofeller, trading as the Bob Hofeller Candy Co., to review order of Commission directing petitioner to cease and desist certain trade practices. Order affirmed.

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<sup>1</sup> Reported in 82 F. (2d) 647. Case before Commission reported in 20 F. T. C. 383. Certiorari denied, October 12, 1936. 299 U. S. 557.

*Mr. William Friedman and Mr. Lloyd C. Whitman*, both of Chicago, Ill., for petitioner.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, asst. chief counsel, and *Mr. Henry C. Lank* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

Before EVANS and SPARKS, Circuit Judges, and BRIGGLE, District Judge.

This appeal is from an order of the Federal Trade Commission directing petitioner to cease and desist unfair trade practices, viz, the selling in interstate commerce to concessionaires, of candy so packed as to be a lottery or gift enterprise. Because of the importance of the findings of the Federal Trade Commission, we have set forth the findings of said Commission, deleting the immaterial portions.<sup>1</sup>

#### 1 FINDINGS AS TO THE FACTS

" \* \* Hofeller, is an individual doing business as Bob Hofeller Candy Company \* \* in \* Chicago \* \* He \* \* has been, engaged in the sale and distribution of packaged candy to concessionaires \* \* burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals. Such purchasers are located in the various states \* \* and respondent causes said candy packages \* \* to be shipped \* \* to the purchasers \* \* in (other) states \* \*. \* \* respondent has been engaged in interstate commerce and is \* \* in *active and substantial competition with others* \* \* engaged in the sale \* \* in interstate commerce, of candy \* \*.

" \* Respondent does not manufacture the candy \* \* but buys certain kind of caramel \* and chocolate covered cream candy \* \*. He places this candy in boxes bearing various brand names, together with prizes \* of \* \* merchandise or coupons \* \* (for) merchandise.

"These assortments vary according to \* \* direction of \* \* customers, but *they all make use of the same chance feature*, and a description of one \* assortment is descriptive of the principle involved in all. One such assortment \* \* (of) respondent \* \* has the brand name 'Oriental Love Drops'. This assortment consists of a number of boxes, each containing \* five pieces of caramel candy and another article of merchandise as a prize. A list of prizes in said boxes includes: stick-pins, paper watches, transfer pictures, snap games, moving picture books, water flowers, eyeglasses, tops, strip pictures, lamps, wall decorations, blankets, stockings, bed spreads and pillows. \* \* (the prizes) are concealed in said boxes and the nature of the prize \* \* can not be ascertained until the box has been purchased and opened. The retail value of the prizes ranges from 1¢ to \$3.00.

" \* \* The articles of prize merchandise are thus distributed wholly by lot or chance. \* \*.

" \* The packages of candy containing \* \* prize merchandise are \* variously described in the candy trade as: 'Prize packages', \* \*. Candy sold without any prize or without any lot or chance feature is referred to \* \* as 'Straight' Candy.

" \* The majority of the packages of candy \* \* retail at 10¢ each, \* a few \* \* at 5¢, a few at 16¢ and a few at 25¢. *The candy contained in said packages is not the equivalent in value of 'straight' candy sold at corresponding prices.*

" \* Numerous concessionaires \* \* purchase the assortments \* \* from respondent or \* \* from others distributing similar types \* \* and such concessionaires \* \* offer the same for resale to \* \* patrons of such \* \* places of amusement \* \*.

" \* \* The packages are \* \* packed in such manner that they can be offered for sale by respondent's customers to the consuming public \* \* without alteration.

[648] EVANS, *Circuit Judge:*

Briefly stated the facts are:

Petitioner sells candy in packages which retail for five to twenty-five cents and contain various prizes ranging in value from one cent to three dollars. The consumer in purchasing a package does not

\* \* The testimony clearly indicates that the packages \* \* can not be resold to the public by respondent's customers, *except as a lottery or gaming device* \* \*.

"\* \* (Respondent) packs and assembles such candy in the way and manner described so that it shall be resold to the public by lot or chance.

"\* Respondent's merchandise is sold as 'Prize Candies' in burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals. \* \* (where) \* with the exception of the burlesque theatres, *no other candy is ordinarily offered for sale*. In burlesque theatres some 'straight' candies are occasionally offered for sale and sold. The evidence discloses and the Commission finds that in theatres other than burlesque theatres candy bars and small packages of candy are quite often offered for sale and sold. Candy manufacturers and candy jobbers testified and the Commission finds that, *if this 'prize' candy was not offered for sale, 'straight' candy in bars or small packages could be sold in substantial quantities in burlesque theatres, traveling shows, etc.* \* \* and carnivals, *the sale of said 'novelty package' candy prevents the sale of 'straight' candy and thus eliminates competition of manufacturers and jobbers selling such 'straight' candy*. The Commission finds that such manufacturers and jobbers of 'straight' candy are potential competitors of the respondent insofar as the sale of the 'straight' candy in the aforementioned places of amusement \* \*.

"\* The sale and distribution \* \* by the sales plan described herein is the sale \* \* of said packages by lot or chance and constitutes a lottery or gaming device.

"\* Competitors and potential competitors of respondent \* \* testified and the Commission finds as a fact that many competitors and potential competitors regard such method of sale and distribution as morally bad and encouraging gambling, and particularly where these packages are offered to audiences made up in part of children; as injurious to the candy industry, because it results in the merchandising of a chance or lottery instead of candy; and as providing the vendors thereof with a means of violating the laws of the several states. Because of these reasons, some competitors and potential competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. Other competitors are opposed to such method of sale for the reasons just above stated and testified, and the Commission finds as a fact, that they are nevertheless compelled to adopt such methods in order to meet the competition of respondent and others indulging in like methods, in order to prevent the loss of their business or a substantial part thereof. The competitors and potential competitors of respondent who refuse to sell their merchandise by such methods are thereby put to a disadvantage in competing. Certain concessionaires, operators, \* \* who find that they can dispose of more candy by using the method of sale as described, buy respondent's products and the products of others employing the same methods of sale and thereby trade is diverted to respondent and others using similar methods from respondent's competitors and potential competitors. Said competitors and potential competitors can compete on even terms only by giving the same or similar devices to their customers. This they are unwilling to do, and their sales of 'straight goods' candy is injuriously affected.

"The use of the method by respondent as described herein in the sale and distribution of his candy is prejudicial and injurious to the public and to respondent's competitors and potential competitors, and has resulted in the diversion of trade to respondent from his said competitors and potential competitors, and thus is a restraint upon, and a detriment to, the freedom of fair and legitimate competition in the candy industry.

"\* The sale of 'straight goods' candy has been injuriously affected by the sale of 'novelty prize' candy, and this effect is principally due to the gambling or lottery feature indicated with the 'novelty prize' candy.

"\* Respondent began the sale \* \* of the (prize) assortments \* \* in 1932, and has continuously \* \* (sold them).

"\* The exact amount of respondent's annual volume of business is not shown, but the respondent testified, and the Commission finds, that the *volume of his business involving the sale and distribution of candy by lot or chance is substantial*.

"\* The sale and distribution of candy by lot or chance is against the public policy of the United States and of many of the states thereof, and some of the said states have laws making the operation of lotteries and gambling devices penal offenses."



know which prize he will receive nor its value. The packages are generally sold in burlesque theatres, at carnivals, and like places, where "straight" candy is not generally sold, but the Commission found that the potential competition of "straight" candy was eliminated by the sale of this prize candy. It also held that the sale of prize candy injuriously affected the business of the straight candy dealers and constituted unfair competition, and violated section 5 of the Federal Trade Commission Act (15 U. S. C. A. Sec. 45).

Petitioner argues that (1) the complaint is insufficient to show unfair methods of competition upon which a valid cease and desist order might be predicated, (2) there was no tendency to suppress substantial competition, exploit or deceive the public (most all of the consumers not being children), and (3) the Federal Trade Commission Act is unconstitutional if it be construed to cover practices not deemed unfair at the time of its adoption.

The instant case is controlled by *Federal Trade Commission v. R. F. Keppel & Bro.*, 291 U. S. 304. Petitioner agrees that his appeal turns upon the applicability or non-applicability of the Keppel case. He differentiates the Keppel case on the ground that sales to children were there the determining factor, but were here absent. It, [649] too, was an unfair competition case involving the sale of prize candy, the sale being most generally to children.

This court followed the Keppel case, in a recent opinion, *Walter H. Johnson Candy Co. v. Fed. Trade Com.*, 78 F. (2d) 717, where we upheld a cease and desist order dealing with the sale of a prize lottery scheme in connection with the sale of candy, mostly to children.

It cannot be denied that the persuasive argument in the *Keppel* case was based on the fact that the consumers of the candy were, in the main, children. We are not satisfied, however, that the conclusion there reached is not here applicable. It will be noted that the Supreme Court emphasized the factor of lottery and chance in determining what constituted an unfair method of competition, and it spoke in general terms, at times without limitation to instances where the consumers were children. The practice there disclosed was deemed offensive to some manufacturers who refrained from adopting it and therefore suffered loss. In the *Keppel* case there are many facts indicative of unfair trade methods there pointed out by the court which are present in the instant case. Among such similarities are: Inferior candy sold in the prize packages; a relatively negligible amount of the candy was given in return for the price; substantial diversion of trade from actual or potential competitors; sale of the candy with the lottery feature in violation of local law; and competing manufacturers damaged by refraining from such practices.

It is quite impossible to escape the conclusion that where a competitive method employs a device whereby the amount of the return

is made to depend upon chance, such method is condemned as being contrary to public policy.

[650] Two matters in this field of law are well settled: (a) What constitutes unfair methods of competition is a question of law for the court. *Fed. Trade Commission v. Balme*, 23 F. (2d) 615; *Fed. Trade Commission v. Raladam Co.*, 283 U. S. 643; *James S. Kirk & Co. v. Fed. Trade Com.*, 59 F. (2d) 179; *Fed. Trade Com. v. Gratz*, 253 U. S. 421; (b) The findings of the Federal Trade Commission are to be accepted if supported by evidence. *Armand Co. v. Fed. Trade Com.*, 78 F. (2d) 707; *E. Griffiths Hughes v. Fed. Trade Com.*, 77 F. (2d) 886; *Fed. Trade Com. v. Curtis Pub. Co.*, 260 U. S. 568. The statute provides: "\* \* \* The findings of the Commission as to facts, if supported by testimony, shall be conclusive." (15 U. S. C. A. Sec. 45.)

The issue is therefore narrowed to whether there was evidence to support the findings of the Commission and, if so, whether the facts found were such as to fall within the purview of the legal conception of "unfair methods of competition." As the Supreme Court has interpreted that phrase, the dominant factor seems to be the element of competition, actual or potential, and the specificity and substantiality of the effect of such unfair methods upon such competition.

Our study of the record has caused us to reach this conclusion. Although we do not find the evidence overwhelmingly establishes either the presence of substantial existing competition, or of potential competition between the sale of straight candy and the novelty candy here under scrutiny there is sufficient evidence to sustain the findings of the Commission. The testimony tended to disclose that in the field of burlesque theatres, free open air shows, carnivals, show boats, and the like, the sale of prize or novelty candies constituted a very substantial, if not a major, part of the receipts from candy sales and that little other candy was sold in such places, except bar candies. There was testimony which tended to show that the distributors of straight candy were deprived of possible business. They either refrained from entering that sort of business because of moral compunctions, or they were unable to compete with the prize candy business because of the appeal of the lottery features. It was also shown that the candy in the prize package was much inferior in quality to straight candy; that the quantity given was negligible in view of price charged; and that the prizes often varied greatly in value. The profit on these packages exceeds 50%.

We are of the opinion that the present investigation was begun in the interest of the public for the protection, encouragement, and maintenance of competition and for the elimination of unfair trade methods involving the use of lottery and methods generally held by

the community to be contrary to public policy. There was evidence to the effect that 60% to 70% of the receipts from the free shows was from the sale of this novelty candy; 35% to 50% of show boat receipts resulted therefrom; and 30% to 35% of tent show receipts was from novelty packages. 95% of petitioner's business was in the sale of prize packages. Although complete evidence was lacking, it was sufficient to show that the prize candy industry is a substantial industry.

The order is affirmed.

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FEDERAL TRADE COMMISSION *v.* SOUTHERN PREMIUM  
MANUFACTURING COMPANY, A CORPORATION, IN ITS  
OWN NAME AND RIGHT, AND TRADING AS RYAN  
CANDY COMPANY

No. 8096

(Circuit Court of Appeals, Fifth Circuit. June 1, 1936)

Order affirming Commission's order in Docket 2270, 21 F. T. C. 98, directing respondent, its officers, etc., in connection with the manufacture, sale, and distribution of candy and candy products, to cease and desist from the use of lottery schemes, as therein set forth, and adopting, as below set forth, provisions thereof, in court's order directing respondent, its officers, etc., to cease and desist.

(Reported in 83 F. (2d) 1008)

Application for enforcement of order of Federal Trade Commission, sitting at Washington, D. C., granted.

*Mr. Martin A. Morrison*, asst. chief counsel, Federal Trade Commission, of Washington, D. C., for petitioner.

Before FOSTER, SIBLEY, and HUTCHESON, Circuit Judges.

PER CURIAM:

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, April 22, 1936, its application for the enforcement of an order to cease and desist issued by it against the respondent, under date of June 25, 1935, under 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" (38 Stat. 719, 15 U. S. C. A. Sec. 45); and said petitioner, having also certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including

all the testimony taken and the report of said petitioner; and respondent having subsequently filed his answer to said application for enforcement, in which answer respondent stated it was not willing to contest said application for enforcement or the proceedings based thereon, and in which answer said respondent consented that this court might, upon said application and respondent's answer thereto, and upon the pleadings, testimony, and proceedings set forth in the transcript aforesaid, make and enter its decree affirming said order to cease and desist and commanding respondent, its officers, directors, agents, representatives, and employees, to comply therewith—

*Now, therefore, it is hereby ordered, adjudged and decreed, That* said order to cease and desist, issued by the Federal Trade Commission, petitioner herein, under date of June 25, 1935, be and the same hereby is affirmed.

*And it is hereby further ordered, adjudged and decreed, That* the respondent, Southern Premium Manufacturing Company, a corporation, in its own name and right and trading as Ryan Candy Company, its officers, directors, agents, representatives, and employees, in the manufacture, sale and distribution in interstate commerce, of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, and to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of retail and wholesale dealers and jobbers, packages or assortments of candy which are used or may be used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality, having centers of a different color, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the person procuring a piece of candy with a center of a particular color.

(4) Supplying to or placing in the hands of wholesale dealers and jobbers, assortments of candy, together with a device commonly called a push card or punch board, for use or which may be used in distributing or selling said candy to the public at retail.

(5) Furnishing to wholesale dealers and jobbers a device commonly called a push card or a punch board, either with packages or assortments of candy or candy products or separately, bearing a legend or

legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(6) Selling and distributing to concessionaires with, and to operators, managers, and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses, and carnivals, and other similar places of amusement, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device or a gift enterprise.

(7) Supplying to, or placing in the hands of, concessionaires with, and operators, managers, and proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses, and carnivals and other similar places of amusement, packages or assortments of candy which are or may be used without alteration or rearrangement of the contents of such packages to conduct a lottery, gaming device or a gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(8) Packing or assembling in the same assortment, packages or small boxes of candy for ultimate sale to the public, which individual packages or small boxes of candy are of uniform appearance, but which contain other articles of merchandise of varying value.

(9) Furnishing to concessionaires with, or operators, managers or proprietors of, burlesque theatres, traveling shows, tent shows, medicine shows, circuses and carnivals and other similar places of amusement, assortments of candy consisting of individual packages or small boxes of candy for resale to the public, which individual or small boxes of candy are of uniform appearance, but which contain articles of merchandise of varying value.

*And it is hereby further ordered, adjudged and decreed, That the Respondent, Southern Premium Manufacturing Company, trading as Ryan Candy Company, within 30 days after the service upon it of this decree, shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.*

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FEDERAL TRADE COMMISSION *v.* BENJAMIN D. RITHOLZ

No. 5709

(Circuit Court of Appeals, Seventh Circuit. June 2, 1936)

Order affirming Commission's order in Docket 2140, 19 F. T. C. 405, directing respondent, his agents, etc., in connection with the advertising, offering for sale and sale of dental plates, to cease and desist from making various

misrepresentations in any manner, including by or through the use of testimonials or endorsements or guarantees or in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, letters or otherwise, as therein set forth, and adopting, as below set forth, said various provisions in court's order directing respondent, its officers, etc., to cease and desist.

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, December 16, 1935, its application for the enforcement of an order to cease and desist issued by it against the respondent under date of November 20, 1934, under 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" (38 Stat. 719, 15 U. S. C. A., sec. 45); and said petitioner, having also certified and filed herein, as required by law, a transcript of the entire record in the proceedings lately, pending before it, in which said order to cease and desist was entered, including all the testimony taken and the report of said petitioner; and respondent having subsequently filed his answer, brief, and argument; and the Commission having filed its brief, and the matter having been heard before this court on oral argument—

*Now, therefore, it is hereby ordered, adjudged, and decreed*, That said order to cease and desist, issued by the Federal Trade Commission, petitioner herein, under date of November 20, 1934, be and the same hereby is affirmed.

*And it is hereby further ordered, adjudged, and decreed*, That the respondent, Benjamin D. Ritholz, his agents, associates, employees, and representatives in connection with the advertising, offering for sale or sale in interstate commerce, and in the District of Columbia, of dental plates, cease and desist from representing in any manner, including by or through the use of testimonials or endorsements or guarantees or in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, letters or otherwise:

(1) That said dental plates are of a value greater than their actual value;

(2) That respondent can make or does make a properly fitting and satisfactory dental plate from an impression of the mouth taken by a layman for whose use such plate is intended;

(3) That properly fitting and satisfactory dental plates can be made from an impression of the mouth taken by one who is not a dentist;

(4) That respondent has adopted and/or is using in the manufacture of dental plates the same scientific methods used by dentists or that he is using scientific methods in the making of said dental plates;

(5) That his methods of making dental plates from self-taken impressions are scientific;

(6) That the dental plates manufactured and sold by respondent meet the customers' needs;

(7) That through written guarantees or otherwise he will refund the money paid for dental plates which are returned as unsatisfactory, when he does not in all cases do so promptly;

(8) That great care or superior workmanship or fine quality of materials are used in the construction of respondent's dental plates;

(9) That dentists have endorsed or approved respondent's methods of making dental plates from self-taken impressions or that they have endorsed or approved any of his methods in making dental plates;

(10) That the laboratory wherein said dental plates are made is personally or otherwise supervised by licensed or other doctors of dental surgery;

(11) That the said dental plates will give full power of mastication, restore the natural facial expression, or enable the purchaser thereof to wear the same with ease and comfort;

(12) That the business of respondent in manufacturing and selling dental plates is conducted by a corporation.

*It is further ordered*, That respondent shall, within 60 days after service upon him of this decree, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with this decree.

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FEDERAL TRADE COMMISSION v. H. I. SIFERS, INDIVIDUALLY AND TRADING AS SIFERS CONFECTION CO.

No. 398 Orig.

(Circuit Court of Appeals, Eighth Circuit. June 4, 1936)

Order or decision affirming, per curiam, Commission's order in Docket 2276, 21 F. T. C. 101, directing respondent, his agents, etc., in connection with the manufacture, sale, and distribution of candy, to cease and desist from the use of lottery schemes, as therein set forth, and adopting, as below set forth, provisions thereof, in court's order directing respondent, its agents, etc., to cease and desist.

(Reported in 84 F. (2d) 999)<sup>1</sup>

Application for enforcement of order of Federal Trade Commission.

*Mr. W. T. Kelley*, Chief Counsel, and *Mr. Martin A. Morrison*, Asst. Chief Counsel, Federal Trade Commission, both of Washington, D. C., for petitioner.

<sup>1</sup> Federal Reporter, however, simply sets forth the nature of the proceeding, the appearances and statement, per curiam that "Order of Federal Trade Commission to cease and desist affirmed, and respondent ordered to file report with Commission, etc."

In the above entitled cause, petitioner, Federal Trade Commission, filed in this court on the 2d day of March 1936, its printed petition asking for a decree of this court affirming, and providing for the enforcement of a certain order to cease and desist issued by said Commission on the 25th day of June 1935, against respondent herein, commanding respondent to cease and desist from the use of certain methods of competition alleged to constitute the use of unfair methods of competition within the intent and meaning of Section 5 of the 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.

On said day petitioner also filed in this court a complete transcript of the entire record in the said proceeding before said Federal Trade Commission, including all the testimony taken and the report and order of the Commission.

On said day petitioner also filed in this court the required number of printed copies of its brief in support of said petition.

Petitioner has also filed in this court sworn proof that petitioner had served upon respondent printed copies of said transcript and of said brief.

Respondent as of this date, to wit: June 4, 1936, filed in this court in this cause a certain written statement in which he declared his purpose to refrain from contesting the petition herein, and consented that this court may sign the order asked for by petitioner, if it is in proper form.

This cause now coming on for consideration and decision upon the petition herein, upon such proof of service, upon said written statement so filed by respondent, and upon the pleadings, testimony, and proceedings set forth in said transcript, and the court being of the opinion that said order to cease and desist so issued by said Commission on the 25th day of June 1935, ought to be in all things affirmed.

It is now ordered, adjudged, and decreed that said order to cease and desist be, and the same hereby is, in all things affirmed.

It is further ordered, adjudged, and decreed that the respondent, H. I. Sifers, individually and trading as Sifers Confection Co., his agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce, of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.



(2) Supplying to or placing in the hands of wholesale dealers and jobbers packages or assortments of candy which are used or may be used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

(3) Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy together with a device commonly called a push card or punch board for use or which may be used in distributing or selling said candy to the public at retail.

(4) Furnishing to wholesale dealers and jobbers a device commonly called a push card or punch board, either with packages of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is further ordered that respondent, H. I. Sifers, individually and trading as Sifers Confection Co., within 30 days after the service upon him of this order, shall 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.

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FEDERAL TRADE COMMISSION *v.* A. McLEAN & SON, M. J. HOLLOWAY & COMPANY, QUEEN ANNE CANDY COMPANY, AND THE BONITA COMPANY<sup>1</sup>

Nos. 5796, 5797, 5798, and 5799

(Circuit Court of Appeals, Seventh Circuit. July 1, 1936)

COMMISSION'S FINDINGS—PRESUMPTIONS—CONCLUSIVENESS.

Findings of Federal Trade Commission are presumed to be supported by competent evidence, and where so supported are conclusive (Federal Trade Commission Act, Sec. 5, 15 USCA, Sec. 45).

UNFAIR METHODS—SPECIFIC PRACTICES—LOTTERY MERCHANDISING—CANDY ASSORTMENTS—CONCEALED COLOR PRIZE PIECES.

Sale of candy by manufacturers packed so that public would be offered candy of uniform size, shape, and quality, except that several pieces in an assortment would have centers of different colors entitling purchasers of such pieces to a larger piece or small box free of charge, constituted unfair method of competition, justifying order of Federal Trade Commission that manufacturers desist from such practice.

<sup>1</sup> Reported in 84 F. (2d) 910. The cases before the Commission are reported in 20 F. T. C. 468, 21 F. T. C. 79, 21 F. T. C. 102, and 20 F. T. C. 454, respectively. Certiorari denied, November 9, 1936. 299 U. S. 590.

FEDERAL TRADE COMMISSION ACT—CONSTITUTIONALITY—SEPARATION OF FUNCTIONS—DUE PROCESS.

Statute authorizing Federal Trade Commission to prevent unfair methods of competition held not violative of constitutional mandate of separation of governmental functions or of due process clause (Federal Trade Commission Act, Sec. 5, 15 USCA, Sec. 45; Const. art. 1, sec. 1; art. 2, sec. 1; art. 3, sec. 1; Amend. 5).

CEASE AND DESIST ORDERS—ABANDONMENT OF PRACTICE—AS BAR TO—BENEFITS BY REPORT OF COMPLIANCE.

Fact that manufacturers had discontinued objectionable practices in connection with sale of their products held no defense to order of Federal Trade Commission that they cease such practices, where benefits of such abandonment could be obtained by report to Commission of compliance with order as required therein.

CEASE AND DESIST ORDERS—INTRASTATE COMMERCE CONTROL AS OBJECTION TO—WHERE ORDER EXPRESSLY LIMITED TO INTERSTATE.

Orders of Federal Trade Commission requiring certain manufacturers to abandon certain unfair methods in sale of their products held not invalid on ground that they sought to control sale of candies in intrastate commerce, where orders were expressly limited to interstate commerce.

CEASE AND DESIST ORDERS—SPECIFIC PRACTICES—LOTTERY MERCHANDISING—CANDY ASSORTMENTS—DESCRIPTIVE ORDER LIMITATION "SO ASSEMBLED THAT RETAIL SALES MAY BE MADE," ETC.—WHETHER TOO BROAD.

Orders of Federal Trade Commission preventing sale of candy to jobbers and wholesalers for resale so assembled that retail sales may be made by means of lottery held too broad, requiring substitution in order of words "are designed to" in place of word "may."

(The syllabus, with substituted captions, is taken from 84 F. (2d) 910)

Separate proceedings on application of Commission for enforcement of its orders against A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co., and the Bonita Co. Orders of Commission modified, and, as so modified, affirmed.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Henry C. Lank*, and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for petitioner.

*Beach, Fathchild & Scofield*, of Chicago, Ill. (*Mr. Irvin H. Fathchild* and *Mr. L. A. Smoler*, both of Chicago, Ill., of counsel), for respondents.

Before EVANS and SPARKS, Circuit Judges, and LINDLEY, District Judge.

SPARKS, *Circuit Judge*:

These are proceedings under section 5 of the Federal Trade Commission Act, 15 U. S. C. A., section 45, for the enforcement of orders issued by the Commission on June 21, 1935. The orders separately require the respective respondents to cease and desist from certain

practices found to constitute unfair and forbidden methods of competition. The facts and the questions presented in all of these proceedings are identical, and a consolidated answer and brief of all the respondents was filed. Our discussion will, therefore, be directed to the *McLean case* as for all. The findings of the Commission<sup>2</sup> closely follow its complaint which [911] was filed December 15, 1934.

#### <sup>2</sup> FINDINGS AS TO THE FACTS

"Paragraph 1. Respondent, A. McLean and Son, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, Illinois. Respondent is now and for several years last past, has been engaged in the manufacture of candy in Chicago, Illinois, and in the sale and distribution of said candy to wholesale dealers and jobbers in the State of Illinois and other states of the United States. It causes said candy when sold to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in Illinois and in the states of the United States other than the State of Illinois. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been in active competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution of the same in interstate commerce.

"Par. 2. Among the candies manufactured and sold by respondents were several assortments of candy each composed of a number of pieces of candy of uniform size, shape, and quality together with a number of larger pieces of candy or small boxes of candy to be given as prizes to purchasers of said candies of uniform size, shape, and quality in the following manner:

"The majority of the said pieces of candy of uniform size, shape, and quality in said assortments have centers of the same color but a small number of said candies have centers of a different color. The color of the centers of these candies is effectively concealed from the prospective purchasers until a purchase or selection has been made and the candy broken open. The said candies of uniform size, shape, and quality in said assortments retail at one cent each but the purchasers who procure one of the said candies having a center of a different color than the majority of said candies, are entitled to receive and are to be given free of charge one of the said larger pieces or small boxes of candy heretofore referred to. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge a larger piece of candy or a small box of candy. The aforesaid purchasers of said candy who procure a candy having a center colored differently from the majority of said pieces of candy thus procure one of the said larger pieces or small boxes of candy wholly by lot or chance.

"Respondent manufactures, sells, and distributes several assortments involving the above lottery or chance feature. The pieces of candy of uniform size, shape, and quality are generally 160 in number but, occasionally, vary a few pieces more or a few pieces less, and the prizes are generally larger prizes of candy or small boxes of candy but occasionally other articles of merchandise are included as prizes, but the principle or sales plan is the same as to each of the said assortments.

"Respondent furnishes to said wholesale dealers and jobbers with said assortments of candy, display cards to be used by retail dealers in offering said candies for sale, which display cards bear a legend or statement informing the prospective purchaser that the said assortments of candies are being sold in accordance with the sales plan above described.

"Par. 3. Another assortment which respondent manufactures, sells, and distributes is contained within two boxes, one box having pieces of candy of uniform size, shape, and quality, the majority of which have centers of the same color but a small number of which have centers of a different color. The other box contains larger pieces or boxes of candy and the number of bars is approximately the same as there are pieces of candy with centers colored differently from the majority in the first box above mentioned and the two boxes are so packed that they may be displayed by the retail dealers as a single assortment and the larger pieces or bars of candy are distributed as prizes to purchasers of the small pieces of candy in the same manner as where they are packed in the same assortment and as described in Paragraph Two herein. Larger pieces or bars of candy are thus distributed to the purchasing public wholly by lot or chance and the respondent in so packing said assortment knows that the same may and will be used as a lottery or chance assortment when sold by the retail dealer.

"Par. 4. The lottery, prize, or draw packages described in paragraphs 2 and 3 above are generally referred to in the candy trade or industry as 'Break and Take', or 'Draw' packages. The packages or assortments of candy without the lottery, prize, or

Aside from the presumption that the findings are supported by competent evidence (*National Harness Manufacturers' Assn. v. Federal Trade Commission*, 261 Fed. 170, and *Federal Trade Commission v. Inecto, Inc.*, 70 F. (2d) 370), we are assured of that fact from an examination of the record. It therefore follows that the findings are conclusive. Federal Trade Commission Act, section 5; *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483.

It is contended by the respondents that the facts as found do not support an order to cease and desist. We hold otherwise on the authority of *Federal Trade Commission v. Keppel*, 291 U. S. 304; *Walter H. Johnson Candy Co. v. Federal Trade Commission*, 78 F. (2d) 717; *Hofeller v. Federal Trade Commission*, 82 F. (2d) 647. Many questions of fact and law are raised by respondents, but most of them were decided adversely to respondents' contentions in the cases just cited. They contend that section 5 of the Act violates the

draw features in connection with their resale to the public are generally referred to in the candy trade or industry as 'Straight Goods.' These terms will be used hereafter in these findings to describe these respective types of candy.

"Par. 5. Numerous retail dealers purchase the assortments described in paragraphs 2 and 3 above, from wholesale dealers or jobbers who in turn have purchased said packages from respondent and such retail dealers display said assortments for sale to the public as packed by the respondent and the candy contained in said assortment is sold and distributed to the consuming public by lot or chance.

"Par. 6. All sales made by respondent are absolute sales and respondent retains no control over the goods after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such manner that they can be displayed by the retail dealer for sale and distribution to the purchasing public, as above described, without alteration or rearrangement. \* \* \* Said assortments can not be resold to the public by the retail dealers except as a lottery or gaming device, unless said retail dealers unwrap, unpack, disassemble, or rearrange the said assortments.

"In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers of assortments of candy, assembled and packed as described in paragraphs 2 and 3 herein, respondent has knowledge that said candy will be resold to the purchasing public by retail dealers, by lot or chance and it packs and assembles such candy in the way and manner described so that it may and shall be resold to the public by lot or chance by said retail dealers.

"Par. 7. The sale and distribution of candy by the retail dealers by the methods described in these findings, is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device. \* \* \*

"\* \* \* Many competitors regard such method of sale and distribution as morally bad and encouraging gambling, especially among children; as injurious to the candy industry, because it results in the merchandizing of a chance or lottery instead of candy; and as providing retail merchants with the means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competing. Certain retailers who find that they can dispose of more candy by the 'Break and Take' or 'Draw' methods, buy respondent's products and the products of others employing the same methods of sale, and thereby trade is diverted to respondent, and others using similar methods, from said competitors. Said competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of 'Straight Goods' candy show a continued decrease.

"There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors of respondent have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondent in the sale and distribution of its candy is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

federal constitutional mandate of separation of governmental functions, and the due process clause. We think there is no merit in this contention. *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307; *National Harness Mfgs. Assn. v. Federal Trade Commission*, 268 Fed. 705; *Arkansas Wholesale Grocers' Assn. v. Federal Trade Commission*, 18 F. (2d) 866; *Federal Trade Commission v. Balme*, 23 F. (2d) 615. See also the concurring opinion of Mr. Justice Cardozo in *Schechter Poultry Corp. v. United States*, 295 U. S. 495 at 552.

It is further contended by certain of the respondents that the court failed to find that they had discontinued the manufacture [913] and sale of the chance assortments on August 1, 1934. Discontinuance or abandonment is no defense to the order, for, if true, it would be no guaranty that the challenged acts will not be renewed. *Federal Trade Commission v. Wallace*, 75 F. (2d) 733. The benefit to re-

"Par. 8. The principal demand in the trade for the 'Break and Take' or 'Draw' candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of the school children. The consumers or purchasers of the lottery or prize package candy are principally children, and because of the lottery or gambling feature connected with the 'Break and Take' or 'Draw' package, and the possibility of becoming a winner, it has been observed that the children purchase them in preference to the 'Straight Goods' candy when the two types of packages are displayed side by side.

"\* \* \* Children prefer to purchase the lottery or prize package candy because of the gambling feature connected with its sale. The sale and distribution of 'Break and Take' or 'Draw' packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise by far the largest class of purchasers and consumers of this type of candy.

"Par. 9. The pieces of candy in the 'Break and Take' or 'Draw' packages of all manufacturers of that type of candy are either smaller in size than the corresponding pieces of 'Straight Goods' candy or the quality of the candy in the 'Break and Take' or 'Draw' packages is poorer than that in the 'Straight Goods' assortments. It is necessary to make this difference between either the size of the individual pieces of candy or the quality of the candy in order to compensate for the value of the prizes or premiums which are distributed with the 'Break and Take' or 'Draw' goods.

"Par. 10. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments of candy and which sell their 'Straight Goods' candy in interstate commerce in competition with the 'Break and Take' or 'Draw' candy, and manufacturers of the 'Straight Goods' type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their markets. This decrease in the sales of 'Straight Goods' candy is principally due to the gambling or lottery feature indicated with the 'Break and Take' or 'Draw' candy.

"Par. 11. In addition to the assortments described in paragraphs 2 and 3 herein, the respondent manufactures candy which it sells to wholesalers and jobbers without any lottery or chance features.

"Par. 12. The sale and distribution of candy by lot or chance is against the public policy of many of the States of the United States and some of said States have laws making the operation of lotteries and gambling devices penal offenses."

#### CONCLUSION

"The aforesaid acts and practices of respondent, A. McLean and Son, under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and constitute violations 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.'"

spondents of an abandonment may be fully protected by their report to the Commissioner as required by the Commission's order.

Respondents further contend that the orders of the Commission seek to control the method of retail sale of candies in intrastate commerce, and for that reason they, together with the Act under which they were promulgated, are invalid under the ruling in the *Schechter case*. The orders, however, are expressly limited to interstate commerce, and they do not apply to any intrastate business in which any of the respondents may be engaged.

We are convinced, however, that paragraphs (1) and (2) of the cease and desist order are too broad in that they prevent the sale and distribution to jobbers and wholesalers for resale to retailers of any candy so packed and assembled that retail sales may be made by means of a lottery, or gaming device. This clearly would prevent the sale of any candy which might [914] afterwards be sold by the retailer by means of a lottery, gaming device, or gift enterprise. Obviously, this was not the intention of Congress, and we think it was not the intention of the Commission. We have therefore stricken the word "may" from paragraphs (1) and (2) of the orders and substituted the words "are designed to," and as thus modified, the orders of the Commission<sup>a</sup> are, affirmed, and respondents, their officers, directors, agents, representatives, and employees, are hereby ordered to comply therewith.

<sup>a</sup> (1) Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or are designed to be made by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to, or placing in the hands of, wholesale dealers and jobbers packages or assortments of candy which are used or are designed to be used without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

(3) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, pieces of candy of uniform size, shape, and quality, having centers of a different color, together with larger pieces of candy, or small boxes of candy, or other articles of merchandise, which said larger pieces of candy, or small boxes of candy, or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Furnishing, to wholesale dealers and jobbers, display cards, either with assortments of candy or candy products, or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

(5) Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy or small box of candy or another article of merchandise will be given free to said purchaser.

It is further ordered that respondents within 30 days after the service upon them of this order, shall 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 hereinabove set forth.

And it is hereby further ordered by reason of the decision of the Supreme Court of the United States in *A. L. A. Schechter Poultry Corporation v. United States of America*, decided May 27, 1935, Count Two of the complaint in this proceeding be, and the same hereby is, dismissed.

ARMAND CO., INC., ET AL. v. FEDERAL TRADE  
COMMISSION<sup>1</sup>

No. 195

(Circuit Court of Appeals, Second Circuit. July 2, 1936)

CEASE AND DESIST ORDERS—VARIANCE WHERE UNFAIR PRACTICES AND CONSPIRACY COMPLAINT AGAINST COSMETIC MANUFACTURER AND DRUGGIST DEALERS DISMISSED AS TO OTHER THAN RESPONDENT MANUFACTURER NAMED.

Variance between complaint which alleged improper acts and conspiracy by cosmetics manufacturer, its officers, and certain wholesale and retail druggists some of whom were not named in complaint, and order of Federal Trade Commission requiring only cosmetics manufacturer to cease and desist from certain trade practices, *held* not fatal, although the proceeding was dismissed as to named wholesalers and retailers.

VARIANCE—WHERE ANSWER AND DEFAULT WITHOUT CONTESTED TRIAL.

Where defendant merely files answer and defaults thereafter, a closer registry between pleading and judgment is exacted than after a contested trial, where it may reasonably be assumed that the disposition corresponded to actual controversy as parties understood it, even though no formal amendment of pleadings appears in roll.

VARIANCE—WHERE CONTESTED—WHEN FATAL.

To constitute a fatal variance between pleadings and judgment in contested case, there must be entire abandonment of substance of dispute to which defendant was summoned, and substitution of another which defendant could not have anticipated, and had no opportunity to meet.

(Syllabus, with substituted captions, is taken from 84 F. (2d) 973)

On petition for reargument of a motion to vacate a decree of the Circuit Court of Appeals, *Armand Company* against *Federal Trade Commission*, 78 F. (2d) 707, affirming an order of the Commission directing respondent to "cease and desist" from certain trade practices. Motion denied.

*Mr. Henry Ward Beer*, of New York City, for the motion.

*Mr. Martin A. Morrison*, of Washington, D. C., opposed.

Before L. HAND, SWAN, and AUGUSTUS N. HAND, Circuit Judges.

PER CURIAM:

We have already once decided this motion without opinion, and we now state our reasons in the hope that this at least may end the matter. The argument is based upon the motion that the "cease and desist" order of the Commission was a nullity because of the departure, or variance, between it and the complaint on which the Commission heard the cause. Apparently it is also supposed that our order affirming it was likewise a nullity, though before us at least there was a controversy to be decided, however void the order reviewed. Passing

<sup>1</sup> Reported in 84 F. (2d) 973. The case before the Commission is reported in 17 F. T. C. 217. Certiorari denied, November 16, 1936. 299 U. S. 597. Rehearing denied, December 14, 1936. 299 U. S. 623.

that question and before addressing ourselves to the first point, we must state the facts. The complaint was against the Armand Company and some of its officers and a number of wholesale and retail druggists, all named as respondents. The company was selling toilet articles manufactured by secret processes through wholesale and retail druggists, both those named as respondents, and others; and the sixth article alleged that the respondents named were "engaged in a conspiracy, common understanding, combination and agreement with and among themselves and \* \* \* dealers not specifically named as respondent \* \* \* to monopolize and unduly \* \* \* to restrain the interstate business \* \* \* of respondents and of the aforesaid dealers not specifically named \* \* \* and in accordance with \* \* \* said conspiracy \* \* \* the respondents and those referred to above as dealers not specifically named \* \* \* have monopolized and unduly \* \* \* restrained the interstate trade \* \* \* of themselves and their competitors". This was alleged to have been done, (a.) by selling the Armand Company's products at retail prices fixed by agreement, higher than would have prevailed except for the conspiracy; (b.), by refusing to sell them at all to dealers who were not druggists; and (c.) by refusing to sell them to those wholesalers or retailers who did not sell at prices fixed by the Armand Company. The complaint then alleged a number of overt acts in execution of this conspiracy, nine done by the company, and seven by the wholesalers and retailers. The respondents answered, much testimony was taken and elaborate findings of fact were made, the upshot of which was that the company exacted contracts of wholesalers and retailers by which they [974] were to maintain retail prices. There was no finding that a conspiracy had existed. Upon these findings the Commission entered a "cease and desist" order, forbidding only the Armand Company and its officers (1) to procure "from wholesale or retail dealers contracts \* \* \* that respondent's products \* \* \* are to be resold \* \* \* at prices specified", and (2) to procure from wholesalers "contracts \* \* \* that Armand products are not to be resold by such wholesalers to price-cutting retail dealers". The proceeding was dismissed as to the wholesalers and retailers, named as respondents.

We assume *arguendo*, although this is not a criminal prosecution, that the rule does not apply which governs civil conspiracies at common law; that is, that the allegation of conspiracy is merely inducement, and that the gist of the wrong is the acts done in furtherance of the common plan. *Lewis Invisible Stitch Machine v. Columbia Blind Stitch Machine Corp.*, 80 F. (2d) 862 (C. C. A. 2). Yet even upon a direct review of convictions for criminal conspiracies it is not a fatal variance to allege a single conspiracy of three and prove



two conspiracies of two each, to which one of the conspirators is in each case not a party. *U. S. v. Berger*, 295 U. S. 77. A fortiori it is not such to allege a conspiracy of three or more and prove one of less members, or of more. Yet these are all cases of departure and show that it is immaterial to prove a different criminal agreement from that alleged, when the defendants are not prejudiced by the variance. Moreover, while it is true that a man may not be convicted on an indictment for conspiracy, if it appear that there was no other party to the transaction, it is not necessary that more than one shall be convicted. *Feder v. U. S.*, 257 Fed. 694 (C. C. A. 2); *U. S. v. Austin-Bagley Corp.*, 31 F. (2d) 229, 233, (C. C. A. 2); *Didenti v. U. S.*, 44 F. (2d) 537 (C. C. A. 9); *Rosenthal v. U. S.*, 45 F. (2d) 1000, 1003, (C. C. A. 8); *Worthington v. U. S.*, 64 F. (2d) 936, 939 (C. C. A. 7). Here, although the wholesalers and retailers, named as respondents, were indeed dismissed, there were others, not named, about whom nothing was determined; and besides, the Armand Company might have acted in concert with its officers and was indeed found to have done so. Thus, at worst, the case is no more than one in which the order does not in terms declare that the respondents in default had been guilty of a conspiracy, an omission of no consequence at all.

If, however, that be thought to be too verbal a way to deal with the matter, the result is the same, though we assume that the company alone was found guilty, and that all wholesalers and retailers, named and not named, were acquitted. None the less the company made agreements with them which were exactly those alleged as the content of the conspiracy; the parties and the performance were precisely the same. The Commission might enjoin the company from so conducting itself, whether under the name of conspiracy, or of an individual "unfair method of competition." Even if we assume that the change was substantial enough to be ground for dismissal unless the complaint was amended, it was no more. To succeed here, the respondent must maintain that the order so far abandoned the very frame and outline of the original charge that it had no greater sanction than if the bailiff had signed it. It is true that there may be such departures. *Reynolds v. Stockton*, 140 U. S. 254; *Jorgenson Co. v. Rapp*, 157 Fed. 732 (C. C. A. 9); *Osage O. & R. Co. v. Continental Oil Co.*, 34 F. (2d) 585, (C. C. A. 10); *Clark v. Arizona M. S. & L. Assn.* (D. C.), 217 Fed. 640; *Munday v. Vail*, 34 N. J. L. 418. But as was intimated in *Reynolds v. Stockton*, *supra*, 265, 266, much depends upon what takes place before judgment; if, for instance, the defendant merely files an answer and defaults thereafter, a closer registry between pleading and judgment is exacted than after a contested trial, where it may reasonably be assumed that the disposition corresponded

to the actual controversy as the parties understood it, even though no formal amendment of the pleadings appears in the roll. Not only must this be true, but, even when the case has not been contested, the question is always one of degree, else any judgment may be upset for trifling variances. At least in a contested case there must be an entire abandonment of the very substance of the dispute to which the defendant was summoned, and the substitution of another which he could not have anticipated, and [975] which he had no opportunity to meet. *Insley v. U. S.*, 150 U. S. 512; *Hatcher v. Hendrie & Bolthoff Mfg. & Supply Co.*, 133 Fed. 267 (C. C. A. 8); (semble); *Jarrell v. Cole*, 215 Fed. 315 (C. C. A. 4); *Cushman v. Warren-Scharf Asphalt Co.*, 220 Fed. 857 (C. C. A. 7). It is apparent at a glance that so considered, this motion was without basis. The difference is of no practical moment between a conspiracy of a manufacturer and his dealers by which all agree to market the goods unlawfully, and the individual acts of the manufacturer in procuring exactly those agreements and distributing his goods under them. The manufacturer called upon to justify such a course of dealing is advised of what he has to meet, and the divergence between the charge framed as a joint wrong and as single, is utterly unimportant. If during the course of the prosecution, he could show any reason why it was important to make the formal adjustment, conceivably it might be error to refuse to do so; but to hold after all had gone through without question that it had been only a dance of marionettes, would be to go back at least two centuries.

Motion denied.

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