

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

DECEMBER 1, 1937, TO MAY 31, 1938

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VOLUME 26



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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF MAY 31, 1938

GARLAND S. FERGUSON, *Chairman.*

Took oath of office November 14, 1927, January 9, 1928,¹ September 26, 1934,² and February 9, 1935.³

CHARLES H. MARCH.

Took oath of office February 1, 1929, and August 27, 1935.¹

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.

¹ Second term.

² Recess appointment.

³ Third term.

ACKNOWLEDGMENT

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

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18

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19 1/2

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CONTENTS

	Page
Members of the Commission.....	II
Table of cases reported.....	VII
Table of stipulations reported.....	XIII
Table of cases in which petitions for review or applications to enforce the orders of the Commission have been filed in the circuit courts of appeals.....	XXIII
Table of court cases, Vols. 1-26.....	XXVII
Cases in which cease and desist orders have been entered.....	1
Cases in which closing, discontinuing, dismissing, or vacating orders have been entered.....	1297
Stipulations:	
General.....	1309
False, misleading, and fraudulent advertising.....	1369
Decisions of the courts in cases instituted against or by the Commission..	1495
Barager-Webster Co.....	1495
U. S. v. Hamilton Brown Shoe Co. (footnote).....	1495
Rittenhouse Candy Co.....	1497
Chase Candy Co.....	1499
A. McLean & Son et al.....	1501
Fairyfoot Products Co.....	1507
Biddle Purchasing Co. et al.....	1511
Goodyear Tire & Rubber Co. (Supreme Court).....	1521
Standard Education Society et al.....	1524
Table of commodities:	
Desist orders.....	1529
Stipulations.....	1533
Index:	
Desist orders.....	1547
Stipulations.....	1566

TABLE OF CASES

[The names in all CAPITALS refer to cases in which orders to cease and desist have been entered by the Commission, and which are reported in full in this volume. The names in *italics* refer to cases in which the Commission has entered orders of discontinuance or dismissal, orders closing case, or vacating and reopening orders]

Name	Page
ABRAHAM & STRAUS, INC.....	460
AGRICULTURAL LABORATORIES, INC.....	296
A. J. SALES & MANUFACTURING CO., ETC. (Albert J. Tarrson doing business as).....	534
ALPHA LABORATORY, INC.....	814
AMERICAN BEAUTY PRODUCTS CO., ETC. (Carl E. Koch et al., doing business as).....	877
AMERICAN CRAYON CO. ET AL.....	604
<i>American Lubricants Co., Inc.</i>	1303
AMERICAN NOVELTY CO. (Donald Reichgott doing business as).....	1045
AMERICAN RADIO CO., ETC. (N. R. Baskin doing business as).....	410
AMERICAN TELEVISION INSTITUTE, INC., ET AL.....	1138
ARABIAN TOILET GOODS CO., INC.....	441
ATLANTIC & PACIFIC TEA CO., THE GREAT.....	486
AUTOMOTIVE TEST LABORATORIES OF AMERICA (Morris E. Newman doing business as), ET AL.....	1209
AUTOMOTIVE TEST LABORATORIES OF AMERICA (Morris E. Newman doing business as).....	1234
<i>Avery Salt Co.</i>	1307
BALL CO., INC., THE.....	574
BANNER MANUFACTURING CO.....	614
BARBARA GOULD SALES CORP. ET AL.....	1
BARCLAY CLOTHING CO., ETC. (Joseph Cominsky doing business as).....	777
BASKIN, N. R. (doing business as American Radio Co., etc.).....	410
BEGGS SONS & CO., C. W.....	50
BELMONT LABORATORIES, INC.....	244
<i>Belmore Jewelry Co., Inc., et al.</i>	1301
<i>Bernstein, Nathan</i> (doing business as Excell Luggage Co.), <i>et al.</i>	1301
BIBERMAN BROS., INC., ET AL.....	911
<i>Block, John, et al.</i>	1302
BOEHM, ALFRED (doing business as Lynx Knitting Co.).....	1095
BOURJOIS, INC., ET AL.....	1
BRADAS & GHEENS, INC., ET AL.....	583
BRILL CO., INC., H. C.....	666
<i>Bristol-Myers Co.</i>	1297
BUCK, EVERETT, ET AL (doing business as United States Caramel Co.).....	1005
BUILDING MATERIAL DEALERS ALLIANCE ET AL.....	142
BUNTE BROTHERS, INC.....	786
CALIFORNIA RICE INDUSTRY ET AL.....	968

Name	Page
CANARY HOSIERY CO., ETC. (Louis H. Tabach doing business as)	284
CAPON WATER CO. ET AL	423
<i>Carey Salt Co</i>	1307
CARPENTIER, DR. EMILE (Emile Carpentier doing business as)	690
CARTER CANDY CO. (Lonnie E. Carter doing business as)	922
CENTRAL PATTERN & FOUNDRY CO	1254
CERTIFIED HOSIERY CO., ETC. (Louis H. Tabach doing business as)	284
CHEMICAL PRODUCTS, MNFRS. (Ralph C. Curtiss doing business as), ET AL	1209
C. J. O'CROWLEY, ETC. (C. J. O'Crowley doing business as)	546
CLIMAX RUBBER CO. (Jacob Stein doing business as)	1070
CLINE MUSIC CO., INC	1158
CLOSE & CO. (Frank Urban et al., doing business as)	402
COLONIAL DAMES, INC., ET AL	1260
COLONIAL MILLS, INC	1186
COLONIAL RIBBON MILLS (Samuel Steckenberg et al., doing business as)	394
COMINSKY, JOSEPH (doing business as Waverley Tailors, etc.)	777
CONFECTIONERS TRADING CORP	30
CONSOLIDATED CANDY CO	555
<i>Consolidated Pinnacle Coal Co. et al</i>	1301
COOKE, T. G. (doing business as Institute of Applied Science)	226
CO-OPERATIVE BUYERS' SERVICE ETC. (Carl E. Koch et al., doing business as)	877
CROCKER, LAWTON V., ET AL. (doing business as The National Survey Co., etc.)	107
CUMMINGS, WILLIAM W., ET AL. (doing business as United States Caramel Co.)	1005
CURTISS, RALPH C. (doing business as Chemical Products, Mnfrs.), ET AL	1209
C. W. BEGGS SONS & CO	50
DELTA THETA CHI, NATIONAL ASSOCIATION OF, ET AL	635
DE LUXE MANUFACTURING CO. (Max Schreiber et al., doing business as)	656
DEPEW CHEMICAL CO., THE (Nelle K. Wing doing business as)	1200
DERMAY PERFUMERS, INC	1086
DERMOLAV LABORATORIES, INC	902
DIAMOND BROKERAGE CO. (Elmer Sussman doing business as)	767
DIETZ GUM CO. OF CHICAGO, ETC. ET AL	272
DILLING & CO	432
D'ISABEY, INC., LES PARFUMS	799
DIXIE HATCHERIES ETC. (Albert L. Hilkemeyer et al., doing busi- ness as)	953
DOUGLASS CANDY CO., ETC. (Ira W. Minter et al., doing business as)	994
D. P. PEN CO. (Robert Morris doing business as)	1036
DUSCH, GABRIEL S., SR., ET AL. (doing business as Gabriel's Laboratories)	366
EARL E. MAY SEED CO. ET AL	78
<i>E. Frederics, Inc</i>	1300
ELI LILLY & CO., THE	581
EMILE CARPENTIER, DR. (Emile Carpentier doing business as)	690
ENGLANDER SPRING BED CO., INC	68
E. R. PAGE CO., INC., THE	1130

Name	Page
EXCEL PRODUCTS, ETC. (C. J. O'Crowley doing business as)	546
<i>Excell Luggage Co.</i> (Nathan Bernstein doing business as), <i>et al.</i>	1301
FASHION FIRSTS, INC. ET AL	701
FIORET SALES CO., INC. ET AL	806
FISCHLER, JOSEPH, ET AL. (doing business as Sanitas Fundoshi Co.)	114
FITCHES, JAMES W., ET AL	983
FORM MAID COAT CO., INC. ET AL	42
FOSTER, INC., GEORGE, ET AL	1027
FOX-WEIS CO	87
<i>Frederics, Inc., E.</i>	1300
FYNKE, ABRAHAM M., ET AL. (doing business as Colonial Ribbon Mills)	394
GABRIEL'S LABORATORIES (Gabriel S. Dusch, Sr., et al., doing business as)	366
GALEY & LORD, INC., ET AL	911
<i>Galvin, Walter B., et al.</i> (doing business as Hair-Tex Co.)	1307
GARDEN CITY NOVELTY MANUFACTURING CO., ETC. (K & S Sales Co., doing business as)	328
GELLMAN BROTHERS (Mike Gellman et al., doing business as)	344
GEORGE FOSTER, INC. ET AL	1027
GHEENS, C. E., ET AL. (doing business as Bradas & Gheens)	583
<i>Gillette Safety Razor Co.</i>	1298
<i>Glade Candy Co.</i>	1306
GLADKE, JEROME, ET AL. (doing business as Korjena Medicine Co.) ..	1013
GOLDBERG, SAMUEL (doing business as U. S. Specialty & Mfg. Co.) ..	384
GOLDEN PEACOCK, INC.	752
GOLF BALL MANUFACTURERS' ASSOCIATION ET AL	824
GORDON, FREDERICK T., ET AL	930
GORHAM, WALTER H., ET AL	939
GOULD SALES CORP., BARBARA, ET AL	1
GREAT ATLANTIC & PACIFIC TEA CO., THE	486
H. C. BRILL CO., INC.	666
<i>Hair-Tex Co.</i> (Walter B. Galvin et al., doing business as)	1307
HALL & CO., WALTER T. (Walter T. Hall et al., doing business as) ..	477
HANDKERCHIEF MFG. CO., INC., UNIVERSAL	1193
HANSEN INOCULATOR CO., INC.	303
HARTZ MOUNTAIN PRODUCTS, INC.	263
HAYNES & CO., INC., JUSTIN	1147
HEFLEBOWER, EUGENE F., ET AL. (doing business as Co-Operative Buyers' Service, etc.)	877
HELZBERG'S DIAMOND SHOP (Barnett C. Helzberg doing business as)	895
HICKSON & CO., J. C.	23
HILDRETH, ANTHONY J., ET AL. (doing business as Sanitas Fundoshi Co.)	114
HILKEMEYER, ALBERT L., ET AL. (doing business as Dixie Hatch- eries, etc.)	953
INDIANAPOLIS SOAP CO. (doing business as Sanisoap Co., etc.)	360
INSTITUTE OF APPLIED SCIENCE (T. G. Cooke doing business as) ..	226
J. ARTHUR WARREN CO. (Joseph H. Robinson et al., doing business as)	565
J. C. HICKSON & CO.	23

Name	Page
JEFFERSON FARMS, ETC. (Albert L. Hilkemeyer et al., doing business as)-----	953
<i>Jefferson Island Salt Co.</i> -----	1306
JOHNSON & JOHNSON-----	134
JOSEPH WEIDENHOFF, INC.-----	592
JUSTIN HAYNES & CO., INC.-----	1147
K & S SALES CO. (doing business as Garden City Novelty Manufacturing Co., etc.)-----	328
KENTUCKY DISTILLERS, INC., SELECTED-----	960
<i>Keystone Distilling Co.</i> -----	1303
KLOMPUS, WILLIAM, ET AL. (doing business as De Luxe Manufacturing Co.)-----	656
KOCH, CARL E., ET AL. (doing business as Co-Operative Buyers' Service, etc.)-----	877
KORJENA MEDICINE CO. ET AL. (Jerome Gladke doing business as)-----	1013
LASALLE EXTENSION UNIVERSITY-----	1277
LAVOPTIK CO., INC.-----	1172
LAWTON, ARTHUR W., ET AL. (doing business as United States Caramel Co.)-----	1005
<i>Lednew Corp.</i> -----	1302
LEITH, W. A. (doing business as Style Silk Co.)-----	524
LES PARFUMS D'ISABEY, INC.-----	799
LIEBOWITZ, JOE-----	1052
LILLY & CO., THE ELI-----	581
LONGWEAR HOSIERY CO., ETC. (Louis H. Tabach doing business as)-----	284
LOOSE-WILES BISCUIT CO.-----	1118
LORD & TAYLOR ET AL.-----	911
LYNX KNITTING CO. (Alfred Boehm doing business as)-----	1095
McPHEETERS, J. W. (doing business as Mid-West Soap Co., etc.)-----	682
MACHEN CO., THE, ETC. (Willard F. Main doing business as)-----	720
MAIN CO., W. F., ETC. (Willard F. Main doing business as)-----	720
MANUFACTURERS SALES CO., ETC. (Thomas R. Moss doing business as)-----	1058
MARCELLE CANDIES, INC.-----	1077
MARCH OF TIME CANDIES, INC.-----	352
MAYFAIR CLOTHING CO., ETC. (Joseph Cominsky doing business as)-----	777
MAY SEED CO., EARL E., ET AL.-----	78
M. H. SOBEL, INC.-----	255
MIDLAND DISTILLERIES, INC.-----	374
MIDWEST PUBLISHING CO. ET AL.-----	939
MID-WEST SOAP CO., ETC. (J. W. McPheeters doing business as)-----	682
MINTER BROTHERS, ETC. (Ira W. Minter et al., doing business as)-----	994
MITHOEFER, WILLIAM C., ET AL.-----	869
MONARCH FASHION CO. (Henry R. Shapiro doing business as)-----	624
<i>Mooser, Louis H., Jr., et al.</i> (doing business as Hair-Tex Co.)-----	1307
MORIN, MURRAY W., ET AL.-----	806
<i>Morrell, Ellis, et al.</i> -----	1301
MORRIS, ROBERT (doing business as D. P. Pen Co.)-----	1036
<i>Morton Salt Co.</i> -----	1304
MOSS, THOMAS R. (doing business as OKeena Novelty Co., etc.)-----	1058
NATIONAL ADVERTISERS CO., ETC. (Albert J. Tarrson doing business as)-----	534
NATIONAL ASSOCIATION OF DELTA THETA CHI ET AL.-----	635

TABLE OF CASES

XI

Name	Page
NATIONAL CANDY CO., INC. (doing business as Pan Confection Factory)-----	449
NATIONAL MANUFACTURERS DISTRIBUTING CO.-----	515
<i>National Modes, Inc., et al.</i> -----	1302
NATIONAL SURVEY CO., THE, ET AL. (Lawton V. Crocker et al., doing business as)-----	107
NEWMAN, MORRIS E. (doing business as Automotive Test Labora- tories of America), ET AL.-----	1209
NEWMAN, MORRIS E. (doing business as Automotive Test Laboratories of America)-----	1234
NITRAGIN CO., INC., THE.-----	320
NU-ART TAILORING CO. (Harry Weinberg doing business as)-----	233
O'CROWLEY, C. J., ETC. (C. J. O'Crowley doing business as)-----	546
OKEENA NOVELTY CO., ETC. (Thomas R. Moss doing business as)---	1058
OLIVER BROTHERS, INC. ET AL.-----	200
<i>Ostler Candy Co.</i> -----	1306
<i>Overland Candy Co.</i> -----	1305
PAGE CO., INC., THE E. R.-----	1130
PAN CONFECTION FACTORY (National Candy Co., Inc., doing business as)-----	449
PARFUMS D'ISABEY, INC., LES.-----	799
PASCAL CO., INC.-----	740
PEARSON CANDY CO.-----	467
PENNSYLVANIA WHISKEY DISTRIBUTING CORP.-----	97
PLA-PAL RADIO & TELEVISION CO., ETC. (Albert J. Tarrson doing business as)-----	534
PRENDERGAST-DAVIES CO., LTD.-----	859
PYROTECHNIC INDUSTRIES, INC. ET AL.-----	1104
<i>Rabin Co., The</i> (Allen H. Rabin doing business as)-----	1299
RALEIGH CANDY CO.-----	122
REICHGOTT, DONALD (doing business as American Novelty Co.)----	1045
RICE INDUSTRY, CALIFORNIA, ET AL.-----	968
ROBINSON, JOSEPH H., ET AL. (doing business as J. Arthur Warren Co.)-----	565
ROCKY MOUNTAIN LABORATORIES, INC. ET AL.-----	983
ROYAL LOTUS CORP.-----	646
RUSSEKS FIFTH AVENUE, INC. ET AL.-----	701
SANISOAP CO., ETC. (Indianapolis Soap Co. doing business as)-----	360
SANITAS FUNDOSHI CO. (Anthony J. Hildreth et al., doing business as)-----	114
SAVON PRODUCTS, ETC. (J. W. McPheeters doing business as)-----	682
SCHREIBER, MAX, ET AL. (doing business as De Luxe Manufacturing Co.)-----	656
SHAPIRO, HENRY R. (doing business as Monarch Fashion Co.)-----	624
SHEFFIELD SILVER CO., INC.-----	713
<i>Shupe-Williams Candy Co.</i> -----	1306
SELECTED KENTUCKY DISTILLERS, INC.-----	960
<i>Seminole Paper Corp.</i> -----	1299
SERVAL-SYSTEM (Waldo W. Townsley doing business as)-----	1223
SIMONS, PHILIP W., ET AL. (doing business as De Luxe Manufacturing Co.)-----	656
SOBEL, INC., M. H.-----	255
SOHN BROS. (Abraham Sohn et al., doing business as)-----	760

Name	Page
SPONGE EXCHANGE, INC., TARPON SPRINGS, ET AL.....	1279
<i>Startup Candy Co.</i>	1305
STECKENBERG, SAMUEL, ET AL. (doing business as Colonial Ribbon Mills).....	394
STEIN, JACOB (doing business as Climax Rubber Co.).....	1070
STEPHENS, GUS (doing business as Tested Specialties Co.).....	1179
STYLE SILK CO. (W. A. Leith doing business as).....	524
SUSSMAN, ELMER (doing business as Diamond Brokerage Co.).....	767
TABACH, LOUIS H., ETC. (doing business as Longwear Hosiery Co., etc.).....	284
TARPON SPRINGS SPONGE EXCHANGE, INC. ET AL.....	1279
TARRSON CO., THE, ETC. (Albert J. Tarrson doing business as).....	534
<i>Taylor & Co., W. A.</i>	1304
TELEVISION INSTITUTE, INC., AMERICAN, ET AL.....	1138
TESTED SPECIALTIES CO. (Gus Stephens doing business as).....	1179
TOSTO FOODS, INC. ET AL.....	869
TOWNSLEY, WALDO W. (doing business as Serval-System).....	1223
<i>United States Pencil Co., Inc.</i>	1300
UNITED STATES CAMEL CO. (William W. Cummings et al., doing business as).....	1005
UNITED STATES SPECIALTY & MFG. CO. (Samuel Goldberg doing business as).....	384
UNITED WOOLEN MILLS.....	852
UNIVERSAL HANDKERCHIEF MFG. CO., INC.....	1193
UNIVERSITY FORUM, INC. ET AL.....	635
UTERMAN, IRVING, ET AL.....	806
URBAN, FRANK, ET AL. (doing business as Close & Co.).....	402
URBANA LABORATORIES, THE (Albert L. Whiting, et al., doing business as).....	312
VAN OGDEN, INC. ET AL.....	930
<i>W. A. Taylor & Co.</i>	1304
W. F. MAIN CO., ETC. (Willard F. Main doing business as).....	720
WALTER-LEWIS & CO., INC. ET AL.....	42
WALTER T. HALL & CO. (Walter T. Hall et al., doing business as).....	477
WARREN CO., J. ARTHUR (Joseph H. Robinson et al., doing business as).....	565
<i>Washington Training Institute, Inc.</i>	1300
WAVERLEY TAILORS, ETC. (Joseph Cominsky doing business as).....	777
WEIDENHOFF, INC., JOSEPH.....	592
WEINBERG, HARRY (doing business as Nu-Art Tailoring Co.).....	233
WEST PENN DISTILLING CO., INC.....	1246
WHITING, ALBERT L., ET AL. (doing business as The Urbana Laboratories).....	312
WING, NELLE K. (doing business as The DePew Chemical Co.).....	1200
WOLCHIN, FRIEDA (doing business as Wright Manufacturers Distributing Co.).....	15
WORTHALL, LTD.....	59
WORTHMORE SALES PROMOTION SERVICE, INC.....	218
WRIGHT MANUFACTURERS DISTRIBUTING CO. (Frieda Wolchin doing business as).....	15
W. W. SOAP MANUFACTURING CO., ETC. (Indianapolis Soap Co., doing business as).....	360
<i>Yardley & Co., Ltd.</i>	1298

TABLE OF STIPULATIONS

[Page references having to do with that class of false, misleading, and fraudulent advertising matters dealt with through the Commission's special board, are in *italics*]

Name	Page
Adams, Harry E. (Electro-Thermo Works)	1435
Aderika Co., The	1374
Alenikoff, Philip, et al. (Siegel & Alenikoff)	1316
Alexander, H. (Staubrite Letter Co.)	1489
Allcock Mfg. Co.	1482
Allport, R. M. (Armall Agency, etc.)	1377
Alma Woodward Products Corp.	1464
Altman & Co., B.	1363
American College	1361
American Frog Industries	1373
American Maté Import Corp.	1419
Appalachian Mills Co.	1327
Ar-Be Products Co.	1370
Armall Agency, etc.	1377
Armstrong Cork Co.	1319
Artex Novelty Co.	1397
Art Musical Instruments, Inc.	1327
Ar. Winarick, Inc.	1460
Ashland Dental Laboratories	1379
Associated Distributors, Inc.	1376
Atlantic Syrup Refining Co.	1351
B. Altman & Co.	1363
B. & N. Sales Co.	1321
Babineaux, L., et al. (Louisiana Frog Co., etc.)	1373
Baby Touch Hair Remover Co.	1432
Baden, Thomas, et al. (Midwest Products Co.)	1477
Baer, L. H., et al. (Louisiana Frog Co., etc.)	1373
Baker-Cammack Hosiery Mills	1344
Ballard, Inc., James F.	1483
Banfi Products Corp.	1483
Bear Crest Co.	1460
Bee-Cell Co., The	1390
Behr, Harry, et al. (Konhauzer & Behr Co.)	1323
Benedict Co., Inc., Harold	1345
Bergdorf & Goodman Co.	1366
Black, Walter J. (Book Coupon Exchange)	1344
Blackburn Products Co.	1406
Blair Shirt Co.	1315
Bland Products Co.	1397
Book Coupon Exchange	1344
Botkin, T. E. (Ar-Be Products Co.)	1370
Bradley, Mrs. C. S.	1452

Name	Page
Branca & Co., Inc., Fratelli.....	1440
Brass Products, Inc.....	1440
Brewer & Co., Inc.....	1418
Brown, William Tulford (Health Laboratories, etc.).....	1450
Burchard, R. D., Jr. (Radio Metal Locating Co.).....	1376
Burns, William H. (Atlantic Syrup Refining Co.).....	1351
Business Detective System.....	1322
B. Y.'s Laboratories, Inc.....	1474
Calmas Products.....	1462
Cameron & Co., Wm.....	1425
Campbell Cereal Co.....	1491
Campbell, Etta, et al. (Heinzelmann Co.).....	1331
Carnation Co.....	1385
Carrano, Cosmo (Oceanview Medical Products, etc.).....	1371
Carter Drug Co.....	1372
Carter Products Corp.....	1400
C. Foster Chemical Co.....	1313
Char-Tex, Inc.....	1460
Chesebrough Mfg. Co., Consolidated.....	1448
C. H. Stemmons Mfg. Co.....	1433
Clara Stanton, Druggist to Women.....	1439
Clifford, J. W. (International Co., etc.).....	1472
Clyde Collins, Inc.....	1491
Cocklin, L. A. (Laco Oil Burner Co.).....	1389
College Pharmacy.....	1410
Collins & Aikman Corp., Inc.....	1352
Collins, Inc., Clyde.....	1491
Colt-Worthington Oil Works, Inc.....	1343
Comet Welder Co.....	1331
Comfy Manufacturing Co.....	1353
Commonwealth Mfg. Corp.....	1449
Congress Wallpaper & Paint Co.....	1325
Conkey Co., G. E.....	1355
Con-O-Lite Corp.....	1345
Consolidated Drug Trade Products, Inc.....	1390, 1391, 1485
Cooke, T. G. (Institute of Applied Science).....	1480
Cooper & Nephews, Inc., William.....	1400
Corn, Inc., Ralph.....	1311
Corn Products Refining Co.....	1448
Corset & Brassiere Trade Centre, Inc.....	1415
Countess D'Arian Cosmetic Co.....	1356
Crandall's Standard Institute, Dr.....	1429
Crescent City Smelting Co.....	1337
Cripe Baking Co. (Rainbo Bread Co.).....	1484
Crosley Radio Corp.....	1484
Crosman Arms Co., Inc.....	1489
C. S. Bradley, Mrs.....	1452
Cumming-Brown Co., Inc., J. B.....	1421
Cutter Laboratories.....	1437
Dainty Dot Hosiery Mills.....	1317
Dant & Russell, Inc.....	1470
Danville Knitting Mills.....	1350
D'Arian Cosmetic Co., Countess.....	1356

Name	Page
Darley Mills Co., Ltd. et al.	1359
Davis, J. O. (Baby Touch Hair Remover Co.)	1432
Davis Prescription Co., E. R.	1475
Davis, Samuel B. (Crescent City Smelting Co.)	1337
Dayton Laboratories, Inc. (Surete Laboratories)	1380
Dedekind, Louis F. (Western Wool Growers Association)	1354
Defiance Rubber Co.	1338
Delettrez, Inc.	1417
Delphi Packing Co.	1326
Del Vecchio, D. (Peoples Hardware Stores)	1373
Dew Cosmetics, Inc. (Vandy, Inc.)	1485
Dhein, Gordon (Universal Repro-Graph Co.)	1334
Dixie-Rub Co., The	1451
D. M. C. Products	1371
Dodge, Inc.	1352
Doty, Angeline, et al. (Florentine Products Co., etc.)	1486
Double B Products Co., Inc.	1318
Doubleday, Doran & Co., Inc. et al.	1346
Drackett Products Co., The	1480
Drew, James W. E. (Trinity Heights Hatchery)	1356
Dry-Zero Corp.	1482
Durkee Famous Foods	1398
Dusatka, Edward C., et al. (American College)	1361
Dyar, Ross (World's Medicine Co.)	1411
Edwards Drug Co.	1478
Ekern, William, et al. (Electrocure Co.)	1340
Electrocure Co.	1340
Electro-Thermo Works	1435
Elfman, Fred, et al. (New Way Hosiery Co.)	1330
E. M. Roth Hosiery Co.	1355
Enoch Morgan's Sons Co.	1441
E. R. Davis Prescription Co.	1475
Estate Stove Co.	1333
Eterne Mfg. Corp., etc.	1476
Euclid Candy Co. of New York, Inc.	1347
Fabarius, Edward G.	1337
Family Supply Co.	1432
F. C. Foard & Co., Inc.	1393
Feminine Products, Inc.	1372
Fitch Co., F. W.	1423
Flavorex, Inc.	1475
Florentine Products Co.	1486
Foard & Co., Inc., F. C.	1393
Foot-Aid Mfg. Co., The	1447
Foster Chemical Co., C.	1313
Foster Clothes, Inc., "Jim"	1487
Frank & Sons, J.	1470
Fratelli Branca & Co., Inc.	1440
Fujikawa, Haruki (College Pharmacy)	1410
Fuller Club, Jane	1428
Fusco, Barth (Metropolitan Window Letter Co.)	1422
F. W. Fitch Co.	1423
Gall-Flo Laboratories, Inc.	1425

Name	Page
Garden City Publishing Co., Inc. et al.....	1346
Garlic Tablet Co.....	1421
G. E. Conkey Co.....	1355
General Card Co.....	1431
George Laboratories, Georgia O.....	1455
Girard Shirt Corp.....	1325
Glessner Co., The.....	1369
Glidden Co., The (Durkee Famous Foods).....	1398
Godsend Hearing Aid Co.....	1427
Gof, David, et al. (A. Gorbaty).....	1336
Gorbaty, A.....	1336
Gordon, Morris, et al. (Family Supply Co.).....	1432
Goudchaux, J. J. (Service Drug Co.).....	1446
Grace Brothers, Ltd.....	1442
Graham-Paige Motors Corp.....	1492
Groville Sales Corp.....	1332
Guaranteed Products, Inc. (Swedish Shampoo Laboratories).....	1400
Guerlain, Inc.....	1317
Hadley-Sullivan, Inc.....	1471
Hain Pure Food Co.....	1455
Halvorfold Co., The (Merchandisers).....	1446
Hamilton, Dr. S. B.....	1392
Hand & Sons, Inc., John, et al.....	1357
H-A Relief, Inc., The.....	1390
Harold Benedict Co., Inc.....	1345
Harris, Edward J. (Retail Business Stimulators).....	1436
Harry Treats Co.....	1384
Hatzenbeuhler, M. (Lorenz Truss and Electric Works).....	1380
Hawkins Million Dollar Hen.....	1315
H. D. Mendelsohn Co.....	1342
Health Laboratories, etc.....	1450
Health Mode Products Co., etc.....	1347
Health Research Foundation.....	1373
Hecht Brothers Co., Inc.....	1366
Heinzelmann Co.....	1381
Hempel, Otto F. (The Perno Co., etc.).....	1390
Henry, Eugene, et al. (Stream Line Tools).....	1353
Henschel, Joseph, et al. (Siegel & Alenikoff).....	1316
Herb Juice-Penol Co., Inc. (Pow-O-Lin Laboratories).....	1377
Herman, F. James (Bear Crest Co.).....	1460
Hilgers & Co., J.....	1420
Hind & Harrison Plush Co., The.....	1349
Hindu Products Mfg. Corp.....	1479
Hintlian, Inc., Neshan G.....	1368
Histen Corp., The.....	1419
H. Meinhardt & Co.....	1403
Horlick's Malted Milk Corp.....	1484
Horney, Juliette D'Arian (Countess D'Arian Cosmetic Co.).....	1356
House of Better Living.....	1456
Inca Co., The.....	1459
Indian River Medicine Co.....	1394
Institute of Applied Science.....	1480
International Charm Institute, Inc.....	1445

Name	Page
International Co.....	1472
International Secret Service Institute.....	1370
Iodent Chemical Co., Inc.....	1454
Iselin & Co., Inc., William, et al.....	1359
James F. Ballard, Inc.....	1483
James, Lee G., et al.....	1339
Jane Fuller Club.....	1428
J. B. Cumming-Brown Co., Inc.....	1421
Jensen, L. M., et al. (Neo Vim Co.).....	1453
Jeurelle-Seventeen, Inc., Maison.....	1328
J. Frank & Sons.....	1470
J. Hilgers & Co.....	1420
J. H. Tigerman, Inc.....	1358
"Jim" Foster Clothes, Inc.....	1487
Joe Lowe Corp.....	1338
Johann Strasska, Inc., Ltd., Dr.....	1439
John Hand & Sons, Inc., et al.....	1357
John Oster Manufacturing Co.....	1340
Johns-Manville Corp, et al.....	1322, 1441
Jordan Laboratories.....	1383
Joseph Love, Inc.....	1313
Joseph Personeni, Inc.....	1378
Jung Arch Brace Co., The (The Foot-Aid Mfg. Co.).....	1447
Kalos, William M. (Artex Novelty Co.).....	1397
Kellogg Co., The.....	1332
Kent, Mary V. (The Kingtex Co.).....	1409
King, William Patrick (The Sample Furniture Shops).....	1362
Kingtex Co., The.....	1409
Kirschenbaum, Irving (Knickerbocker Advertising Co.).....	1326
Knickerbocker Advertising Co.....	1326
Konhauzer & Behr Co.....	1323
Kosofsky, Samuel (Lakro Co.).....	1380
Kotofom Corp. of America (Lubritex Laboratories), et al.....	1341
Kraus, Albert J. (United Sales and Manufacturing Co.).....	1428
Kraus, Otto E., et al.....	1320
Krisman-Frey Jewelers.....	1319
Kristee Manufacturing Co., The.....	1416
Laco Oil Burner Co.....	1389
Laco Products, Inc.....	1389
Lacy Products Corp.....	1310
Lager Mildred M. (House of Better Living).....	1456
Lakro Co.....	1380
Lanac Chemical Co. (Dr. Latham Chemical Co.).....	1330
Larson, Edward H., et al. (Tintz Co., etc.).....	1466
Latham Chemical Co., Dr.....	1330
Leach, L. D. (LeJay Manufacturing Co.).....	1445
Lehn & Fink Products Corp.....	1430
LeJay Manufacturing Co.....	1445
Lelles, A. T. (Washington Mushroom Industries).....	1404
Leonhardt Co., Dr.....	1453
Lever Brothers Co.....	1478
Levin, Copal, et al. (Dainty Dot Hosiery Mills).....	1317
Lewis-Howe Co.....	1415

Name	Page
Lewis Reducing Belt Co.....	1450
Lifol Co., The.....	1421
Lion Oil Refining Co.....	1355
Lipman, David, et al. (Sager, Lipman & Co.).....	1331
Loftis Jewelry Co.....	1415
Logan Health Garment, Dr.....	1328
L. Opplemau, Inc.....	1358
Lorenz Truss and Electric Works.....	1380
Louisiana Frog Co.....	1373
Love, Inc., Joseph.....	1313
Lowe Corp., Joe.....	1338
Lubritex Manufacturing Co. et al.....	1341
Lucky Heart Laboratories, Inc.....	1467
Luden's, Inc.....	1483
Lux Co., The.....	1465
Lux Visel, Inc. (The Lux Co.).....	1465
McLoughlin Manufacturing Co. (Toss-A-Way Co.).....	1324
McMahon, Nelson J., et al. (Tintz Co., etc.).....	1466
Magic Products Co.....	1329
Mailman, A. L., et al. (Pal Blade Co.).....	1320
Maison Jeurelle-Seventeen, Inc.....	1328
Major Tire & Rubber Co.....	1471
Mansfield, C. H., et al. (The Inca Co.).....	1459
Marble Monument Co.....	1323
Marshall Feed Co.....	1430
Martin Rowan's Social Club.....	1428
Marvello Toilet Co.....	1399
Mastin, F. B., Jr., (Calmas Products).....	1462
Matsuoka Food Laboratory.....	1403
Matthews, Ben C., et al. (Dr. Crandall's Standard Institute).....	1429
Medland, G. E. (Modernistic Sign Letter Co.).....	1488
Meinhardt & Co., H.....	1403
Mendelsohn Co., H. D.....	1342
Merchandisers.....	1446
Metropolitan Window Letter Co.....	1422
Midwest Products Co.....	1477
Mineral Plant Food Co.....	1363
Mitchell, Louis, et al. (Krisman-Frey Jewelers).....	1319
Modernistic Sign Letter Co.....	1488
Morgan's Sons Co., Enoch.....	1441
Morse, Stewart Y. (Business Detective System).....	1322
Mountain, Lee.....	1333
Mystol Mfg. Co.....	1490
Nassau Pen & Pencil Corp.....	1359
Nathan, Solomon (B. & N. Sales Co.).....	1321
National Toilet Co. (Sunclyme House).....	1485
Nature Food Centres, Inc. (Health Mode Products Co., etc.).....	1347
Nelson Enterprises, Robert, etc.....	1450
Neo Vim Co.....	1453
Neshan G. Hintlian, Inc.....	1368
New Century Beverage Co., Inc.....	1366
New Way Hosiery Co.....	1330
New York Research Corp.....	1454

TABLE OF STIPULATIONS

XIX

Name	Page
Northwestern Fuel Co.....	1439
Norzel's Beauty Products Mfg. Co., Inc.....	1492
No Wheez Corp.....	1431
Nutrena Mills, Inc.....	1412
Oceanview Medical Products.....	1371
Oppleman, Inc., L.....	1358
Osoff, Myer (Paramount Art Co.).....	1314
Oster Manufacturing Co., John.....	1340
Packard Shirt Mfg. Corp.....	1461
Paddock, Dr. E. E.....	1437
Pal Blade Co. et al.....	1320
Palmer, Inc., Pauline.....	1417
Paragon Laboratories, Inc., etc.....	1476
Paramount Art Co.....	1314
Part Laboratory Co., Inc.....	1447
Pauline Palmer, Inc.....	1417
Peoples Hardware Stores.....	1373
Perey Turnstile Co.....	1312
Perno Co., The.....	1390
Personal Stationery Corp. of New York.....	1333
Personeni, Inc., Joseph.....	1378
Petersime Incubator Co.....	1469
Peters, W. Robert (Serosol Laboratories).....	1392
Phillips & Benjamin Co., Inc.....	1401
Podrofsky, Louis (Star Products Co.).....	1465
Pollard, W. C., et al. (Neo Vim Co.).....	1453
Pow-O-Lin Laboratories.....	1377
Preussaer, Angelene.....	1488
Prince Macaroni Mfg. Co.....	1457
Princeton Knitting Mills, etc.....	1319
Progress Corp.....	1364
Pro-Vita Food Laboratory.....	1403
Pruitt Corp., The.....	1424
Pynosol Laboratories, Inc.....	1414
Quiros, Marta (Reyna Marie).....	1443
Radio Metal Locating Co.....	1376
Rainbo Bread Co.....	1484
Ralco Undergarment Corp.....	1365
Ralph Corn, Inc.....	1311
Retail Business Stimulators.....	1436
Reyna Marie.....	1443
Reynolds Corp.....	1375
Riaff, A. L. et al. (Neo Vim Co.).....	1453
Rich, L., et al. (S-X Products Co.).....	1405
Richard Trading Corp.....	1335
Roban Laboratories, Inc.....	1438
Röbert Nelson Enterprises, etc.....	1450
Robinson Popcorn Co., Inc.....	1339
Rodstein, Morris, et al.....	1359
Roloff, Edward J., et al. (Georgia O. George Laboratories).....	1455
Rosenthal & Wright et al.....	1357
Rossman-Weaver Co. (Blair Shirt Co.).....	1315
Roth Hosiery Co., E. M.....	1355

Name	Page
Routzahn, Carlton (Bland Products Co.)	1397
Rowan's Social Club, Martin	1428
Royal Typewriter Co., Inc.	1477
Rubin, Louis (Princeton Knitting Mills, etc.)	1319
Sager, Lipman & Co.	1331
Sample Furniture Shops, The	1362
Sanford Products Corp.	1324
Sargent & Co.	1401
Sasa Distributors	1442
Saxet Health Products, Ltd.	1463
Schick Dry Shaver, Inc.	1360
Schnitzel, Michael, et al.	1335
Scientific Manufacturing Co.	1357
Sears, Roebuck & Co.	1332
Seligman, Harry (Harry Treats Co.)	1384
Serosol Laboratories	1392
Service Drug Co.	1446
Shackleford, Allen M., et al. (Marble Monument Co.)	1323
Sheldon Tailoring Co.	1343
Shiffer System of Hair and Scalp Treatments	1408
Siegel & Alenikoff	1316
Sigel, Berdye H. (Si-Noze Co., etc.)	1436
Silverman, L.	1367
Si-Noze Co., etc.	1436
Skelly Oil Co.	1399
Skol Co., Inc.	1454
Smith, Clarence P. (Mystol Mfg. Co.)	1490
Smith, W. D., et al. (Midwest Products Co.)	1477
Sofskin Co.	1369
Southwestern Drug Corp.	1475
Spartman, Clyde, et al. (Stream Line Tools)	1353
Spears, Searcy C., et al. (Marble Monument Co.)	1323
Spector, Joseph, et al. (Krisman-Frey Jewelers)	1319
Sports Knitted Sweater Mills, etc.	1319
Sprafka, Florence J. (Ashland Dental Laboratories)	1379
Stabrite Letter Co.	1489
Stanco Inc.	1394
Stanton, Clara, Druggist to Women	1439
Star Products Co.	1465
Starek, Frank C. (Wide-O-Wake Co.)	1393
Steele-Wedeles Co.	1415
Stemmons Mfg. Co., C. H.	1433
Stern, T., et al. (S-X Products Co.)	1405
Stetson China Co., Inc.	1334
Stewart School	1388
Stockwell, J. D., et al. (Florentine Products Co., etc.)	1486
Stokes, Robert, etc.	1458
Strasska, Inc., Ltd., Dr. Johann	1439
Stream Line Tools	1353
Stylette Corset Co.	1329
Sussman, Harry, et al.	1335
Sunclyme House	1485
Surete Laboratories	1380

TABLE OF STIPULATIONS

XXI

Name	Page
Surgical Dressings, Inc.....	1395
Swedish Shampoo Laboratories.....	1400
S-X Products Co.....	1405
Taylor, Mina (Lewis Reducing Belt Co.).....	1450
Therapy, Ltd.....	1410
Tigerman, Inc., J. H.....	1358
Tintz Co., etc.....	1466
Tomko, Paul (Garlic Tablet Co.).....	1421
Toss-A-Way Co.....	1324
Toxite Laboratories.....	1402
Tri-City Service, The.....	1369
Trindl Products, Ltd.....	1422
Trinity Heights Hatchery.....	1356
Truslow Poultry Farm, Inc. (Toxite Laboratories).....	1402
Tryco Co., Inc.....	1396
United Sales and Manufacturing Co.....	1426
Universal Repro-Graph Co.....	1334
United Laboratories, Inc.....	1309
Vaccinol Products Corp.....	1436
Vandy, Inc. (Dew Cosmetics, Inc.).....	1485
Vitab Products, Inc.....	1423
Vitality Laboratories.....	1472
Vitaphore Appliances, Inc., The.....	1407
Volk Manufacturing Co.....	1336
Von Allman Preserving Co., Inc.....	1309
Washington Mushroom Industries.....	1404
Weber & Heilbronner, Inc.....	1352
Weingart, Alex, et al.....	1312
Western Wool Growers Association.....	1354
Westminster Manufacturing Co. et al.....	1339
Whetzel, Frank A., et al. (Sasa Distributors).....	1442
White's Specific Toilet Co.....	1491
Whitewater Brewing Co., et al.....	1312
Wide-O-Wake Co.....	1393
Wiggins, G. L. (The Lifol Co.).....	1421
Wilkinson, Hartus R. (Defiance Rubber Co.).....	1338
Wm. Cameron & Co.....	1425
William Cooper & Nephews, Inc.....	1400
William Iselin & Co., Inc. et al.....	1359
Williamson, Mrs. Juanita, et al. (Sasa Distributors).....	1442
Winarick, Inc., Ar.....	1460
Wolfe, Paul J.....	1487
Wolfe's Laboratories.....	1314
Woodward Products Corp., Alma.....	1464
World's Medicine Co.....	1411
Wright, Robert J., et al. (Rosenthal & Wright).....	1357
Wulff, H. H. (The Tri-City Service).....	1369
Yale Oil Corp.....	1420
Youngstrom, John A., et al. (American College).....	1361
Zonite Products Corp.....	1391



**TABLE OF CASES IN WHICH PETITIONS FOR REVIEW OF,
OR APPLICATIONS TO ENFORCE, ORDERS OF THE COM-
MISSION HAVE BEEN FILED IN THE UNITED STATES
CIRCUIT COURTS OF APPEALS FROM DECEMBER 1, 1937,
TO MAY 31, 1938, INCLUSIVE**

Name	Vol.	Page
CHASE CANDY CO.....	23	780
Application to enforce filed in Circuit Court of Appeals for the Eighth Circuit on December 11, 1937. Commission's order affirmed January 20, 1938. 97 F. (2d) 1002.		
CHARLES N. MILLER CO.....	23	211, 886
Application to enforce filed in Circuit Court of Appeals for the First Circuit on January 11, 1938. Commission's order affirmed, after modification, June 10, 1938. 97 F. (2d) 563.		
AMERICAN CANDY CO.....	23	576
Application to enforce filed in Circuit Court of Appeals for the Seventh Circuit on February 21, 1938. Commission's order affirmed June 29, 1938. 97 F. (2d) 1001.		
SHEFFIELD SILVER CO., INC.....	26	713
Petition for review filed in Circuit Court of Appeals for the Second Circuit on March 17, 1938, and cross petition to enforce filed by Commission. Commission's order vacated July 18, 1938. 98 F. (2d) 676.		
THE GREAT ATLANTIC & PACIFIC TEA CO.....	26	486
Petition for review filed in Circuit Court of Appeals for the Third Circuit on March 18, 1938. Commission's order affirmed September 22, 1939.		
BELMONT LABORATORIES, INC.....	26	244
Petition for review filed in Circuit Court of Appeals for the Third Circuit on March 23, 1938. Commission's order affirmed, after modification, March 29, 1939. 103 F. (2d) 538. Petition for rehearing by company denied May 3, 1939. Petition for rehearing by Commission denied May 15, 1939.		
HELEN ARDELLE, INC.....	25	361
BROWN & HALEY.....	25	370
CANTERBURY CANDY MAKERS, INC.....	25	434
IMPERIAL CANDY CO.....	25	481
ROGERS CANDY CO.....	25	527
Petition for review filed in Circuit Court of Appeals for the Ninth Circuit on May 16, 1938. Commission's orders affirmed, after modification, February 14, 1939. 101 F. (2d) 718.		
NATIONAL CANDY CO.....	26	449
Petition for review filed in Circuit Court of Appeals for the Seventh Circuit on May 16, 1938. Commission's order affirmed June 2, 1939. 104 F. (2d) 999.		

Name	Vol.	Page
RALADAM CO.....	24	475
Petition for review filed in Circuit Court of Appeals for the Sixth Circuit on May 16, 1938.		
FIORET SALES CO., INC., ET AL.....	26	806
Petition for review filed in Circuit Court of Appeals for the Second Circuit on May 17, 1938. Commission's order affirmed December 5, 1938. 100 F. (2d) 358.		
NATIONAL SILVER CO.....	24	722
Petitions for review of original order and modified order filed in Circuit Court of Appeals for the Second Circuit on May 17, 1938 and September 24, 1938, respectively. Petitions dismissed May 1, 1939.		
H. N. HEUSNER & SON.....	24	1370
Petition for review filed in Circuit Court of Appeals for the Third Circuit on May 18, 1938. Commission's order affirmed August 10, 1939.		
ILLINOIS LUMBER & MATERIAL DEALERS ASS'N, INC. (BUILDING MATERIAL DEALERS ALLIANCE ET AL.)....	26	142
Petition for review filed in Circuit Court of Appeals for the Seventh Circuit on May 18, 1938. Dismissed without prejudice June 28, 1938. 97 F. (2d) 1005.		
MARCH OF TIME CANDIES, INC.....	26	352
DIETZ GUM CO. ET AL.....	26	272
Petitions for review filed in Circuit Court of Appeals for the Seventh Circuit on May 18, 1938. Commission's orders affirmed June 2, 1939. 104 F. (2d) 999.		
MINTER BROS. ET AL.....	26	994
Petition for review filed in Circuit Court of Appeals for the Third Circuit on May 18, 1938. Commission's order affirmed February 14, 1939. 102 F. (2d) 69.		
UNITED STATES STEEL CORP. ET AL.....	8	1
Petition for review filed in Circuit Court of Appeals for the Third Circuit on May 18, 1938.		
TENNESSEE COAL, IRON & RAILROAD CO.....	8	1
Petition for review filed in Circuit Court of Appeals for the Fifth Circuit on May 18, 1938.		
BOURJOIS, INC. ET AL.....	26	1
Petition for review filed in Circuit Court of Appeals for the Second Circuit on May 19, 1938. Dismissed on stipulation December 12, 1938.		
BUNTE BROS., INC.....	26	786
Petition for review filed in Circuit Court of Appeals for the Seventh Circuit on May 19, 1938. Commission's order affirmed May 17, 1939. 104 F. (2d) 996.		
CAPON WATER CO. ET AL.....	26	423
Petition for review filed in Circuit Court of Appeals for the Third Circuit on May 19, 1938. Commission's order affirmed October 9, 1939.		
SWEET CANDY CO.....	24	343
Petition for review filed in Circuit Court of Appeals for the Tenth Circuit on May 19, 1938.		

TABLE OF COURT PETITIONS AND APPLICATIONS

XXV

Name	Vol.	Page
CALIFORNIA RICE INDUSTRY ET AL.....	26	968
Petition for review filed in Circuit Court of Appeals for the Ninth Circuit on May 20, 1938. Commission's order affirmed after modification, March 17, 1939. 102 F. (2d) 716.		
OLIVER BROS., INC. ET AL.....	26	200
Petition for review filed in Circuit Court of Appeals for the Fourth Circuit on May 20, 1938, and cross petition to enforce filed by Commission. Commission's order affirmed and en- forced March 25, 1939. 102 F. (2d) 763.		

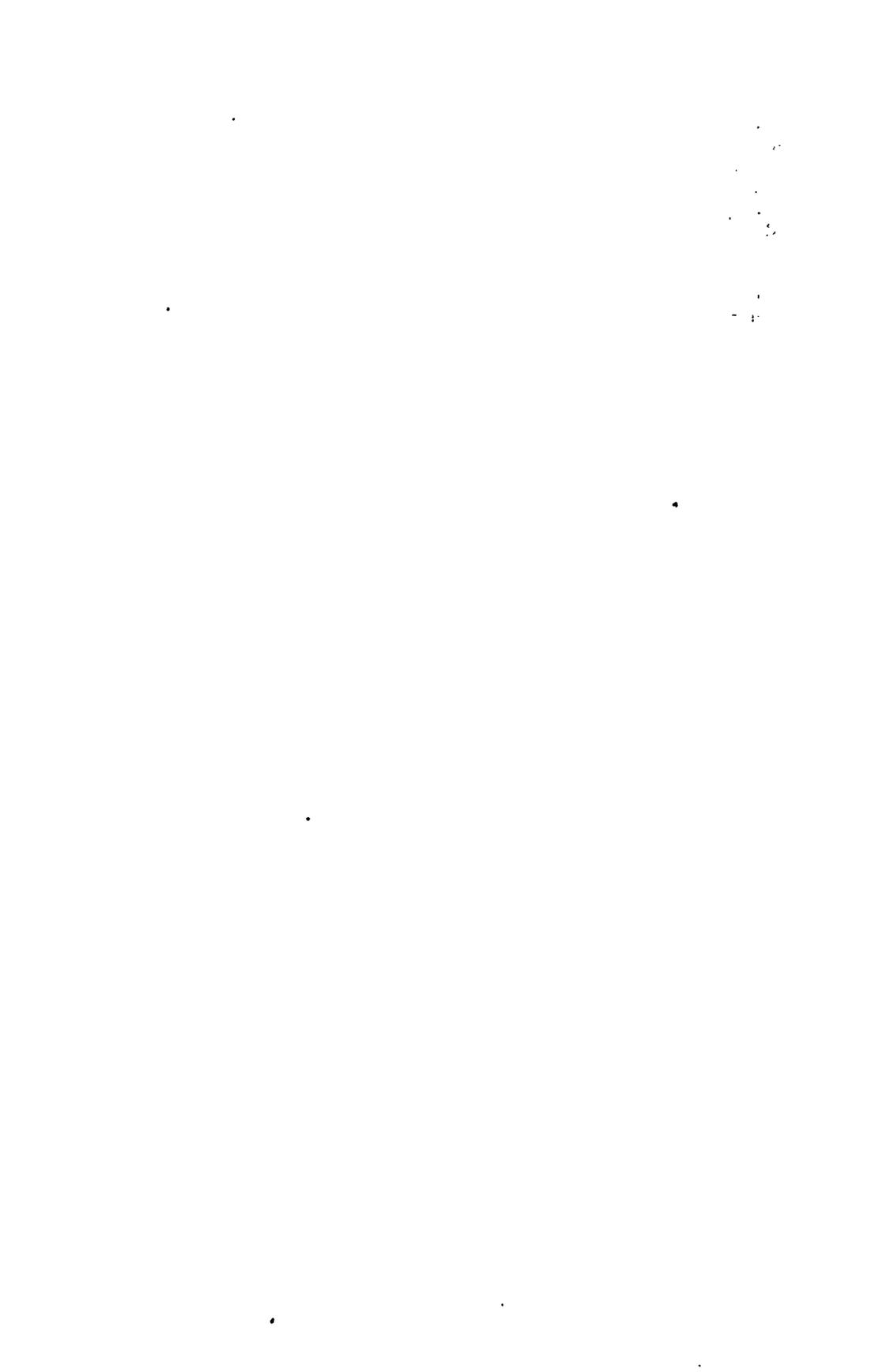


TABLE OF COURT CASES IN VOLUMES 1-26, INCLUSIVE¹

[Abbreviations: S. C.=U. S. Supreme Court; C. C. A.=Circuit Court of Appeals; S. C. of D. C.=Supreme Court of the District of Columbia (changed on June 25, 1936, to District Court of the U. S. for the District of Columbia, and identified by abbreviation D. C. of D. C.); C. A. of (or for) D. C.=U. S. Court of Appeals for the District of Columbia (prior to June 7, 1934, Court of Appeals of the District of Columbia); D. C.=District Court. Hyphenated numbers refer to volume and page of the F. T. C. Reports, the number preceding the hyphen denoting the volume, the numbers following referring to the page]

Advance Paint Co.....	(C. C. A.), "Memoranda" 20-739.
Algoma Lumber Co., et al.....	(C. C. A.) 16-657, 17-669; 56 F. (2d) 774; 64 F. (2d) 618; 291 U. S. 67; (S. C.) 18-669. (54 S. Ct. 315).
Aluminum Co. of America.....	(C. C. A.) 5-529, 7-618. 284 Fed. 401; 299 Fed. 361.
Amber-Ita (Ward J. Miller).....	(C. C. A.) 21-1223.
A. McLean & Son et al.....	(C. C. A.) 22-1149, 26-1501. 84 F. (2d) 910; 94 F. (2d) 802.
American Army and Navy Stores, Inc.....	(C. A. for D. C.) 23-1392.
American Snuff Co.....	(C. C. A.) 13-607. 38 F. (2d) 547.
American Tobacco Co.....	(D. C.) 5-558; (S. C.) 7-599; 283 Fed. 999; 264 U. S. 298; (44 S. Ct. 336); (C. C. A.) 9-653; (S. C.) 9 F. (2d) 570; 274 U. S. 543 (47 S. Ct. 11-668. 663).
Arkansas Wholesale Grocers Ass'n.....	(C. C. A.) 11-646. 18 F. (2d) 866.
Armand Co., Inc., et al.....	(C. C. A.) 21-1202, 22-1155. 78 F. (2d) 707; 84 F. (2d) 973.
Armour & Co. ²	(C. C. A.), "Memoranda" 20-745.
Army and Navy Trading Co.....	(C. A. of D. C.) 24-1601. 88 F. (2d) 776.
Arnold Stone Co.....	(C. C. A.) 15-606. 49 F. (2d) 1017.
Arrow-Hart & Hegeman Electric Co.....	(C. C. A.) 17-658, 683; (S. C.) 63 F. (2d) 108; 65 F. (2d) 336; 291 U. S. 18-691. 587 (54 S. Ct. 532).

¹ Interlinear citations are to the reports of the National Reporter System and to the official United States Supreme Court Reports in those cases in which the proceeding, or proceedings, as the case may be, have been there reported. Such cases do not include the decisions of the Supreme Court of the District of Columbia, nor, in all cases, some of the other proceedings set forth in the above table, and described or reported in the Commission's Decisions and the Commission publication entitled "Statutes and Decisions—1914-1929," which also includes cases here involved up to 1930.

Said publication (hereinafter referred to as "S. & D.") also includes Clayton Act cases bearing on those sections of said Act administered by the Commission during the aforesaid period, but in which Commission was not a party.

² Interlocutory order. See also S. & D. 721.

Artloom Corp.....	(C. C. A.) 18-680.
69 F. (2d) 36.	
Artloom Corp. v. National Better Business Bureau, et al.	(D. C.), footnote, 15-597.
48 F. (2d) 897.	
Aviation Institute of U. S. A., Inc.....	(C. A. of D. C.) 21-1219.
Ayer, Harriet Hubbard, Inc. ³	(C. C. A.) 10-754.
15 F. (2d) 274.	
Balme, Paul.....	(C. C. A.) 11-717.
23 F. (2d) 615.	
Baltimore Grain Co., et al.....	(D. C.) 5-578; (S. C.) 8-632.
284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).	
Baltimore Paint & Color Works, Inc.....	(C. C. A.) 14-675.
41 F. (2d) 474.	
Barager-Webster Co.....	(C. C. A.) 26-1495.
95 F. (2d) 1000.	
Basic Products Co.....	(D. C.) 3-542.
260 Fed. 472.	
Battle Creek Appliance Co., Ltd.....	(C. C. A.) 21-1220.
Bayuk Cigars, Inc.....	(C. C. A.) 14-679 (footnote), 708.
Beech-Nut Packing Co. ⁴	(C. C. A.) 2-556; (S. C.) 4-583.
264 Fed. 885; 257 U. S. 441 (42 S. Ct. 150).	
Bene & Sons, Inc., John.....	(C. C. A.) 7-612.
299 Fed. 468.	
Berkey & Gay Furniture Co., et al.....	(C. C. A.) 14-679.
42 F. (2d) 427.	
Bethlehem Steel Co.....	(D. C.) (S. C. of D. C.), footnote, 3-543.
Biddle Purchasing Co. et al.....	(C. C. A.) 26-1511.
96 F. (2d) 687.	
Block, Sol, et al. (Rittenhouse Candy Co.).....	(C. C. A.) 26-1497.
Blumenthal, Sidney, et al. (Rittenhouse Candy Co.)	(C. C. A.) 26-1497.
Bonita Co., The, et al.....	(C. C. A.) 22-1149.
84 F. (2d) 910.	
Bradley, James J.....	(C. C. A.) 12-739.
31 F. (2d) 569.	
Breakstone, Samuel ⁵	(C. C. A.), "Memoranda," 20-745.
Brecht Candy Co.....	(C. C. A.) 25-1701.
92 F. (2d) 1002.	
Brown Fence & Wire Co.....	(C. C. A.) 17-680.
64 F. (2d) 934.	
Butterick Co., et al. ⁶	(S. C. of D. C.) footnote, 3-542,
4 F. (2d) 910.	(C. C. A.) 8-602.
Butterick Publishing Co., et al.....	(C. C. A.) 23-1384.
85 F. (2d) 522.	
Canfield Oil Co.....	(C. C. A.) 4-542.
274 Fed. 571.	

³ For interlocutory order see "Memoranda," 20-744 or S. & D. 720.

⁴ For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or S. & D. 189.

⁵ Interlocutory order. See S. & D. 722.

⁶ For Interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

TABLE OF COURT CASES IN VOLUMES 1-26, INCLUSIVE XXIX

Cannon v. U. S.....	(C. C. A.) footnote, 11-677.
19 F. (2d) 823.	
Carey Mfg. Co., Philip, et al.....	(C. C. A.) 12-726.
29 F. (2d) 49.	
Cassoff, L. F.....	(C. C. A.) 13-612.
38 F. (2d) 790.	
Chamber of Commerce of Minneapolis, et al. ⁷	(C. C. A.) 4-604, 10-687.
280 Fed. 45; 13 F. (2d) 673.	
Chase & Sanborn (Moir, John, et al.) ⁸	(C. C. A.) 10-674.
12 F. (2d) 22.	
Chase Candy Co.....	(C. C. A.) 26-1499.
97 F. (2d) 1002.	
Chicago Portrait Co.....	(C. C. A.) 8-597.
4 F. (2d) 759.	
Chicago Silk Co.....	(C. C. A.) 25-1692.
90 F. (2d) 689.	
Civil Service Training Bureau, Inc.....	(C. C. A.) 21-1197.
79 F. (2d) 113.	
Claire Furnace Co., et al. ⁹	(S. C. of D. C.), footnotes, 3-
285 Fed. 936; 274 U. S. 160 (47 S. Ct. 553).	543, 4-539; (C. A. of D. C.)
	5-584; (S. C.) 11-655.
Consolidated Book Publishers, Inc.....	(C. C. A.) 15-637.
53 F. (2d) 942.	
Cosner Candy Co.....	(C. C. A.) 25-1703.
92 F. (2d) 1002.	
Counter Freezer Manufacturers, National Asso-	(S. C. of D. C.) 22-1137.
ciation of, et al.	
Cox, S. E. J.....	(C. C. A.), "Memoranda," 20-
	739.
Crancer, L. A., et al.....	(C. C. A.), footnote, 20-722.
Cream of Wheat Co. ¹⁰	(C. C. A.) 10-724.
14 F. (2d) 40.	
Cubberley, U. S. ex. rel.....	(S. C. of D. C.), footnote,
	18-663.
Curtis Publishing Co.....	(C. C. A.) 3-579; (S. C.) 5-599.
270 Fed. 881; 260 U. S. 568.	
Dodson, J. G.....	(C. C. A.) 20-737.
Dollar Co., The Robert.....	(C. C. A.), footnote, 16-684;
	"Memoranda," 20-739.
Douglas Fir Exploitation & Export Co.....	(S. C. of D. C.), footnote,
	3-539; "Memoranda," 20-741.
Eastman Kodak Co. et al.....	(C. C. A.) 9-642; (S. C.) 11-669.
7 F. (2d) 994; 274 U. S. 619 (47 S. Ct. 688).	
Edwin Cigar Co., Inc.....	(C. C. A.) 20-740.
Electric Bond & Share Co. (Smith, A. E., et al.)	(D. C.) 13-563, 17-637.
34 F. (2d) 323; 1 F. Supp. 247.	
Electro Thermal Co.....	(C. C. A.) 25-1695.
91 F. (2d) 477.	
Evans Fur Co. et al.....	(C. C. A.) 24-1600.
88 F. (2d) 1008.	

⁷ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

⁸ For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

⁹ For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., or S. & D. 190.

¹⁰ For interlocutory order, see "Memoranda," 20-744, or S. & D. 720.

Fairyfoot Products Co.....	(C. C. A.) 21-1224, 26-1507.
80 F. (2d) 684; 94 F. (2d) 844.	
F. A. Martoccio Co. (Hollywood Candy Co.)..	(C. C. A.) 24-1608.
87 F. (2d) 561.	
Fluegelman & Co., Inc., N.....	(C. C. A.) 13-602.
37 F. (2d) 59.	
Flynn & Emrich Co.....	(C. C. A.) 15-625.
52 F. (2d) 836.	
Fox Film Corporation.....	(C. C. A.) 7-589.
296 Fed. 353.	
Fruit Growers' Express, Inc.....	(C. C. A.) 3-628; footnote,
274 Fed. 205; 261 U. S. 629 (42 S. Ct. 518).	6-559.
Garment Mfrs. Assn., Inc. et al.....	(S. C. of D. C.); footnote, 18-
	663.
George Ziegler Co.....	(C. C. A.) 24-1625.
90 F. (2d) 1007.	
Good-Grape Co.....	(C. C. A.) 14-695.
45 F. (2d) 70.	
Goodyear Tire & Rubber Co.....	(C. C. A.) 25-1707, (S. C.)
92 F. (2d) 677; 304 U. S. 257 (58 S. Ct. 863).	26-1521.
Grand Rapids Varnish Co. ¹¹	(C. C. A.) 13-580.
41 F. (2d) 996.	
Gratz et al.....	(C. C. A.) 1-571, 2-545; (S. C.)
258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572).	2-564.
Guarantee Veterinary Co. et al.....	(C. C. A.) 5-567.
285 Fed. 853.	
Gulf Refining Co. et al. (Sinclair Refining Co. et al.).	(C. C. A.) 4-552; (S. C.) 6-587.
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).	
Hall, James B., Jr.....	(C. C. A.) 20-740.
67 F. (2d) 993.	
Hamilton-Brown Shoe Co., U. S. #.....	(D. C.); footnote, 26-1495.
Hammond Lumber Co.....	(C. C. A.); footnote, 16-684;
	"Memoranda," 20-739.
Hammond, Snyder & Co.....	(D. C.) 5-578; (S. C.) 8-632.
284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).	
Harriet Hubbard Ayer, Inc.....	(C. C. A.) 10-754.
15 F. (2d) 274.	
Heuser, Herman.....	(C. C. A.) 8-628.
4 F. (2d) 632.	
Hills Bros.....	(C. C. A.) 10-653.
9 F. (2d) 481.	
Hires Turner Glass Co.....	(C. C. A.) 21-1207.
81 F. (2d) 362.	
Hoboken White Lead & Color Works, Inc.....	(C. C. A.) 14-711, 18-663.
67 F. (2d) 551.	
Hoffman Engineering Co.....	(C. C. A.) 21-1221.
Holloway & Co., M. J., et al.....	(C. C. A.) 22-1149.
84 F. (2d) 910.	
Hollywood Candy Co. (F. A. Martoccio Co.)..	(C. C. A.) 24-1608.
87 F. (2d) 561.	

¹¹ For interlocutory order, see "Memoranda," 20-746, or S. & D. 724.

TABLE OF COURT CASES IN VOLUMES 1-26, INCLUSIVE XXXI

Hughes, Inc., E. Griffiths.....	(C. A. of D. C.) 17-660, 20-734 63 F. (2d) 362.
Hurst & Son, T. C.....	(D. C.) 3-565. 268 Fed. 874.
Ice Cream Manufacturers, International Association of, et al.	(S. C. of D. C.) 22-1137.
Indiana Quartered Oak Co.....	(C. C. A.) 12-721, 16-683. 26 F. (2d) 340; 58 F. (2d) 182.
Inecto, Inc.....	(C. C. A.) 18-705, 20-722. 70 F. (2d) 370.
International Association of Ice Cream Manufacturers, et al.	(S. C. of D. C.) 22-1137.
International Shoe Co. ¹²	(C. C. A.) 12-732 (S. C.) 29 F. (2d) 518; 280 U. S. 291 (50 S. Ct. 89). 13-593.
Ironized Yeast Co.....	(C. C. A.) 20-737.
Johnson Candy Co., Walter H.....	(C. C. A.) 21-1195. 78 F. (2d) 717.
Jones Co., Inc., H. C.....	(D. C.) 5-578; (S. C.) 8-632. 284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Juvenile Shoe Co.....	(C. C. A.) 6-594. 289 Fed. 57.
Kay, Abbott E.....	(C. C. A.) 13-575. 35 F. (2d) 160.
Kelley, James.....	(C. C. A.) 24-1617. 87 F. (2d) 1004.
Keppel & Bro., Inc. R. F.....	(C. C. A.) 17-651; (S. C.) 63 F. (2d) 81; 291 U. S. 304; (54 S. Ct. 423). 18-684.
Kinney-Rome Co.....	(C. C. A.) 4-546. 275 Fed. 665.
Kirk & Co., Jas. S., et al. ¹³	(C. C. A.) 16-671. 59 F. (2d) 179.
Kirschmann Hardwood Co.....	(C. C. A.); footnote, 16-684; "Memoranda," 20-739.
Klesner, Alfred (Shade Shop, etc.).....	(C. A. of D. C.) 9-650, (S. C.) 6 F. (2d) 701; 274 U. S. 145 (47 S. Ct. 557); 11-661; (C. A. of D. C.) 25 F. (2d) 524; 280 U. S. 19 (50 S. Ct. 1). 12-717; (S. C.) 13-581.
Kobi & Co., J. W. ¹⁴	(C. C. A.) 11-713. 23 F. (2d) 41.
Leader Novelty Candy Co., Inc.....	(C. C. A.) 25-1701. 92 F. (2d) 1002.
Leavitt, Louis ¹⁵	(C. C. A.) 11-635, 21-1228. 16 F. (2d) 1019.
Lee Co., George H.....	(C. C. A.) "Memoranda," 20- 722.
Lee, U. S. v. (Sherwin et al. v. U. S.).....	(D. C.) (C. C. A.); footnote 290 Fed. 517; 297 Fed. 704 (affirmed 268 U. S. 369; 45 S. Ct. 517). 6-559.
Lesinsky Co., H.....	(C. C. A.) 4-595. 277 Fed. 657.

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

¹³ For interlocutory order, see "Memoranda," 20-745 or S. & D. 723.

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

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

Lighthouse Rug Co.-----	(C. C. A.) 13-587. 35 F. (2d) 163.
Loose-Wiles Biscuit Co.-----	(C. C. A.) 7-603. 299 Fed. 733.
Lorillard Co., P.-----	(D. C.) 5-558, (S. C.) 7-599. 283 Fed. 999; 264 U. S. 298 (44 S. Ct. 336).
MacFadden Publications, Inc. ¹⁶ -----	(C. A. of D. C.) 13-605. 37 F. (2d) 822.
Maisel Trading Post, Inc.-----	(C. C. A.) 20-725, 21-1212, 77 F. (2d) 246, 79 F. (2d) 127, 84 F. (2d) 23-1381. 768.
Maison Pichel.-----	(D. C.) footnote, 18-663.
Maloney Oil & Mfg. Co. (Sinclair Refining Co. et al).-----	(C. C. A.) 4-552; (S. C.) 6-587. 276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
Marietta Mfg. Co.-----	(C. C. A.) 15-613 50 F. (2d) 641.
Martoccio Co., F. A. (Hollywood Candy Co.)--	(C. C. A.) 24-1608. 87 F. (2d) 561.
Masland Duraleather Co., et al.-----	(C. C. A.) 13-567. 34 F. (2d) 733.
Maynard Coal Co. ¹⁷ -----	(S. C. of D. C.) 3-555, 6-575; 22 F. (2d) 873. (C. A. of D. C.) 11-698.
McLean & Son, A., et al.-----	(C. C. A.) 22-1149; 26-1501. 84 F. (2d) 910; 94 F. (2d) 802.
Mennen Co. ¹⁸ -----	(C. C. A.) 6-579. 288 Fed. 774.
Mid West Mills, Inc.-----	(C. C. A.) 25-1688. 90 F. (2d) 723.
Miller, Ward J. (Amber-Ita)-----	(C. C. A.) 21-1223.
Millers National Federation, et al.-----	(S. C. of D. C.) 10-739 (C. A. of D. C.) 11-705 (S. C. of D. C.) 14-675 (footnote); (C. A. of D. C.) 14-712.
Mills Novelty Co. et al., U. S. ex rel.-----	(S. C. of D. C.) 22-1137.
Minneapolis, Chamber of Commerce of, et al. ¹⁹ -----	(C. C. A.) 4-604, 10-687. 280 Fed. 45; 13 F. (2d) 673.
Mishawaka Woolen Mfg. Co.-----	(C. C. A., S. C.) 5-557. 283 Fed. 1022; 260 U. S. 748 (43 S. Ct. 247).
M. J. Holloway & Co., et al.-----	(C. C. A.) 22-1149. 84 F. (2d) 910.
Moir, John, et al. (Chase & Sanborn) ²⁰ -----	(C. C. A.) 10-674. 12 F. (2d) 22.
Morrissey & Co., Chas. T., etc.-----	(C. C. A.) 14-716. 47 F. (2d) 101.

¹⁶ 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. 701.

¹⁷ 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.

¹⁸ For interlocutory order, see "Memoranda," 20-743 or S. & D. 715.

¹⁹ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

²⁰ For interlocutory order, see "Memoranda," 20-744 or S. & D. 716.

TABLE OF COURT CASES IN VOLUMES 1-26, INCLUSIVE XXXIII

National Association of Counter Freezer Manu- facturers et al.	(S. C. of D. C.) 22-1137.
National Biscuit Co. ²¹	(C. C. A.) 7-603; (D. C.) 24-1618. 299 Fed. 733; 18 F. Supp. 667.
National Harness Mfrs. Assn.....	(C. C. A.) 4-539, 3-570. 261 Fed. 170; 268 Fed. 705.
National Silver Co.....	(C. C. A.) 24-1627. 88 F. (2d) 425.
New Jersey Asbestos Co.....	(C. C. A.) 2-553. 264 Fed. 509.
Non-Plate Engraving Co.....	(C. C. A.) 15-597. 49 F. (2d) 766.
Norden Ship Supply Co., Inc., et al. (Winslow et al.).	(C. C. A.) 4-578. 277 Fed. 206.
Northam Warren Corp.....	(C. C. A.) 16-687. 59 F. (2d) 196.
Nulomoline Co.....	(C. C. A.), footnote, 3-542; 254 Fed. 988. "Memoranda," 20-740.
Ohio Leather Co. ²²	(C. C. A.) 14-699. 45 F. (2d) 39.
Oppenheim, Oberdorf & Co. (Sealpax Co.) ²³	(C. C. A.) 9-629. 5 F. (2d) 574.
Ostermoor & Co., Inc. ²⁴	(C. C. A.) 11-642. 16 F. (2d) 962.
Ozment, C. J., etc.....	(C. C. A.) 22-1135.
Pacific States Paper Trade Assn. et al.....	(C. C. A.) 8-608; (S. C.) 11-636; 4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255); (C. C. A.) 24-1631. 88 F. (2d) 1009.
Paramount Famous-Lasky Corp.....	(C. C. A.) 16-660. 57 F. (2d) 152.
Pearsall Butter Co., B. S. ²⁵	(C. C. A.) 6-605. 292 Fed. 720.
Philip Carey Mfg. Co. et al.....	(C. C. A.) 12-726. 29 F. (2d) 49.
Powe Lumber Co., Thos. E.....	(C. C. A.), footnote, 16-684; "Memoranda," 20-739.
Procter & Gamble Co. et al.....	(C. C. A.) 10-661. 11 F. (2d) 47.
Pure Silk Hosiery Mills, Inc.....	(C. C. A.) 8-595. 3 F. (2d) 105.
Q. R. S. Music Co. ²⁶	(C. C. A.) 10-683. 12 F. (2d) 730.
Queen Anne Candy Co. et al.....	(C. C. A.) 22-1149. 84 F. (2d) 910.
Raladam Co.....	(C. C. A.) 14-683; (S. C.) 42 F. (2d) 430; 51 F. (2d) 587; 283 U. S. 643 15-598. (51 S. Ct. 587).

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

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

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

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

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

²⁶ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

- Raymond Bros.-Clark Co.----- (C. C. A.) 4-625; (S. C.) 7-594.
280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162).
- Real Products Corp. et al.----- (C. C. A.) 25-1685.
90 F. (2d) 617.
- Republic Iron & Steel Co.----- (D. C.) (S. C. of D. C.), foot-
note, 3-543.
- Ritholz, Benjamin D.----- (C. C. A.) 22-1145.
- Rittenhouse Candy Co. (Sol Block et al.)----- (C. C. A.) 26-1497.
- Royal Baking Powder Co.²⁷----- (C. C. A.) 4-614; (S. C. of
D. C.) 11-677, 701; (C. A.
of D. C.) 12-740.
- Royal Milling Co. et al.----- (C. C. A.) 16-679; (S. C.)
58 F. (2d) 581; 288 U. S. 212 (53 S. Ct.
17-664.
555).
- Ryan Candy Co. (Southern Premium Manu- (C. C. A.) 22-1143.
facturing Co., etc.).
83 F. (2d) 1008.
- Savage Candy Co.----- (C. C. A.) 25-1705.
92 F. (2d) 1003.
- Sea Island Thread Co., Inc.----- (C. C. A.) 11-705.
22 F. (2d) 1019.
- Sealpax Co. (Oppenheim, Oberndorf & Co.)²⁸ (C. C. A.) 9-629.
5 F. (2d) 574.
- Sears, Roebuck & Co.----- (C. C. A.) 1-562, 2-536.
258 Fed. 307.
- Shade Shop, etc., Alfred Klesner doing busi-
ness under name of, see Klesner, Alfred.
- Shakespeare Co.----- (C. C. A.) 15-609.
50 F. (2d) 758.
- Sherwin et al. v. U. S. (Lee, U. S. v.)----- (D. C.); (C. C. A.), footnote,
290 Fed. 517; 297 Fed. 704 (affirmed, 268
6-559.
U. S. 369); (45 S. Ct. 517).
- Sifers Confection Co. (H. I. Sifers, etc.)----- (C. C. A.) 22-1147.
84 F. (2d) 999.
- Silver Co., L. B.----- (C. C. A.) 6-559, 608.
289 Fed. 985; 292 Fed. 752.
- Sinclair Refining Co.----- (C. C. A.) 4-552; (S. C.) 6-587.
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
- Smith, A. E., et al., and Electric Bond and (D. C.) 13-563, 17-637.
Share Co.
34 F. (2d) 323; 1 F. Supp. 247.
- Southern Hardware Jobbers Assn.----- (C. C. A.) 6-597.
290 Fed. 773.
- Southern Premium Manufacturing Co., etc. (C. C. A.) 22-1143.
(Ryan Candy Co.).
83 F. (2d) 1008.

²⁷ For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda," 20-743 or S. & D. 715.

For memorandum of decision of the Supreme Court of the District of Columbia, declining to grant a supersedeas to operate as an injunction against Commission, pending appeal, and final decree dismissing plaintiff's bill on Nov. 15, 1927, see "Memoranda," 20-742 or S. & D. 651.

For order of Supreme Court of the District of Columbia on May 17, 1929, denying company's petition for writ of mandamus to require certain action of Commission re certain affidavits and motions, see "Memoranda," 20-742 or S. & D. 703, 704.

²⁸ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

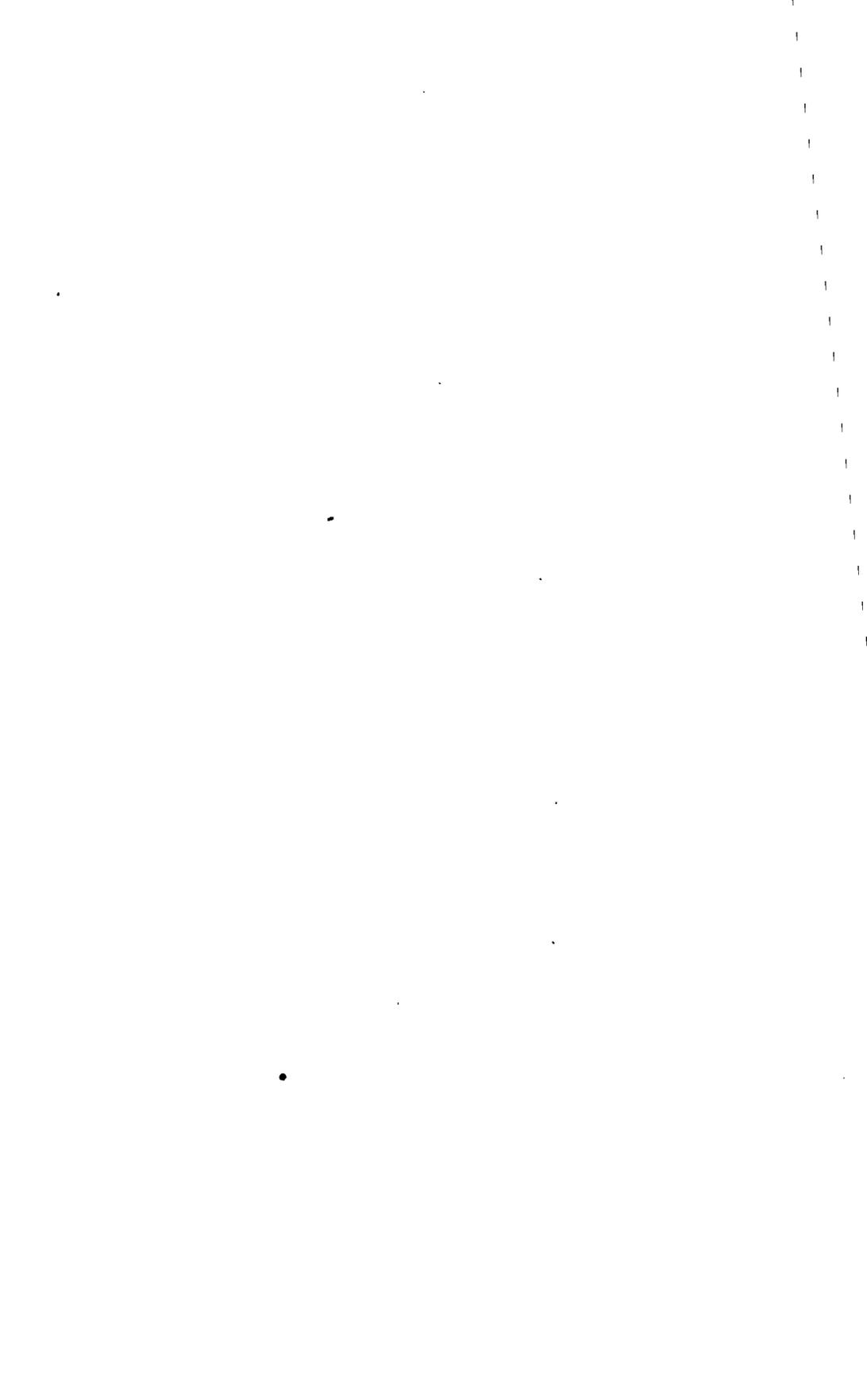
TABLE OF COURT CASES IN VOLUMES 1-26, INCLUSIVE XXXV

Sowles, M. H.....	(D. C.) "Memoranda" 20-740.
Standard Education Society.....	(C. C. A.) 10-751; 24-1591;
14 F. (2d) 947; 86 F. (2d) 692; 302 U. S.	(S. C.) 25-1715; (C. C. A.)
112 (58 S. Ct. 113).	26-1524.
Standard Oil Co. of New Jersey et al.....	(C. C. A.) 5-542, 6-587.
282 Fed. 81; 261 U. S. 463 (43 S. Ct. 450).	
Standard Oil Co., of New York.....	(C. C. A.) 3-622.
273 Fed. 478.	
Swift & Co.....	(C. C. A.) 8-616; (S. C.) 11-629.
8 F. (2d) 595; 272 U. S. 554 (47 S. Ct.	
175).	
Temple Anthracite Coal Co.....	(C. C. A.) 15-616.
51 F. (2d) 656.	
Texas Co. (Standard Oil Co. of N. Y.).....	(C. C. A.) 3-622.
273 Fed. 478.	
Thatcher Mfg. Co.....	(C. C. A.) 9-631; (S. C.) 11-629.
5 F. (2d) 615; 272 U. S. 554 (47 S. Ct. 175).	
Toledo Pipe-Threading Machine Co. ²⁰	(C. C. A.) 9-652, 10-664.
6 F. (2d) 876; 11 F. (2d) 337.	
U. S. ex rel. Cubberley.....	(S. C. of D. C.) footnote 18-663.
U. S. ex rel. Mills Novelty Co. et al.....	(S. C. of D. C.) 22-1137.
U. S. v. Hamilton-Brown Shoe Co.....	(D. C.); footnote, 26-1495.
Utah-Idaho Sugar Co.....	(C. C. A.) 11-692.
22 F. (2d) 122.	
Vivaudou, Inc., V.....	(C. C. A.) 15-631.
54 F. (2d) 273.	
Walker's New River Mining Co.....	(C. C. A.) 21-1213.
79 F. (2d) 457.	
Wallace, E. J.....	(C. C. A.) 20-713.
75 F. (2d) 733.	
Ward Baking Co.....	(C. C. A.) 2-550.
264 Fed. 330.	
Western Meat Co.....	(C. C. A.) 8-589, 623; (S. C.)
1 F. (2d) 95; 4 F. (2d) 223; 272 U. S. 554	11-629; (C. C. A.) 13-559.
(47 S. Ct. 175); 33 F. (2d) 824.	
Western Sugar Refinery Co. et al.....	(C. C. A.) 4-557.
275 Fed. 725.	
Wholesale Grocers' Assn. of El Paso et al.....	(C. C. A.) 4-595.
277 Fed. 657.	
Winslow et al.....	(C. C. A.) 4-578.
277 Fed. 206.	
Winsted Hosiery Co. ³⁰	(C. C. A.) 3-618; (S. C.) 4-610.
272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184).	
Winston Co., John C. ³¹	(C. C. A.) 8-625.
3 F. (2d) 961.	
Woolley, E. R.....	(C. C. A.) 11-692.
22 F. (2d) 122.	
Ziegler Co., George.....	(C. C. A.) 24-1625.
90 F. (2d) 1007.	

²⁰ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

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

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



FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, DECEMBER 1, 1937, TO MAY 31, 1938

IN THE MATTER OF

BOURJOIS, INC., AND BARBARA GOULD SALES CORPORATION

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

Docket 2838. Complaint, June 9, 1936—Decision, Dec. 4, 1937

Where a corporation engaged in manufacture of cosmetics and other toilet preparations, and in sale and distribution thereof through its corporate subsidiary, and said subsidiary engaged in selling, distributing, and shipping to purchasers in every State, under corporate name including words "Barbara Gould," products of said manufacturer, including so-called "Skin Food," "Skin Cream," and "Face Powder," sold under designations including aforesaid words; and, as thus engaged, in substantial competition with others likewise engaged in sale of cosmetics and other toilet preparations in commerce among the various States and in the District of Columbia—

- (a) Sold their "Evening in Paris Talcum" in glass containers with label displaying words "Evening in Paris, BOURJOIS, New York—Paris," and enclosed in cardboard containers similarly displaying aforesaid words, together with depiction of certain scenes peculiar to Paris, and including the Eiffel Tower, notwithstanding fact talcum powder in question was compounded and processed from separately imported ingredients and assembled and packaged for sale and distribution at factory, in this country, of said first-named corporation;
- (b) Represented, in various periodicals, including magazines of Nation-wide circulation, and in newspapers of wide interstate circulation, and in advertising matrices sent for reproduction to retailers throughout the United States, that preparation first sold by them under designation "Barbara Gould Irradiated Skin Food" and thereafter, substantially unchanged, as "Barbara Gould Irradiated Skin Cream," had been irradiated with ultra-violet rays, and that, applied to the skin, said "Food" released rays of light and sunlight of therapeutic and beneficial value, and that its said similarly designated "Irradiated Face Powder," and its said "Irradiated Skin Food," were beautifying, stimulating, and beneficial in treatment of skin, by reason of such ultra-violet irradiation, and that its aforesaid skin cream, by reason of such treatment, and as a consequence thereof, released, when applied to skin, atomic oxygen, which was absorbed thereby, and thus conferred upon users thereof therapeutic and beneficial results, facts being processes used in compounding said products did not and do not have result of causing them to absorb and retain, and, upon use, emit sufficient ultra-violet rays to be beneficial in treatment of skin, and said

Syllabus

26 F. T. C.

"Face Powder," "Skin Food," and "Skin Cream" gave out no radiation whatever, nor ultra-violet rays or sunlight or light or re-irradiation of any kind, and emitted no form of light rays;

- (c) Represented, through inclusion of words "Skin Food" in aforesaid designation of their above referred to product, that said "Irradlated Skin Food" possessed such properties as to constitute a food for the skin or tissues, and that said preparation awakened and restored the youth glands of the skin, facts being it did not possess such properties or characteristics as to constitute such a food, did not serve to furnish nourishment to skin, body has no "youth glands," and no glands thereof were restored or revived by use of its products or preparations externally applied; and
- (d) Displayed and made use of name "Barbara Gould," as above indicated, in connection with its aforesaid products, and represented that their said products were developed or discovered after research or experimentation by said Barbara Gould, or that said Barbara Gould collaborated with a scientist or scientists in developing or originating such products, through such statements as "After extensive research and experiment in her laboratories, Barbara Gould, internationally known Beauty Counsellor, has developed this fine face powder. * * *," "This new Barbara Gould Skin Food * * *," "Barbara Gould Says: 'My Irradiated Skin Food gently, safely, supplles tiny rays of light to your skin!'" etc., and " 'If ultra-violet-rays should be introduced into a beauty cream how marvelous that would be for a woman's skin!' thought Barbara Gould. So, in collaboration with a scientist in a great Eastern University she developed her new Irradiated Skin Food," etc., facts being name was fictitious and was an alias for an otherwise named person who, at one time, was in their employ as beauty counsellor, and person referred to did not discover or develop products in question, had no scientific degree or degrees, was not skilled in scientific preparation of cosmetics, and had no special knowledge regarding therapeutic effect of ultra-violet rays;

With capacity and tendency to mislead purchasing public into mistakenly believing that said "Food" gave nourishment to, and acted as a food for, the skin, and to confuse and mislead members of such public into erroneous belief that there were glands in the body which would be restored and revived through use of such products, variously developed, as above noted, by supposed Barbara Gould as a person of special skill and knowledge regarding the therapeutic effect of ultra-violet rays on the skin, etc., and who, by reason thereof, had incorporated, with beneficial results noted, sunlight and ultra-violet rays into aforesaid product, and that users thereof, through such emission of ultra-violet rays and release of atomic oxygen, would benefit and receive results similar to those obtained from exposure to natural sunshine and from ultra-violet rays, and that talcum powder above referred to was made in France and imported to the United States, and to induce members of purchasing public to buy and use aforesaid preparation because of erroneous beliefs thus brought about, and with effect, by reason of belief of substantial portion of purchasing public, and preference of many thereof, and supposed properties or source or origin, as case might be, of aforesaid preparations, of giving added sales value thereto, and with capacity and tendency further unfairly to divert trade to them from their competitors above referred to, of whom some do not in any manner misrepresent the therapeutic value or effect of their said preparations, nor place of origin thereof:

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Complaint

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. Astor Hogg for the Commission.

Olwany, Eisner & Donnelly, 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 Bourjois, Inc., a corporation, and Barbara Gould Sales Corp., a corporation, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bourjois, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its factory located at Rochester in said State and its office and principal place of business located at 35 West Thirty-fourth Street, New York, in said State. Respondent, Barbara Gould Sales Corp., 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 35 West Thirty-fourth Street, in the city of New York in said State. The stock of respondent, Barbara Gould Sales Corp. is wholly owned by respondent, Bourjois, Inc., and it, Barbara Gould Sales Corp., is a selling agent of respondent, Bourjois, Inc., and is completely dominated and controlled by respondent, Bourjois, Inc. Respondent, Bourjois, Inc., has been for more than one year last past, and now is, engaged in the manufacture of cosmetics and other toilet preparations and in the sale and distribution of same through its selling agent and subsidiary, respondent Barbara Gould Sales Corp., and now causes, and for more than one year last past has caused, its said products when sold by it and by respondent Barbara Gould Sales Corp. to be shipped from said place of business in the State of New York 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. There is now, and has been for more than one year last past, a constant current of trade in commerce between and among the various States of the United States and in the District of Columbia in said products sold by the respondents.

Respondents are now, and for more than one year last past have been, in substantial competition with other corporations, partnerships, persons, and firms engaged in the sale of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents adopted and now use, as and for their trade names for certain of their products the words "Barbara Gould Irradiated Skin Food," "Barbara Gould Irradiated Skin Cream," "Evening In Paris Talcum," "Talc Soir de Paris," and "Barbara Gould Irradiated Face Powder," and cause said trade names to appear prominently displayed in their advertisements and advertising matter, letterheads, and stationery; on labels affixed to the containers in which said products are packed, sold, and distributed; and on the wrappers in which said containers are packed. The respondents also cause the words "London," "New York," "Paris," "Barcelona," "Buenos Aires," "Mexico," and "Havana" to appear prominently displayed on such labels.

PAR. 3. For a good many years a substantial portion of the purchasing public has been led to believe, and does believe, that exposure of the human body to the natural sunshine and to ultra-violet rays produces beneficial results to the skin.

Perfumes, cosmetics, and other toilet preparations manufactured or compounded in London, Paris, Barcelona, Buenos Aires, Mexico, and Havana and imported into the United States have for many years enjoyed widespread popularity and goodwill among the trade and the consuming public throughout the United States, many of whom consider and believe that perfumes, cosmetics and other toilet preparations manufactured or compounded in Paris, London, Barcelona, Buenos Aires, Mexico, or Havana and other foreign countries, are superior in quality and other desired characteristics to such commodities manufactured in the United States. Many of the consuming public throughout the United States purchase perfumes, cosmetics, and other toilet preparations manufactured in foreign countries and imported into the United States in preference to perfumes, cosmetics, and other toilet preparations manufactured in the United States.

PAR. 4. In and by the use of the words "Evening In Paris Talcum," "Talc Soir de Paris," and other labels of the products sold and distributed as aforesaid, respondents impliedly represent that the products so labeled, sold and distributed by them have been manufactured in Paris, France, and imported into the United States, when, as a matter of fact, said products so labeled, sold, and dis-

1

Complaint

tributed were not manufactured in Paris, France, or any other place in France and then imported into the United States but on the contrary were manufactured and compounded in the United States. In and by the use of the words "London," "New York," "Paris," "Barcelona," "Buenos Aires," "Mexico," and "Havana," respondents impliedly represent that they have factories located at those places where the products sold by them bearing such words have been manufactured and imported into the United States, when, in truth and in fact respondents do not have factories or laboratories at London, or Paris, or Barcelona, or Buenos Aires, or Mexico, or Havana, and said products were not manufactured at such places, but on the contrary were manufactured in the United States.

PAR. 5. In the course and conduct of their business, as described in paragraph 1 hereof, in soliciting the sale of and selling their said products, respondents now represent and for more than one year last past have represented in various periodicals, including magazines and newspapers having a wide interstate circulation, the following:

Beautifying, stimulating and beneficial to the skin—Barbara Gould Irradiated Face Powder * * *

After extensive research and experiment in her laboratories, Barbara Gould, internationally known Beauty Counsellor, has developed this fine face powder. A most refreshing effect is obtained with this powder which is irradiated with ultra-violet rays to be had in your skin tone.

BARBARA GOULD

(Pictorial representation of two jars showing labels reading "Barbara Gould Irradiated Skin Food.")

This new Barbara Gould Skin Food, being irradiated with vitalizing health-giving ultra-violet rays, performs wonders in the way of improving your skin making it finer and even more tempered and causing unsightly blemishes to disappear * * *

Sunshine While You Sleep Without Tanning Your Skin. New Irradiated Skin Food By Barbara Gould.

Barbara Gould's New Skin Food slowly, gently, safely applies tiny ultra-violet rays to your skin all night long but you cannot see them * * * or feel them! They do not tan the skin like the ultra-violet rays of the sun, nor do they give you a sunburn! So mild are the rays, however, that they give only benefits to your skin.

Directly irradiated with ultra-violet rays. That is why beauty results show so quickly so shortly after you have begun to use Barbara Gould Irradiated Skin Food * * *

Barbara Gould Says:

My Irradiated Skin Food gently, safely, supplies tiny rays of light to your skin all night long! You cannot see them or feel them but they reawaken the youth glands of your skin!

A beauty cream irradiated with ultra-violet rays—what marvelous things that would do for a woman, said Barbara Gould.

If ultra-violet rays should be introduced into a beauty cream how marvelous that would be for a woman's skin! thought Barbara Gould. So, in collaboration with a scientist in a great Eastern University she developed her new Irradiated Skin Food, into which is introduced just the right amount of ultra-violet rays to benefit the skin, without including "tan" or sunburn.

Barbara Gould Irradiated Skin Food * * * actually contains the health-giving rays of sunlight * * * all night long it softly sheds its invisible tiny rays into the depths of every pore—gently coaxes tired, sluggish glands to normal vigor and health * * * the gentlest, safest of sun treatments.

All said representations and statements, together with other statements not herein detailed, purported to be descriptive of respondents' products and of the beneficial results that may reasonably be expected to be obtained by the users of said products.

PAR. 6. In truth and in fact the representations made by the respondents in aid of the sale of their products are grossly exaggerated, false, misleading and incorrect. The product sold and distributed under the trade name of Barbara Gould Irradiated Skin Food did not and does not possess such properties or characteristics as to be a food for the human skin or tissues. There are no such glands in the human body as "youth glands." The name of Barbara Gould was and is a fictitious name and an alias for one Ruth Frances, who is employed by said respondents as a beauty counsellor, and she did not discover or develop such products, and she has no scientific degrees and is not skilled in the scientific preparation of cosmetics, and has no special knowledge regarding the therapeutic effect of ultra-violet rays. The process used in compounding said products did not and does not have the result of causing them to absorb, retain, and, upon use, emit sufficient ultra-violet rays to be beneficial in the treatment of the human skin.

PAR. 7. The use of the trade name "Barbara Gould Irradiated Skin Food" has a capacity and tendency to deceive the purchasing public into believing that the products sold by respondents give nourishment to and acts as a food for the human skin. The representations of respondents as hereinabove set forth and other similar representations made by the respondents have had and do have the tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous belief that there are glands in the human body known as "youth glands," which will be restored and revived if respondents' products are used; that the alleged Barbara Gould, in the employ of respondents, after extensive research and experiments, developed the talcum powder "Barbara Gould Irradiated Face Powder," and that she has special skill and knowledge

1

Findings

regarding the therapeutic effect of ultra-violet rays on the human skin and by her skill and knowledge has incorporated natural sunshine and ultra-violet rays into the products sold by respondents, which products, if applied to the skin will produce beneficial results; that the products sold by the respondents contain and, when applied to the human skin, emit sufficient violet rays to be beneficial in the treatment of the human skin; that the products sold by respondents and especially those designated by them as "Evening In Paris Talcum," "Talc Soir de Paris," were manufactured in France and imported into the United States, and that the products labeled with the words "London," "Paris," "Barcelona," "Buenos Aires," "Mexico," and "Havana" were all products manufactured in respondents' factories or laboratories in either London, Paris, Barcelona, Buenos Aires, Mexico, or Havana, and were products imported into the United States from foreign countries; that users of said products will receive beneficial results and results similar to those received from natural sunshine and from ultra-violet rays.

The said representations of respondents have had and do have the tendency and capacity to induce members of the purchasing public to buy and use said preparations because of the erroneous beliefs engendered, as above set forth, and as a result thereof to unfairly divert trade to respondents from competitors engaged in the sale, in interstate commerce, of similar competing preparations who truthfully represent the origin of and the therapeutic value of their respective products. As a further result thereof injury has been and is now being done by respondents to competitors in commerce as hereinabove set out.

There are among the competitors of respondents, as mentioned in paragraph 1 hereof, many who sell and distribute in commerce similar preparations who do not misrepresent the origin or place of manufacture of such products or the properties or qualities, or therapeutic virtues or effects of their said competing products.

PAR. 8. The above alleged acts and practices of respondents are all to the prejudice of the public and the respondents' 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 June 9, 1936, issued, and subsequently served, its complaint in this proceeding upon respondents Bourjois, Inc., and Barbara Gould Sales 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 other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of said complaint by Mark Eisner, attorney for respondents, and said testimony and other evidence were 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bourjois, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its offices and principal place of business located at 35 West Thirty-fourth Street, city of New York, in said State. The stock of respondent Barbara Gould Sales Corporation is wholly owned by respondent Bourjois, Inc. Respondent Bourjois, Inc., has been for more than one year last past, and now is, engaged in the manufacture of cosmetics and other toilet preparations at its factory located at Rochester, N. Y., and in the sale and distribution of said products to and through its subsidiary, Barbara Gould Sales Corporation, and through other subsidiaries. Respondent Barbara Gould Sales 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 35 West Thirty-fourth Street in the city of New York, in said State.

Respondents cause, and for more than one year last past have caused, their said products, when sold by them, to be shipped from said places of business in the State of New York to the purchasers thereof, some located in the State of New York and others located in various States of the United States other than the State of New York, and in the District of Columbia.

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Findings

There is now, and has been for more than one year last past, a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia in said products sold by the respondents. Barbara Gould Sales Corporation purchases the products sold by it exclusively from Bourjois, Inc., taking deliveries from Rochester, N. Y., to New York city and Chicago, Ill. From these cities it ships said merchandise to purchasers located in every State of the United States.

Respondents are now, and for more than one year last past have been, in substantial competition with other corporations and with partnerships, persons, and firms engaged in the sale of cosmetics and other toilet preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. During the year 1935 and prior thereto, respondents manufactured and sold a skin preparation under the trade name and brand "Barbara Gould Irradiated Skin Food." On or about July 1, 1935, the label on said product was changed and substantially the same product was labeled, branded and marketed by respondents as "Barbara Gould Irradiated Skin Cream." During the year 1935 and prior thereto, respondents manufactured and sold a face powder which they labeled and branded as "Barbara Gould Irradiated Face Powder." Respondents have manufactured and sold, and do now manufacture and sell, a talcum powder which they brand and label as "Evening in Paris Talcum."

PAR. 3. The talcum powder designated "Evening in Paris Talcum" is placed in a glass container to which is attached a label that reads

Evening
in Paris
BOURJOIS
New York—Paris

The said glass container of talcum powder is enclosed in a cardboard container on which appear the words

Evening
in Paris
BOURJOIS
New York — Paris

and on which cardboard container appear certain lineal outline scenes which may be observed only in Paris, France, including the Eiffel Tower located in Paris, France.

PAR. 4. In the course and conduct of their businesses, as described in paragraph 1 hereof, in soliciting the sale of and selling their products designated "Barbara Gould Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," and "Barbara Gould Irradiated Skin

Cream," respondents represented in various periodicals including magazines having a nation-wide circulation and in newspapers having a wide interstate circulation, and through advertising matrices sent to retailers throughout the United States to be reproduced, as follows:

1. *Beautifying, stimulating and beneficial to the skin*—Barbara Gould Irradiated Face Powder * * * After extensive research and experiment in her laboratories, Barbara Gould, internationally known Beauty Counsellor, has developed this fine face powder. A most refreshing effect is obtained with this powder which is irradiated with ultra-violet rays to be had in your skin tone.

2.

BARBARA GOULD

(Pictorial representation of two jars showing labels reading "Barbara Gould Irradiated Skin Food.") This new Barbara Gould Skin Food, being irradiated with vitalizing, health-giving ultra-violet rays, performs wonders in the way of improving your skin, making it finer and even more tempered and causing unsightly blemishes to disappear *** Sunshine While You Sleep Without Tanning Your Skin. New Irradiated Skin Food by Barbara Gould.

Barbara Gould's New Skin Food slowly, gently, safely applies tiny ultra-violet rays to your skin all night long but you cannot see them * * * or feel them! They do not tan the skin like the ultra-violet rays of the sun, nor do they give you a sunburn! So mild are the rays, however, that they give only benefits to your skin.

Directly irradiated with ultra-violet rays. That is why beauty results show so quickly so shortly after you have begun to use Barbara Gould Irradiated Skin Food * * *

3.

Barbara Gould Says:

"My Irradiated Skin Food gently, safely, supplies tiny rays of light to your skin all night long! You cannot see them or feel them but they reawaken the youth glands of your skin!

"A beauty cream irradiated with ultra-violet rays—what marvelous things that would do for a woman," said Barbara Gould.

"If ultra-violet rays should be introduced into a beauty cream how marvelous that would be for a woman's skin!" thought Barbara Gould. So, in collaboration with a scientist in a great Eastern University she developed her new Irradiated Skin Food, into which is introduced just the right amount of ultra-violet rays to benefit the skin, without including "tan" or sunburn.

Barbara Gould Irradiated Skin Food * * * actually contains the health-giving rays of sunlight * * * all night long it softly sheds its invisible tiny rays into the depths of every pore—gently coaxes tired, sluggish glands to normal vigor and health * * * the gentlest, safest of sun treatments.

4. Barbara Gould Irradiated Skin Cream has a normalizing effect on all types of skin. This is brought about through the atomic oxygen element of the cream which is imparted to it by the irradiation of ultra-violet rays. U. V. R. This cream has a revitalizing rejuvenating and normalizing effect on all skins—

Due to irradiation with ultra-violet rays, this cream literally teems with oxygen atoms. They, too, are released to your skin—toning, invigorating and generally building up normal health.

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Findings

PAR. 5. In the manner and by the means aforesaid, respondents represent that their talcum powder designated "Evening in Paris Talcum" and sold and distributed by them, was, and is, manufactured in France and imported into the United States; that their product, "Barbara Gould Irradiated Skin Food" was a beauty cream irradiated with ultra-violet rays, which, when applied to the skin, released rays of light and sunlight to the skin, which were of therapeutic and beneficial value; that "Barbara Gould Irradiated Skin Food" possessed such properties and characteristics as to be a food for the human skin; that "Barbara Gould Irradiated Skin Food" awakened and restored the youth glands of the skin; that one Barbara Gould, an internationally known beauty counsellor, had developed the products "Barbara Gould Irradiated Face Powder" and "Barbara Gould Irradiated Skin Food," which products were beautifying, stimulating and beneficial in the treatment of the skin by reason of the fact that they had been irradiated with ultra-violet rays; that the product "Barbara Gould Irradiated Skin Cream" had been irradiated with ultra-violet rays and, as a consequence, released atomic oxygen, when applied to the skin, which was absorbed through the skin and that by reason thereof, therapeutic and beneficial results were received by the users of such cream.

The representations made by the respondents as aforesaid are misleading, for the following reasons: The talcum powder designated as "Evening in Paris Talcum" was not manufactured in France and imported into the United States, but on the contrary was manufactured at Rochester, N. Y. The ingredients of the "Evening in Paris Talcum" are separately imported into the United States and compounded and processed into the completed product, then assembled and packaged for sale and distribution at the factory of respondent Bourjois, Inc., located at Rochester, N. Y. The product designated "Barbara Gould Irradiated Skin Food" does not possess such properties or characteristics as to be a food for the human skin or tissues. Such product did not serve to furnish nourishment to the skin. There are no such glands in the human body as "youth glands." Glands in the human body are not restored or revived by the use of respondents' products or by the use of any preparations applied externally. The processes used in compounding said products did not, and do not, have the result of causing them to absorb, retain and, upon use, emit sufficient ultra-violet rays to be beneficial in the treatment of the human skin. As a matter of fact, it has been conclusively shown, and the Commission finds, that "Barbara Gould Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," and "Barbara Gould Irradiated Skin Cream" give out no radiation whatever,

neither do they give out any ultra-violet rays or sun rays or light or re-irradiation of any kind. They emit no form of light rays.

The name "Barbara Gould" is a fictitious name used by respondents and the name "Barbara Gould" was an alias for Ruth Frances who, at one time, was employed by respondents as a beauty counsellor. She did not discover or develop such products and she has no scientific degree or degrees and is not skilled in the scientific preparation of cosmetics and has no special knowledge regarding the therapeutic effect of ultra-violet rays.

PAR. 6. For a good many years a substantial portion of the purchasing public has been led to believe, and does believe, that exposure of the human body to the natural sunlight and to ultra-violet rays produces beneficial results. To represent a cosmetic as one which emits ultra-violet rays or sunshine causes such cosmetic to have an added sales value.

Perfumes, cosmetics and other toilet preparations manufactured in France and imported into the United States have for many years enjoyed prosperity and good-will among the trade and consuming public throughout the United States. Many of the consuming public throughout the United States purchase perfumes, cosmetics and other toilet preparations manufactured in France and imported into the United States in preference to perfumes, cosmetics and other toilet preparations manufactured in the United States. Domestic cosmetics labelled as of French origin causes such cosmetics to have added sales value and enables dealers in the cosmetics so labelled to sell same more readily than would otherwise be the case.

PAR. 7. The use of the trade name "Barbara Gould Irradiated Skin Food" had the capacity and tendency to mislead the purchasing public into mistakenly believing that said product sold by respondents gave nourishment to and acted as a food for the human skin. The representations of respondents as hereinabove set forth have had, and do have, the tendency and capacity to confuse and mislead members of the purchasing public into the erroneous belief that there are glands in the human body known as "Youth glands" which will be restored and revived if respondents' products are used; that the alleged Barbara Gould employed by respondents, after extensive research and experiments, developed the products "Barbara Gould Irradiated Face Powder" and "Barbara Gould Irradiated Skin Food," that she had special skill and knowledge regarding the therapeutic effect of ultra-violet rays on the human skin and by her skill and knowledge had incorporated natural sunlight and ultra-violet rays into said products which, if applied to the skin, would produce beneficial results; that the products designated "Barbara Gould

1

Order

Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," and "Barbara Gould Irradiated Skin Cream," when applied to the human skin, would emit ultra-violet rays and release atomic oxygen which would be absorbed through the skin, all of which would be beneficial in the treatment of the human skin and that users of said products would receive beneficial results and results similar to those received from exposure to natural sunshine and from ultra-violet rays; that the product designated "Evening In Paris Talcum" was manufactured in France and imported into the United States. .

The said representations of respondents have had and now have the tendency and capacity to induce members of the purchasing public to buy and use said preparations because of the erroneous beliefs brought about as above set forth. The representations made by respondents as aforesaid have the capacity and tendency unfairly to divert trade to respondents from competitors herein referred to, some of which said competitors do not in any manner misrepresent the therapeutic value or effects of said preparations nor the place of origin of such products.

CONCLUSION

The aforesaid acts and practices of the respondents Bourjois, Inc., and Barbara Gould Sales Corporation are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Astor Hogg, counsel for the Commission, and Mark Eisner, 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 ordered, That the respondents, Bourjois, Inc., and Barbara Gould Sales Corporation, corporations, their respective officers, rep-

representatives, agents, and employees, in connection with the offering for sale, sale and distribution of cosmetics and other toilet preparations in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said products contain any beneficial elements of the natural rays of the sun, or that the use of said products will bring the beneficial effects of sunshine to the users thereof, or that said products emit or give off ultra-violet rays or any other rays which are beneficial in the treatment of the human skin;

2. Representing in any manner that their face creams when applied to the skin, release oxygen which is absorbed through the skin or that said creams are beneficial in the treatment of the human skin by reason thereof;

3. Representing, through the use of the words "skin foods" or any other word or words of similar import to describe or designate their products, or in any manner, that the product designated "Barbara Gould Irradiated Skin Food" or said product under any other designation or any other product containing similar ingredients and having substantially similar properties, possesses such properties as to be a food for the human skin or tissues;

4. Representing in any manner that any of their said products will reawaken or restore so-called "youth glands" or any other glands;

5. Representing in any manner that their products were developed or discovered after research or experimentation by one Barbara Gould, or that Barbara Gould collaborated with a scientist, or scientists, in developing or originating any of such products;

6. Using the word "Paris" or "France," or any other word or words, or any design, outline, symbol, or illustration suggesting French origin to advertise, brand, label, designate, or otherwise describe talcum powder, cosmetics or toilet preparations compounded, bottled, packaged, and assembled in the United States solely from imported ingredients without clearly stating in immediate connection and conjunction therewith in letters of equal size and conspicuousness that said products were compounded, bottled, packaged and assembled in the United States.

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

Syllabus

IN THE MATTER OF

FRIEDA WOLCHIN, INDIVIDUALLY AND TRADING AS
WRIGHT MANUFACTURERS 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 3177. Complaint, July 20, 1937—Decision, Dec. 4, 1937

Where an individual engaged in sale and distribution of clocks, in commerce among the various States, and in furnishing her customers and prospective customers with push cards for use in sale of her said clocks, in accordance with said cards' explanatory legend, under which amount paid for chance was dependent upon number disclosed under card's discs, receipt of clock was dependent upon chance selection of feminine name corresponding to that disclosed under master seal after sale of all discs, and operator of card was compensated by receipt of one of such articles; in soliciting sale of and in selling and distributing her said products—

Made use of, and sold same under and through, method and plan involving distribution of said clocks to purchasing public by means of lottery scheme or gift enterprise, through sale thereof in accordance with push cards aforesaid and under scheme or plan, in accordance with explanatory legend contained thereon, by which amount paid for chance to receive clocks thus sold was dependent on particular number concealed under and disclosed by removal of card's various discs and receipt of clock was contingent upon selection of name of girl corresponding to that concealed under master seal, and operator was similarly compensated by receipt of such an article, and thereby supplied to and placed in hands of others means of conducting lotteries in sale of her merchandise in accordance with such plan, in violation of public policy long recognized by the common law and in criminal statutes, and contrary to established public policy of the United States Government, and in competition with many who are unwilling to adopt and use said or any plan involving game of chance or sale of a chance to win by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by her said method and element of chance involved in sale of clocks to purchasing public, and game of chance, or sale of a chance to procure such article at price much less than normal retail price thereof, and were induced to buy and sell her said merchandise in preference to that offered and sold by competitors who did not use same or equivalent methods, and of diverting trade and custom to her from her said competitors:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.

Complaint

26 F. T. C.

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 Frieda Wolchin, individually and trading as Wright Manufacturers Distributing 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. The respondent is an individual, doing business under the name and style of Wright Manufacturers Distributing Company, with her principal office and place of business located at 418 South Wells Street, Chicago, Ill. She is now, and for some time last past has been, engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. She causes and has caused said products when sold to be shipped or transported from her place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of her business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said clocks, has furnished her customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of said clocks to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated discs, and concealed within each disc is a number; directly above each disc is a girl's name. The said push card also has a master seal, and concealed within such master seal is a name corresponding to one of the

names on the card. Purchasers select one of the discs and remove the same, disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29¢. The push card bears a legend informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the clocks described thereon are to be distributed. When all of the discs have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card, as above described, receives one of the clocks heretofore referred to without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting a particular name until the selection has been made and the disc removed. The name under the master seal is concealed from purchasers and prospective purchasers until all of the discs have been selected. Thus, customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money they pay. The person selecting the name corresponding to the name under the master seal receives one of the clocks for a price not exceeding 29¢, which is less than the normal retail price of such clocks. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise 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 her merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of her merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of clocks to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such merchandise in competition with respondent, as above alleged, 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 or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from her said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of 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, 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 July 20, 1937 issued, and on August 23, 1937 served, its complaint in this proceeding upon respondent, Frieda Wolchin, individually and trading as Wright Manufacturers Distributing Company, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said Act. Thereafter on October 27, 1937 respondent filed in the office of the Commission her answer dated October 23, 1937, admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure. After the filing of said answer this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission having duly considered the matter and being now fully advised in the prem-

ises, 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 and was doing business under the name and style of Wright Manufacturers Distributing Company, with her principal office and place of business located at 418 South Wells Street, Chicago, Ill. The respondent is now located at 3318 West Marquette Road, Chicago, Ill. Prior to June 15, 1937 the respondent was engaged in the sale and distribution of clocks in commerce between and among the various States of the United States. She caused said products, when sold, to be shipped or transported from her place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. Prior to June 15, 1937 there was a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business respondent was in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of her business as described in paragraph 1 hereof respondent, in soliciting the sale of and in selling and distributing the said clocks, furnished her customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involved the distribution of said clocks to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was substantially as follows:

The said pushcard had a number of partially perforated discs, and concealed in each disc was a number; directly above each disc was a girl's name. The said push card also had a master seal, and concealed within such master seal was a name corresponding to one of the names on the card. Purchasers selected one of the discs and removed the same, disclosing the number thereunder. Persons selecting numbers from 1 to 29 paid in cents the amount of such number, and persons selecting numbers over 29 paid 29¢. The push card had printed thereon a legend informing purchasers and prospective purchasers of the plan or method by which said push card was operated and by which the clocks described thereon were to be distributed.

When all of the discs had been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal received one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card, as above described, received one of the clocks heretofore referred to without further charge or additional service. The numbers under the names were concealed from purchasers and prospective purchasers, and they did not know how much they would have to pay for the privilege of selecting a particular name until the selection had been made and the disc removed. The name under the master seal was concealed from purchasers and prospective purchasers until all of the discs had been selected. Thus, customers selecting names which did not correspond with the name under the master seal received nothing but the privilege of making a selection for the money they paid. The person selecting the name corresponding to the name under the master seal received one of the clocks for a price not exceeding 29¢, which was less than the normal retail price of such clocks. The purchasing public was thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks were thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer paid for a chance was determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnished the said push cards used the same in purchasing, selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of her merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of her merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, was, and is, a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and was, and is, contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of clocks to the purchasing public in the manner above alleged involved a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who did and do sell or distribute similar merchandise in competition with the respondent as above alleged were and 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, or any other method that was or is contrary to public policy, and such competitors have refrained and do refrain therefrom. Many persons were attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who did not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, had the tendency and capacity to and did divert trade and custom to respondent from her said competitors who did not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent Frieda Wolchin, individually and trading as Wright Manufacturers Distributing Company, were, and 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, and the answer filed on October 27, 1937 by the respondent admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent had 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, Frieda Wolchin, individually and trading as Wright Manufacturers Distributing Company, her agents, representatives, and employes, in connection with the offering for sale, sale, and distribution of clocks and other merchandise in interstate commerce, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or similar devices for the purpose of enabling such persons to dispose of or sell, by the use thereof, clocks or other articles of merchandise;

Order

26 F. T. C.

2. Mailing, shipping, or transporting to members of the public push cards or similar devices so prepared or printed as to enable said persons by the use thereof to sell or distribute clocks or other articles of merchandise; and

3. Selling or otherwise disposing of clocks or other articles of merchandise by the use of push cards or similar devices.

It is further ordered, That the respondent shall, within 30 days after service upon her of this order, file with the Commission a report in writing setting forth in detail the manner and form in which she has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

J. C. HICKSON & COMPANY

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

Docket 2554. Complaint, Sept. 18, 1935—Decision, Dec. 7, 1937

Where a corporation engaged in the growing and packing of citrus fruits, and in the sale thereof to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in similar sale and shipment—

- (a) Set forth, in advertisements and on labels of crates thereof, words "Indian River," through statements such as "Indian River," "Indian River Fruit Exclusively," "Groves and packing houses Ft. Pierce, Vero Beach, White City, Gifford, Mims, on the Indian River," notwithstanding fact fruit in question was not that recognized superior quality and preferred fruit raised in Indian River Valley, but was grown in area far distant therefrom, and it owned no groves or packing houses at any point within aforesaid area and raised no fruit therein; and
- (b) Falsely represented number of pieces of fruit contained in certain cartons by placing thereon figure indicating that number of pieces contained therein was greater than that of pieces of fruit actually packed therein;

With capacity and tendency to mislead purchasing public into erroneous belief that fruit thus labeled was grown in Indian River Valley area, and with effect of misleading and deceiving consuming public as to origin of such fruit and number of pieces packed in its said cartons, and of causing substantial number of purchasing public to buy its said products because of erroneous belief thus engendered, and of unfairly and substantially diverting trade in commerce involved to it from its competitors; to their injury and that of the public:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Alden S. Bradley and *Mr. James I. Rooney* for the Commission.

Weissbuch & Silverman, of Miami, Fla., 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 J. C. Hickson and 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 of Congress, and it appearing to said Commission that a proceeding by it in respect

Complaint

26 F. T. C.

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

PARAGRAPH 1. Said respondent, J. C. Hickson and Company, is a corporation existing under and by virtue of the laws of the State of Florida, having its principal office and place of business in Miami, Fla., and has been since the issuance of its charter in the month of July 1929, engaged in the growing, packing, shipping and selling of citrus fruits, and in the course of the sale of said citrus fruits has caused the same to be transported from the place of business of the respondent in the State of Florida to the purchasers thereof located in States other than the State of Florida and in the District of Columbia, and has maintained a constant current of trade and commerce between and among the various States of the United States.

PAR. 2. During the period of its corporate existence respondent has inserted, or caused to be inserted, in advertisements published by it the words and phrases—

Indian River
Indian River fruit
exclusively.
Indian River Fruit
Groves and packing houses
Fort Pierce, Vero Beach,
White City, Gifford, Mims
on the Indian River.

and has caused to be imprinted upon the labels and the crates of the fruits so sold the words "Indian River."

The use of the words "Indian River" in connection with the packing, shipping, or selling of fruit indicates to a substantial portion of the purchasing public that the fruit so packed, shipped, and sold was grown in that area along the eastern seaboard of the State of Florida drained by the Indian River and which section is widely famed for the excellence of the fruit there produced.

The effect of the use of the words as above indicated is to falsely represent to the public that the fruits to be purchased from the respondent corporation are what is known as "Indian River" fruit.

There are among the members of the purchasing public a substantial number who have an actual preference and desire for fruit characterized and known as "Indian River" fruit.

The designation of fruit as being of that class of fruit known as "Indian River" fruit indicates to the minds of a substantial number of the purchasing public that the fruit is of a superior quality, and among the industry in which respondent is engaged the superior quality of such fruit is recognized and asserted.

In truth and in fact, the fruits sold and offered for sale by the respondent under the above-stated representations are grown in an area other than that particular geographical section on the eastern seaboard of the State of Florida drained by the Indian River, and are principally, if not wholly, secured from Dade County, Fla.

PAR. 3. During the entire period of its corporate existence the respondent has advertised and offered for sale various packages of crystallized fruit and other merchandise of the character and material hereinabove described, falsely representing them to have a content weight of one pound, two pounds, three pounds, or five pounds, according to the various packages, when in truth and in fact such packages fall materially short of having the weight represented by the respondent.

PAR. 4. During the entire course of its corporate existence, respondent has falsely represented cartons of fruit to contain twenty pieces of fruit, when in truth and in fact there is a substantial deviation from such representation, the cartons of fruit so represented often containing a number materially less than twenty pieces of fruit, and in some instances only twelve pieces of fruit are contained in such cartons.

PAR. 5. There are among the competitors of the respondent corporation a substantial number of persons, partnerships, and corporations who do not falsely represent the fruit offered by them for sale to be of that class of fruit known as "Indian River" fruit or who do in fact sell and offer for sale fruit grown in that territory along the eastern seaboard of the State of Florida drained by the Indian River, so that the same are truthfully represented or designated as "Indian River" fruit.

There are among the competitors of the respondent various persons, partnerships and corporations which offer for sale merchandise of a like nature and character with that in which the respondent deals, offering the same for sale to members of the purchasing public and truthfully representing the proper net weight of the fruit so offered for sale, offering the same in cartons similar to those used by the respondent but truthfully representing the exact and correct weight of the merchandise so offered.

There are among the competitors of the respondent various persons, partnerships and corporations who represent to a substantial number of the purchasing public the number of pieces of fruit to be obtained at a given price in a described carton, or otherwise, and such representation on the part of such competitors is truthful, and the number of pieces of fruit represented as being offered for sale in

such packages are the number of pieces of fruit which are actually placed in such cartons or packages.

PAR. 6. The above acts and practices done by the respondent are all to the injury and prejudice of the public and of the competitors of the respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce 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.

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 18, 1935, issued, and on September 20, 1935, served its complaint in this proceeding upon respondent; J. C. Hickson & 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 other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, before John W. Addison, an examiner of the Commission, theretofore duly designated by it, no evidence was introduced by the respondent; and the said testimony and other 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 other evidence and brief in support of the complaint; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. C. Hickson & Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business in the city of Miami, State of Florida, and since its inception in 1929 has been engaged in the business of growing, packing and selling of citrus fruits and causing said citrus fruits, when sold, to be transported from its place of business in the State of Florida to the purchasers

thereof located in States other than the State of Florida and in the District of Columbia, and has maintained a constant current of trade and commerce in said produce 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, as aforesaid, respondent is now, and since its inception in 1929 has been, in substantial competition with other corporations, and with partnerships, firms, and individuals engaged in the sale and shipment of citrus fruits in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent in the course and conduct of its business, as aforesaid, and in the sale and distribution of citrus fruit, has caused to be inserted in advertisements published by it and imprinted on labels and crates of fruit so sold by it the following words and phrases:

Indian River,
Indian River Fruit Exclusively,
Groves and packing houses Ft. Pierce, Vero Beach, White City,
Gifford, Mims, on the Indian River.

The use of the words "Indian River" in connection with the sale and distribution of citrus fruits indicates to a substantial portion of the purchasing public that the fruit so labelled was grown in an area known as "Indian River Valley," which extends from Daytona Beach to West Palm Beach in the State of Florida and is between 15 and 25 miles wide.

Among the industry in which the respondent is engaged the superior quality of citrus fruit raised in the area known as "Indian River Valley" is recognized and asserted; and there is a decided preference on the part of the purchasing public for citrus fruit grown in this area.

The citrus fruit sold and shipped by the respondent as aforesaid, under the aforementioned representation, had not been grown in the area known as "Indian River Valley" but had been grown in an area known as Dade County, which is far distant from the area known as "Indian River Valley."

The respondent does not own, nor has it ever owned groves or packing houses at any point located within the area known as "Indian River Valley," nor has the respondent raised any fruit in said area.

The use of the words "Indian River" in connection with the sale and offering for sale of citrus fruit has the capacity and tendency to mislead the purchasing public into the erroneous belief that the said fruit so labelled has been grown in the area known as Indian River Valley.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has falsely represented the number of pieces of fruit contained in certain cartons by placing thereon a number indicating that the number of pieces of fruit contained in said cartons was greater than the number of pieces of fruit actually packed in said cartons.

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to, and do, mislead and deceive the consuming public as to the origin of said fruit and as to the number of pieces of fruit packed in said cartons, and have caused a substantial number of the purchasing public to purchase said products because of the erroneous belief engendered by the acts and practices of the respondent, thereby unfairly substantially diverting trade in said commerce to the respondent from its competitors, to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, J. C. Hickson & 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 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 other evidence taken before John W. Addison, an examiner of the Commission, theretofore duly designated by it, in support of the allegations to said complaint and in opposition thereto, and brief 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, J. C. Hickson & Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of citrus fruits in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

(a) Representing in advertisements, on labels, or otherwise, that citrus fruit is "Indian River Valley" fruit, unless and until said

Order

fruit is produced in that section of the State of Florida where the fruit produced is known and sold as "Indian River Valley" fruit.

(b) Representing that it owns or operates fruit groves or warehouses in that section of the State of Florida where the citrus fruit produced is known and sold as "Indian River Valley" fruit, unless and until it does own or operate a fruit grove or warehouse, as the case may be, in that section of the State of Florida.

(c) Representing by figures placed on the container, or otherwise, that the number of pieces of fruit in such container is greater than the number of pieces of fruit in such container.

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
CONFECTIONERS 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 3195. Complaint, Aug. 5, 1937—Decision, Dec. 9, 1937

Where a corporation engaged in sale and distribution of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and one of which was composed of a number of penny pieces of uniform size and shape, together with number of larger pieces to be given as prizes to those purchasers selecting, by chance, one of a relatively few of said penny pieces, concealed centers of which were pink and not white—

(a) Represented, to customers and prospective customers, through salesmen and agents, and through its business stationery, billheads, invoices and other printed literature, that it was a manufacturing agent of the candy dealt in by it, notwithstanding fact it neither owned, controlled, nor operated any factory whatsoever, and did not make candy purchased, repacked, and sold by it, and was not agent for manufacturer or manufacturers thereof;

With effect of misleading, and deceiving many of its customers and prospective customers into erroneous belief that it was a business concern which controlled and operated factory in which candy sold by it was made, or was agent of such business concerns, and that persons dealing with it were buying from the manufacturer or agent thereof, and thereby limiting profits of middlemen and obtaining various advantages, including those of service, delivery and adjustment of account, not obtained by purchasers from middlemen, and of diverting business from, and otherwise injuring and prejudicing, competitors, including many who make the candies sold by them or are agents of the manufacturers thereof and rightfully represent themselves as such manufacturers or agents, and others who purchase candy dealt in by them and resell same at profit to themselves, and in no wise represent that they are manufacturers of such product;

(b) Sold, to wholesalers, jobbers, and retailers, assortments of candy without name thereon of manufacturer thereof and in wrappers displaying names and addresses, as case might be, of various concerns other than itself, notwithstanding fact candy in question was not made by any one of companies thus indicated;

With effect of misleading and deceiving many of its customers and prospective customers into the erroneous belief that candy thus sold was made by business concern whose name appeared thereon, and of diverting business from, and otherwise injuring and prejudicing, competitors, of whom many do not misbrand the merchandise sold by them, nor place thereon false and misleading labels; and

(c) Sold, to wholesalers, jobbers, and retailers, lottery assortments above described, for display and resale to purchasing public in accordance with above set forth sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products, in

Complaint

accordance with such plan, and as means of inducing purchasers to buy its said products in preference to those offered and sold by competitors, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy made and sold by them, so packed and assembled or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by its said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase its said candy, so packed and sold, in preference to that offered by competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use same or equivalent method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and in such other distributors of candy as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Alexander J. Sparrow, of Brooklyn, N. Y., 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 Confectioners Trading 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 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, Confectioners Trading Corporation, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 380 Throop Avenue, in the city of Brooklyn, State of New York. It is now, and for several months last past has been, engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the

United States. It causes the said products when sold to be transported from its principal place of business in Brooklyn, N. Y., to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to its customers and prospective customers by its salesmen and agents, and to be set forth on its business stationery, billheads, invoices, and other printed literature, that it is a manufacturing agent of the candy in which it deals. By the representation that it is the manufacturing agent, respondent represents that it is the direct agent of the concern or concerns manufacturing the candy which it sells, and also by said representation represents that it is agent for certain customers or purchasers and as such manufactures candy to their order. A substantial portion of the purchasing public, including dealers in candy, have expressed and have a preference for purchasing products direct from the manufacturer or his agents, such persons believing that they secure closer prices, superior quality, and other advantages that are not obtained when they purchase from an independent selling agency or middleman.

PAR. 3. The use by respondent of said representation that it is a manufacturer of candy, or the agent of manufacturers of candy, 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 factory in which the aforesaid candy sold by respondent is manufactured, or that it is the agent of such business concerns, and that persons dealing with the respondent are buying said candy from the manufacturer thereof or his agent, 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 factory whatsoever and does not manufacture said candy sold by it and is not the agent for the manufacturer or manufacturers of the candy which it sells, but on the contrary only purchases and repacks the candy which it sells.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who manufacture the candy which they sell or who are agents of such manufacturers and who rightfully represent that they are the manufacturers thereof or are the agents of such manufacturers. There are others of said competitors who purchase the candy in which they deal and resell the same at a profit to themselves and who in no wise represent that they manufacture said candy. 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers assortments of candy which do not and did not have thereon its name or the name of the manufacturer of the candy contained in said assortment. The candy contained in said assortment was contained in wrappers bearing the legends Red Hook Chocolate Corporation, Red Hook, N. Y., thereby representing that the said candy was manufactured by the Red Hook Chocolate Corporation of Red Hook, N. Y., when such was not the fact. The candy in other assortments was contained in wrappers bearing the name Harwood Candy Corporation. Other assortments contained candy in wrappers bearing the name Lincoln Chocolate & Confectionery Company. Other assortments contained candy in wrappers bearing the name Geiger's Candy Company. Other assortments bore the legend Allan & Allan, Corning, New York, thereby representing that the assortments contained candy manufactured by the Harwood Candy Corporation, Lincoln Chocolate & Confectionery Company, Geiger's Candy Company, and Allan & Allan, respectively, when in fact the candy was not made by any one of the said companies. The misbranding of respondent's merchandise, or the false labeling thereof, has the capacity and tendency to and does mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that the candy so sold was manufactured by the business concern whose name appeared on the said wrappers. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who do not misbrand the merchandise which they sell and who do not place thereon false and misleading labels. The acts and practices of respondent just above described tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers assortments of candy so packed and as-

sembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of the said pieces of candy of uniform size and shape have white centers, but a small number of said pieces of candy have pink centers. The said pieces of candy of uniform size and shape retail at the price of 1¢, but the purchaser who procures one of said candies having a pink center is entitled to receive and is to be given free of charge one of the said larger pieces of candy contained in said assortment and heretofore referred to. The color of the center of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers who procure a piece of candy having a pink center thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent packs, assembles and sells various assortments of candy involving the above described sales plan or lottery scheme but varying in detail from the sales plan or lottery scheme just above described.

PAR. 7. The jobbers and wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale 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 products in preference to candy offered for sale and sold by its competitors.

PAR. 8. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy. The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has

the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 9. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or an equivalent method; 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 to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use the said method or an equivalent method.

PAR. 10. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said methods, 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.

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 5, 1937, issued and on August

6, 1937, served its complaint in this proceeding upon respondent, Confectioners 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 filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefore an answer dated November 3, 1937, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which answer was duly filed in the office of the Commission on November 9, 1937. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Confectioners Trading Corporation, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 380 Throop Avenue, in the city of Brooklyn, State of New York. It is now, and for several months last past has been engaged in the sale and distribution of candy to wholesale dealers, jobbers and retail dealers located at points in the various States of the United States. It causes the said products when sold to be transported from its principal place of business in Brooklyn, N. Y., to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to its customers and prospective customers by its salesmen and agents, and to be set forth on its business stationery, billheads, invoices, and other printed literature, that it is a manufacturing agent of the candy in which it deals. By the representation that it is the manufacturing agent, respondent represents that it is the direct agent of the concern or concerns manufac-

turing the candy which it sells, and also by said representation represents that it is agent for certain customers or purchasers and as such manufacturers candy to their order. A substantial portion of the purchasing public, including dealers in candy, have expressed and have a preference for purchasing products direct from the manufacturer or his agents, such persons believing that they secure closer prices, superior quality, and other advantages that are not obtained when they purchase from an independent selling agency or middleman.

PAR. 3. The use by respondent of said representation that it is a manufacturer of candy, or the agent of manufacturers of candy, 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 factory in which the aforesaid candy sold by respondent is manufactured, or that it is the agent of such business concerns, and that persons dealing with the respondent are buying said candy from the manufacturer thereof or his agent, 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 factory whatsoever and does not manufacture said candy sold by it, and is not the agent for the manufacturer or manufacturers of the candy which it sells, but on the contrary only purchases and repacks the candy which it sells.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who manufacture the candy which they sell or who are agents of such manufacturers and who rightfully represent that they are the manufacturers thereof or are the agents of such manufacturers. There are others of said competitors who purchase the candy in which they deal and resell the same at a profit to themselves and who in no wise represent that they manufacture said candy. The above described 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. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers assortments of candy which do not and did not have thereon its name or the name of the manufacturer of the candy contained in said assortment. The candy contained in said assortment was contained in wrappers bearing the

legends Red Hook Chocolate Corporation, Red Hook, N. Y., thereby representing that the said candy was manufactured by the Red Hook Chocolate Corporation of Red Hook, N. Y., when such was not the fact. The candy in other assortments was contained in wrappers bearing the name Harwood Candy Corporation. Other assortments contained candy in wrappers bearing the name Lincoln Chocolate & Confectionery Company. Other assortments contained candy in wrappers bearing the name Geiger's Candy Company. Other assortments bore the legend Allan and Allan, Corning, N. Y., thereby representing that the assortments contained candy manufactured by the Harwood Candy Corporation, Lincoln Chocolate & Confectionery Company, Geiger's Candy Company, and Allan & Allan, respectively, when in fact the candy was not made by any one of the said companies. The misbranding of respondent's merchandise, or the false labeling thereof, has the capacity and tendency to and does mislead and deceive many of respondent's customers and prospective customers into the erroneous belief that the candy so sold was manufactured by the business concern whose name appeared on the said wrappers. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who do not misbrand the merchandise which they sell and who do not place thereon false and misleading labels. The acts and practices of respondent just above described tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments is composed of a number of pieces of candy of uniform size and shape together with a number of larger pieces of candy which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of the said pieces of candy of uniform size and shape have white centers, but a small number of said pieces of candy have pink centers. The said pieces of candy of uniform size and shape retail at the price of 1¢, but the purchaser who procures one of said candies having a pink center is entitled to receive and is to be given free of charge one of the said larger pieces of candy contained in said assortment and heretofore referred to. The color of the center of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the

piece of candy selected broken open. The aforesaid purchasers who procure a piece of candy having a pink center thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent packs, assembles, and sells various assortments of candy involving the above described sales plan or lottery scheme but varying in detail from the sales plan or lottery scheme just above described.

PAR. 7. The jobbers and wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale 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 products in preference to candy offered for sale and sold by its competitors.

PAR. 8. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure larger pieces of candy. The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 9. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by

Order

26 F. T. C.

respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or an equivalent method; 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 to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the said method or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Confectioners Trading 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer dated November 3, 1937 and filed herein on November 9, 1937 by the respondent, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, that the respondent, Confectioners Trading Corporation, its officers, representatives, agents, and employes, in connection with the offering for sale, sale and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Representing, directly or indirectly that it is a manufacturing agent of the candy which it sells, or that it is the direct agent of the concern or concerns manufacturing the candy which it sells and distributes, or that it is the agent for certain customers or purchasers, and as such manufactures the candy which it sells to their order;

2. Representing, directly or indirectly by labels, wrappers or otherwise that the candy which it sells or offers for sale is manufactured by any concern other than the actual manufacturer or manufacturers thereof;

3. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or 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;

4. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy contained in said assortments to the public; and

5. Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size and shape 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 purchaser procuring a piece of candy having a center of a particular color.

It is further ordered, That the respondent, Confectioners Trading Corporation, a corporation, shall, within 30 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
FORM MAID COAT COMPANY, INC., AND WALTER-LEWIS
& 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 3237. Complaint, Oct. 8, 1937—Decision, Dec. 10, 1937

Where a corporation engaged in manufacture of women's cloth coats made from fabric containing little, if any, of the hair or wool of the camel, and the exclusive sales agent of said fabric and seller thereof to said first-named corporate coat manufacturer, respectively engaged in substantial competition with others likewise selling and distributing, in commerce among the States, women's coats, and with those engaged in thus selling cloth fabrics from which such garments are made—

Respectively supplied, and made use of, labels for attachment to garments made from fabric in question, depicting camel with palm trees and mountains or pyramids, and displaying, in large and readable type, statement "Genuine Camel's Hair," and thereby represented to retailers and purchasing public that garments made, as above set forth, from aforesaid fabric and with aforesaid labels thus supplied and attached thereto, were composed in whole or in substantial part from the hair or wool of the camel;

With effect of misleading and deceiving dealers and substantial portion of purchasing public into erroneous belief that coats in question, made from aforesaid fabric and labeled as above described, were made in whole or in substantial part from such hair or wool, and with the result, as a consequence of such erroneous and mistaken belief thus engendered, that some dealers and members of purchasing public bought said garments as and for camel's hair or wool, preferred by many retailers and members of purchasing public as more desirable than those of other materials and as lighter, warmer and more desirable than other similar products not thus made in whole or substantial part, and trade was thereby unfairly diverted, in commerce in question, to them from their competitors who do not misrepresent the nature, character or quality of the materials from which their garments are made, and of placing in hands of unscrupulous retailers means whereby latter may commit fraud upon members of purchasing public by representing thereto that such garments are made in whole or substantial part from the hair or wool of the camel; to the substantial injury of competition in commerce:

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

Mr. Wm. T. Chantland 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 Form Maid Coat Company, Inc. and Walter-Lewis & Co., Inc., corporations, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined by 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 Form Maid Coat Company, Inc. is a New York corporation with its office and principal place of business located at 545 Eighth Avenue in New York City, N. Y. It is engaged in manufacturing, selling and distributing women's cloth coats.

Respondent Walter-Lewis & Co., Inc. is a New York corporation with its office and principal place of business located at 450 Seventh Avenue in New York City, N. Y. The said respondent is now, and for more than one year last past has been, the exclusive sales agent for certain fabrics manufactured by Blackinton Company, Inc. These fabrics are used in the manufacture of women's cloth coats. Included in such fabrics made by Blackinton Company, Inc. and sold and distributed by its sales agent, respondent Walter-Lewis & Co., Inc., to respondent Form Maid Coat Company, Inc., to be used by it in manufacturing women's cloth coats, is one fabric known as Style No. 5036 (with various subnumbers to represent different shades).

PAR. 2. In the course and conduct of their respective businesses, the respondents herein, Walter-Lewis & Co., Inc. and Form Maid Coat Company, with the aid, assistance and cooperation of respondent Walter-Lewis & Co., Inc., caused, and now cause, said cloth fabric and said women's coats made therefrom, and labelled as hereinafter described, when sold, to be transported from their respective places of business in the State of New York to the purchasers thereof located at various points in the States of the United States other than the State of New York. The respondents maintained a constant current of trade in commerce in said cloth fabrics and women's coats made therefrom between and among the various States of the United States.

PAR. 3. In the course and conduct of their respective businesses the respondents are now, and they have been for more than one year last past, engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing women's coats and cloth fabrics from which said coats are manufactured in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their businesses and for the purpose of inducing the purchase of said garments by retailers and by members of the purchasing public, the respondents have entered into and subsequently carried out, and are now carrying out, a common understanding, agreement and conspiracy with the intent and for the purpose and with the effect of misleading and deceiving retail dealers and members of the purchasing public.

Such agreement, combination, understanding and conspiracy has been, and is now being, carried out in part in the following manner. The respondent Walter-Lewis & Co., Inc., in selling cloth fabric to the respondent Form Maid Coat Company, Inc., also furnishes said respondent Form Maid Coat Company, Inc., with a supply of labels to be attached to the garments made by it from said cloth fabric. These labels depict a camel together with palm trees and mountains or pyramids within a diamond shaped border. The labels also bear in large and readable type the statement, "Genuine Camel's Hair." Such labels so furnished by respondent Walter-Lewis & Co., Inc., are attached to the coats made by the respondent Form Maid Coat Company, Inc., from the cloth fabric purchased from respondent Walter-Lewis & Co., Inc.

PAR. 5. The use of such hereinabove described labels and the statements contained thereon serve as representations, on the part of both respondents, that the garments so manufactured by respondent Form Maid Coat Company, Inc., from fabrics procured from respondent Walter-Lewis & Co., Inc., and so labelled were in fact composed in whole, or in substantial part, from hair or wool obtained from camels.

In truth and in fact the representations so made are deceptive, exaggerated, false and untrue. The garments made from the fabric above referred to and labelled in the manner above referred to contain only a negligible amount of camel's hair if any at all. The principal constituent parts of the fabric from which said garments are made consists of rayon, wool and cotton warp. The amount of camel's hair or camel's wool contained in the fabric from which said garments are made is negligible, if there is any such wool present at all.

PAR. 6. Garments made from camel's hair or wool are generally believed, by many retail dealers and members of the general purchasing public, to be more desirable than garments made from any other material. Garments made from genuine camel's hair or wool are light in weight and are warm and possess other qualities which make them more desirable than other similar garments not made from camel's wool. Consequently, there is a preference on the part of

the purchasing public for purchasing garments that are in truth and in fact made up of camel's hair or wool.

PAR. 7. The aforesaid acts and practices of the respondents have the tendency and capacity to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous and mistaken belief that said coats so manufactured by the respondent Form Maid Coat Company, Inc., and bearing the labels furnished by the respondent Walter-Lewis & Co., Inc., with the fabric from which said coats are made, are in fact made in whole or substantial part from camel's hair. As a result thereof, such dealers and members of the purchasing public purchase said garments on account of the mistaken and erroneous beliefs induced as aforesaid, and thereby trade is unfairly diverted to the respondents from their competitors who do not similarly misrepresent the nature, character, or quality of the materials from which their garments are made.

The aforesaid acts and practices of respondents place in the hands of unscrupulous retail dealers a means whereby said dealers may commit a fraud upon members of the purchasing public by representing that said garments are made in whole or in substantial part from camel's hair.

The aforesaid acts and practices on the part of the respondents therefore cause a substantial injury to competition in commerce among and between the various States of the United States.

PAR. 8. 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 October 8, 1937, issued, and on October 9, 1937, served, its complaint in this proceeding upon respondents Form Maid Coat Company, Inc., and Walter-Lewis & Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, respondent Form Maid Coat Company, Inc., filed its answer admitting all the material allegations

of the complaint to be true, and respondent Walter-Lewis & Co., Inc., entered into a stipulation as to the facts in lieu of evidence, which was received, accepted and approved by the Commission, and each respondent waived hearings on the charges set forth in the complaint and consented that, without further evidence, or other intervening procedure, the Commission may make its findings as to the facts, and order disposing of the case. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation as to the facts, no briefs having been filed or oral argument having been made, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Form Maid Coat Company, Inc., is a New York corporation with its office and principal place of business located at 545 Eighth Avenue in New York, N. Y., and is engaged in manufacturing, selling and distributing women's cloth coats.

Respondent Walter-Lewis & Co., Inc., is a New York corporation with its office and principal place of business located at 450 Seventh Avenue in New York, N. Y., and is now, and for more than one year last past has been, the exclusive sales agent for certain fabrics manufactured by Blackinton Company, Inc., and that said fabrics are used in the manufacture of women's cloth coats. That included in such fabrics made by Blackinton Company, Inc., and sold, distributed and shipped in interstate commerce by its sales agent, respondent Walter-Lewis & Co., Inc., to respondent Form Maid Coat Company, Inc., to be used by it in manufacturing women's cloth coats, is one fabric known as Style No. 5036 (with various sub-numbers to represent different shades).

PAR. 2. In the course and conduct of its business, the respondent Form Maid Coat Company, Inc., with the aid, assistance and cooperation of respondent Walter-Lewis & Co., Inc., caused, and now causes, said cloth fabric and said women's coats made therefrom, and labeled with labels furnished by respondent Walter-Lewis & Co., Inc., as hereinafter described, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located at various points in the States of the United States other than the State of New York. Respondent Walter-Lewis & Co., Inc., in the course and conduct of its business of selling cloth fabrics from which coats are made, is now, and has been for more than one year last past, engaged in substantial competition with other corporations, and with

firms and individuals engaged in the business of selling and distributing in commerce among and between the various States of the United States, cloth fabrics from which coats are manufactured. The respondents maintained a constant current of trade in commerce in said cloth fabrics and women's coats made therefrom between and among the various States of the United States.

PAR. 3. In the course and conduct of its business, the respondent Form Maid Coat Company, Inc., is now, and has been for more than one year last past, engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing women's coats in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their businesses and for the purpose of inducing the purchase of said garments by retailers and by members of the purchasing public, respondent Walter-Lewis & Co., Inc., in selling cloth fabric to the respondent Form Maid Coat Company, Inc., also furnished it with a supply of labels to be attached to the garments made by it from said cloth fabric, which labels depict a camel together with palm trees and mountains or pyramids within a diamond shaped border, and said labels also bear in large and readable type the statement "Genuine Camel's Hair," and such labels so furnished by respondent Walter-Lewis & Co., Inc., were intended to be and were attached to the coats made by the respondent Form Maid Coat Company, Inc., from the cloth fabric purchased from respondent Walter-Lewis & Co., Inc.

PAR. 5. By the means and in the manner aforesaid, the respondents represent to retailers and to the purchasing public that the garments manufactured by the respondent Form Maid Coat Company, Inc., from fabrics purchased from the respondent Walter-Lewis & Co., Inc., and bearing labels furnished by the respondent Walter-Lewis & Co., Inc., were composed in whole, or in substantial part, from hair or wool obtained from camels. Garments made in whole, or in substantial part, from camel's hair or wool are generally believed by many retail dealers and members of the purchasing public to be more desirable than garments made from other materials, as they are light in weight, are warm, and possess other qualities which make them more desirable than other similar garments not made in whole, or in substantial part, from camel's hair or wool, and there is a preference on the part of the purchasing public for garments made wholly, or in substantial part, from camel's hair or wool.

PAR. 6. The representations so made and used by the respondents are deceptive, exaggerated and untrue, in that the fabrics, and the garments made from the fabrics above referred to and labeled in the

manner above described, are not composed in whole, or in substantial part, of camel's hair or wool but, in fact, contain only a negligible amount of camel's hair or wool, and the principal constituent parts of the fabric from which said garments are made consists of rayon, wool, and cotton warp.

PAR. 7. The aforesaid acts and practices of the respondents have the tendency and capacity to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous and mistaken belief that said coats so manufactured by the respondent Form Maid Coat Company, Inc., from the fabric purchased from, and bearing labels furnished by the respondent Walter-Lewis & Co., Inc., are made in whole, or in substantial part, from camel's hair or wool; as a result of the erroneous and mistaken belief engendered by the acts and practices of respondents, as aforesaid, some dealers and members of the purchasing public purchased said garments and thereby trade was unfairly diverted in said commerce to the respondents from their competitors who do not misrepresent the nature, character, or quality of the materials from which their garments are made, and the aforesaid acts and practices of the respondents place in the hands of unscrupulous retail dealers a means whereby said retail dealers may commit a fraud upon members of the purchasing public by representing to the purchasing public that said garments are made in whole, or in substantial part, from camel's hair or wool, to the substantial injury of competition in commerce between and among the various States of the United States, and to the injury of the public.

CONCLUSION

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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and on the answer of the respondent Form Maid Coat Company, Inc., filed November 3, 1937, admitting all of the material allegations of the complaint to be true, and waiving hearing on the charges set forth in the complaint and all other intervening procedure, and on the stipulation as to the

facts executed by the respondent Walter-Lewis & Co., Inc., duly approved by the Commission, wherein it waives the taking of further evidence and all other intervening procedure, 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 Form Maid Coat Company, Inc., and Walter-Lewis & Co., Inc., their officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of coats and other garments, or fabrics from which coats or other garments are to be made, do forthwith cease and desist from:

1. Representing, directly or indirectly, that the coats or the fabrics from which coats are made, or are to be made, contain camel's hair or wool, unless such coats or the fabrics do, in fact, contain a substantial quantity of camel's hair or wool, and unless, where such fabric is made from camel's hair or wool and other materials, such other materials contained in said fabric are aptly and truthfully described in equally conspicuous words in connection and in conjunction with the word or words used in describing the camel's hair or wool content of said fabric.

2. Using labels, or furnishing the same for use by others, containing the words "Genuine Camel's Hair," or any word or words of similar import and meaning, to designate and describe coats or textile fabrics which are not composed wholly of the hair or wool of the camel.

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

IN THE MATTER OF

C. W. BEGGS SONS & COMPANY

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

Docket 2687. Complaint, Jan. 18, 1936—Decision, Dec. 13, 1937

Where a corporation engaged in sale of its "Marcelle" line of cosmetics, and in distribution thereof in commerce among the various States, through stores, department stores, and other media, in substantial competition with those engaged in similar sale of preparations recommended or used for treatment or relief of allergy, hypersensitiveness, and kindred diseases or conditions, and also with those engaged in sale of cosmetics in commerce among the various States and in the District of Columbia; in extensively advertising its aforesaid assertedly nonallergic line of cosmetics in various periodicals in interstate circulation and through radio broadcast of interstate transmission and reception, and through booklets and circulars—

Represented that its said "Non-Allergic" cosmetics and formulas therefor had been accepted or approved by the American Medical Association, or had passed rigorous requirements of that organization with regard to ingredients, claims and purity, and that said association, after finding, on investigation, said line "100% pure," "passed an approval note on to every physician in the United States advising them" that said cosmetics were "pure in every sense of the word," facts being that, while its said cosmetic advertisements were accepted for publication by the Journal American Medical Association, said association had no councils for accepting or approving cosmetics and had never accepted or approved any cosmetics from it or anyone else, nor had it declared its products 100% pure or sent approval notices to such effect, as above claimed;

With capacity and tendency to mislead and deceive public into the erroneous and mistaken belief that its said products had in truth and in fact been accepted or approved by said association, and to induce purchasing public to buy its said products in preference to other cosmetics and other preparations compounded and used for avoidance or relief of allergy and kindred diseases or conditions, and with effect of unfairly diverting trade to it, by reason of such deceptive and misleading representations, from competitors above named and cosmetic manufacturers, dealers, and distributors who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof:

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

Before *Mr. John W. Addison*, *Mr. Robert S. Hall* and *Mr. John J. Keenan*, trial examiners.

Mr. T. H. Kennedy for the Commission.

Matthews, Harmon, Karr & Springer, of Chicago, Ill., 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 C. W. Beggs Sons & 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, C. W. Beggs Sons & Co., 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 at Chicago in said State. It is now and for more two years last past, has been engaged in the preparation and manufacture of cosmetics which it sells under the trade name "Marcella" 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 products when sold by it to be transported from its place of business in Illinois, or other place within the United States, to purchasers (chiefly retailers) thereof, some located in the State of Illinois and others located in various other States of the United States and in the District of Columbia; and there has been for more two years last past and still is, a constant current of trade and commerce in cosmetics manufactured by respondent between respondent and respondent's customers, 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 two years last past has been in constant competition with other corporations and with persons, firms, and partnerships engaged in the sale of cosmetics 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, advertising matter, and by other means, represented and still represents that the products manufactured and sold by it were and are submitted to and accepted by the American Medical Association before they were or are distributed to the purchasers thereof, and that before each preparation manufactured by said respondent is distributed to the purchasers thereof it must pass the rigorous requirements of the American Medical Association with regard to the ingredients of said product and the claims of respondent-

ent for said product, and as to the purity of said product; and that the formulas for the compounding of said products were and are accepted by the American Medical Association and that the formulas for the compounding and the claims of respondent with regard to said products are approved by the American Medical Association when in truth and in fact, such representations by respondents with reference to the submission to, the acceptance by, and the approval of said products by the American Medical Association have been and are untrue. There is a preference on the part of a substantial number of retailer dealers in cosmetics and on the part of a substantial part of the purchasing public for cosmetics represented to have been submitted to, accepted or approved by the American Medical Association. The aforesaid representations by respondent that the products sold by it are submitted to, accepted or approved by the American Medical Association, have had and still have 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 products of respondent have been and are submitted to, approved and accepted by the American Medical Association and causes them to purchase respondent's products in such erroneous belief. The aforesaid representations by respondent have placed and still place in the hands of retailers of cosmetics, the means of misleading and deceiving the purchasing public.

PAR. 3. In the course and conduct of its business described hereinabove, respondent for more than two years last past, has, by means of catalogs, advertising matter, display cards, and otherwise, represented and still represents as follows:

M A R C E L L E
NON-ALLERGIC
COSMETICS
Advertising
ACCEPTED BY
AMERICAN
MEDICAL ASSOCIATION

In said representation, the word "advertising" has been and is printed in comparatively small and inconspicuous type and the other words in large and conspicuous type, and said representation has the tendency and capacity to cause the readers thereof to believe that the products of the respondent have been and are accepted by the American Medical Association, when in truth and in fact the products of the respondent have not been and are not now accepted by the American Medical Association. There is a preference on the part of a substantial number of retail dealers in cosmetics and on the part of a substantial part of the purchasing public for cosmetics represented to

have been accepted by the American Medical Association. The aforesaid representation by respondent that the products sold by it are accepted by the American Medical Association 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 products of respondent have been accepted by the American Medical Association, and to purchase respondent's products in such erroneous belief. The aforesaid representations by respondent has placed and still places in the hands of retailers of cosmetics, the means of misleading and deceiving the purchasing public.

PAR. 4. There are among the competitors of respondent hereinabove mentioned, manufacturers of cosmetics who truthfully represent the acceptance and approval of their said products. There are also among such competitors, manufacturers who do not submit or request the acceptance or approval of their products by the American Medical Association, who do not represent that such products have been submitted to, accepted or approved by the American Medical Association.

By the representations made by the respondent as set out hereinabove, trade has been and still is diverted to the respondent from such competitors. Thereby substantial injury has been done and still is being 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 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 18th day of January 1936, issued and on January 22, 1936, served its complaint in this proceeding upon the respondent, C. W. Beggs Sons & Company, 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 and the filing of the respondent's answer thereto, testimony and other evidence in support of the allegations of said

Findings

26 F. T. C.

complaint were introduced by Thomas H. Kennedy, attorney for the Commission, before John W. Addison, Robert S. Hall, and John J. Keenan, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Clement F. Springer and Joseph R. Harmon, attorneys for the respondent; and said testimony and other evidence were 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, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested) and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, C. W. Beggs Sons & Company, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1741 N. Western Avenue, in the city of Chicago, within the State of Illinois. Said respondent is now, and has been since 1923, engaged in the sale of cosmetics, including face powders, creams, lotions, lipsticks and rouges of various kinds, under the trade names or designations "Marcelle Laboratories" or "Marcelle," and in the distribution thereof in commerce between and among the various States of the United States. It causes said cosmetic products, when sold by it, to be transported from its aforesaid place of business in Illinois to purchasers thereof located in various States of the United States other than the State of Illinois. There is now, and has been for more than three years last past, a course of trade and commerce by respondent in said cosmetic products between and among the various States of the United States. In the course and conduct of its said business, respondent is now, and since 1923 has been, in substantial competition with sundry other corporations, and with partnerships, firms, and individuals engaged in the sale and distribution of other preparations recommended or used for the treatment or relief of allergy, hypersensitiveness and kindred diseases or conditions, in commerce between and among the various States of the United States, and in substantial competition with persons, firms and partnerships engaged in the sale of cosmetics in commerce among the various States of the United States and in the District of Columbia.

PAR. 2. The cosmetic preparations sold and distributed under the trade name "Marcelle" are sold and distributed by said respondent through drug stores, department stores, and other media of distribution located in the various States of the United States.

PAR. 3. The respondent, in the course and conduct of its said business, has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of said "Marcelle" cosmetic preparations, and as media of such advertising it has been and now is using various magazines of interstate circulation and broadcasts over radio stations having interstate transmission and reception. Said respondent also issues and distributes booklets and circulars describing the said "Marcelle" cosmetic preparations.

PAR. 4. The respondent, in its said advertisements of "Marcelle" cosmetic preparations sold and distributed by it, has made various statements regarding the merits and qualities of said preparations in the treatment or relief of hypersensitiveness, allergy and kindred diseases or conditions. Among the statements which said respondent has used in its sales devices, advertisements in magazines and over the radio, and in its booklets and circulars, are the following:

MARCELLE COSMETICS
NON-ALLERGIC

Accepted by
The American Medical
Association
Medical Women's National
Association
Good Housekeeping Bureau
U. S. P. Pure Ingredients

MARCELLE COSMETICS
NON-ALLERGIC

Formulas Accepted By
The American Medical
Association
Endorsed by
Medical Women's National
Association
Good Housekeeping Bureau
U. S. P. Pure Ingredients

MARCELLE NON-ALLERGIC COSMETICS comply with the ethical demands of the American Medical Association with regard to formulas, claims and purity.

WE SUBMIT MARCELLE NON-ALLERGIC formulas to the *American Medical Association*. Before each preparation is distributed it must pass the rigorous requirements of that organization with regard to ingredients, claims and purity. We do this in order to meet conscientiously the standards of the

medical profession. Materials worth many thousands of dollars have been discarded because they did not in the strictest sense meet every non-allergic requirement.

This is the Face Powder recommended by physicians because of its purity and high quality. It has been tested and approved by the Good Housekeeping Bureau; formulas and claims are approved by the American Medical Association and endorsed by the Medical Women's National Association.

Marcelle Cosmetics, approved by the American Medical Association as being 100% pure, endorsed by the Medical Women's National Association on the same score and because they are beneficial.

Marcelle Cosmetics will pass the test of your own physician. They have been approved by the American Medical Association and endorsed by the Medical Women's National Association.

When the American Medical Association investigated the field of cosmetics they found Marcelle Cosmetics were 100% pure, and they passed an approval note on to every physician in the United States advising them that Marcelle Cosmetics are pure in every sense of the word.

PAR. 5. The respondent, in the course and conduct of its business, has, by the means aforesaid, and in catalogs and other advertising matter, represented that:

1. The cosmetic preparations sold and distributed by it under the name "Marcelle" were and are submitted to and accepted and approved by the American Medical Association before they are distributed and sold to the purchasers thereof;

2. Before each of respondent's preparations sold under the name "Marcelle" is distributed and sold to the purchasers thereof they must pass the rigorous requirements of the American Medical Association with regard to the ingredients and purity of said product and with regard to respondent's claims for said product;

3. The formulas for the compounding of said products were and are accepted by the American Medical Association, and that the formulas for the compounding and the claims of respondent with regard to said products are approved by the American Medical Association.

PAR. 6. So-called non-allergic cosmetics are only relatively non-allergic, depending upon the reaction of each individual user. Orris root, rice starch, and other ingredients generally used in the compounding of cosmetics frequently react against certain individual users, and the omission of such ingredients from so-called non-allergic cosmetics frequently averts allergic reactions in hypersensitive individual users. Usually it is necessary for each individual to submit to so-called medical "patch tests" to determine the identity of the allergic agent involved in his own case and the allergic agent can be other than the above-named products. Respondent's products do not contain orris root, rice starch or other ingredients, which frequently

react against individual users, but the exclusion of such ingredients does not insure respondent's products against being allergic to other individual users.

PAR. 7. Respondent's cosmetics have never been "accepted" or "approved" by the American Medical Association, nor has that Association declared respondent's products 100% pure or sent approval notices to like effect to all physicians throughout the country. Respondent's cosmetic advertisements are accepted only for publication by the Journal American Medical Association. "Acceptance" by the American Medical Association is different from acceptance for advertising by the Journal American Medical Association. The American Medical Association has no councils for "accepting" or "approving" cosmetics and, therefore, has never "accepted" nor "approved" any cosmetics from respondent or anyone else. Proper officials of the American Medical Association have denied that such Association has prescribed or promulgated requirements with regard to ingredients, claims, and purity of cosmetics, whether for the treatment or relief of allergy, or for general use.

PAR. 8. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraph 4, are misleading. Such representations have had the capacity and tendency to mislead and deceive the public into the erroneous and mistaken belief that respondent's products have, in truth and in fact, been "accepted" or "approved" by the American Medical Association, and to induce such purchasing public to purchase respondent's products in preference to other cosmetics and other preparations compounded and used for the avoidance or relief of allergy and kindred diseases or conditions. The result of such deceptive and misleading representations on the part of said respondent is to unfairly divert trade to said respondent from such competitors above named and cosmetic manufacturers, dealers and distributors who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, C. W. Beggs Sons & Company, are to the prejudice of the public and of 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

26 F. T. C.

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 other evidence taken before John W. Addison, Robert S. Hall and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto and briefs filed herein, no oral arguments having been heard, and the Commission having made its findings as to the facts and its conclusion that said respondent, C. W. Beggs Sons & Company, 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, C. W. Beggs Sons & Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the cosmetic preparations now known as and sold under the name of "Marcelle," or any preparations, under whatever name sold, composed of the same or similar ingredients and possessing similar properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing in any manner that—

Said preparations, including the formulas therefor, have been "accepted" or "approved" by, or have passed rigorous requirements as to purity of ingredients and therapeutic claims established by, the American Medical Association.

It is further ordered, That the respondent, C. W. Beggs Sons & 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 has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
WORTHALL, LTD.

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

Docket 2690. Complaint, Jan. 24, 1936—Decision, Dec. 13, 1937

Where a corporation engaged as distributor of its "Drury Lane English Lavender" line of cosmetics and toilet preparations, including soaps, perfumes, toilet water, face powder, rouge, lipstick, and other similar products, ordinarily compounded or manufactured and packed and labeled for it by the manufacturers thereof and sold and distributed by it to drug stores and other retail outlets, principally, at points in the various States and in the District of Columbia, in competition with those engaged in manufacture, distribution, and sale, or in distribution and sale, of similar toilet preparations and cosmetics in commerce among the various States and in the District of Columbia—

Caused products thus dealt in and sold by it to be packed, wrapped, assembled, and labeled by the respective manufacturers with packages and labels conceived, designed, printed, and prepared and furnished by it to said compounders or manufacturers, and bearing legend, as attached by them, "Drury Lane English Lavender," along with name of individual preparation, and "Distributed by Worthall, Ltd., London, Montreal and New York," and also, at bottom of the various containers and entirely detached from aforesaid labels, small and inconspicuous and readily removable paper stickers containing words "Made in U. S. A.," facts being products in question were made for it at domestic plants of aforesaid domestic manufacturers and were not compounded or made in England, and contained no English materials or ingredients, and were not in any sense products of English manufacture or English in origin, and it had no branch or office in London, England, or Montreal, Canada;

With effect of misleading and deceiving members of the purchasing public into the mistaken and erroneous belief that said toilet preparations, distributed as aforesaid under name "Drury Lane English Lavender," were genuine English products prepared and compounded in England of English ingredients by an English concern, and subsequently imported from England into the United States, as preferred by substantial portion of purchasing public to similar domestic toilet preparations, and as implied from such terms as "English," "Made in England," etc., and of inducing members of purchasing public, acting in such mistaken and erroneous beliefs thus engendered, to buy its said toilet preparations, and thereby unfairly divert trade to it from its competitors who do not misrepresent the materials and place of origin of their respective products, or the ingredients thereof, and from competitors who actually sell and distribute toilet preparations of English origin and manufacture and truthfully represent the same:

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

Complaint

26 F. T. C.

Before *Mr. John W. Bennett*, trial examiner.
Mr. Allen C. Phelps for the Commission.
Boyd & Holbrook, 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 Worthall, Ltd., 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. Worthall, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 160 Fifth Avenue, in the city of New York, N. Y.: The officers of said respondent, Worthall, Ltd., are: H. A. Woods, president; Philip F. Cohen, executive vice president; C. C. Payne, first vice president; E. R. Albright, second vice president; Max Rosenwald, secretary and treasurer, and Joseph Rosenwald, assistant secretary and treasurer. The directors of said respondent corporation are: H. A. Woods, Philip F. Cohen, C. C. Payne, E. R. Albright, and Max Rosenwald.

PAR. 2. Respondent, Worthall, Ltd., since prior to September 1934, has been and now is engaged in the business of causing to be compounded and manufactured, of offering for sale, selling and distributing a line of toilet preparations and cosmetics, including soaps, perfumes, toilet water, face powder, rouge, lipstick, and other similar products, to purchasers in the various States of the United States. Said respondent ordinarily causes said products to be compounded or manufactured, packed and labeled in the State of New York, and sells and distributes the same to various retail outlets, principally drug stores, located in the different States of the United States, including the District of Columbia, said products being in turn sold by said retail outlets to the public. In the course and conduct of its said business, said respondent causes its said products to be transported from the State of New York through and into other States of the United States, including the District of Columbia, and in the conduct of said business said respondent was and is in competition with

other individuals, firms, partnerships, and corporations likewise engaged in the manufacture and compounding, sale and distribution in interstate commerce of similar products.

PAR. 3. During the time above mentioned, respondent Worthall, Ltd., in the course and conduct of its said business, caused and now causes to be manufactured, compounded, wrapped, packed, offered for sale, and sold and distributed a line of toilet preparations which were and now are so sold and distributed in interstate commerce under the trade name or brand of "Drury Lane English Lavender." The labels attached to the containers and packages in which said toilet preparations were and are packed, sold, and distributed were and are conceived, designed, printed, and prepared by said respondent and furnished by respondent to the manufacturer or compounder of said products, who attaches said labels to the packages and containers of said products at the request of the respondent.

PAR. 4. For a long period of time the terms "English," "Made in England," "Imported from England," and similar terms, when used in connection with toilet preparations such as perfumes, soaps, toilet water, face powder, rouge, and similar articles have had and still do have a definite significance in the minds of wholesalers and retailers and the ultimate purchasing public, to wit: Such toilet preparations and products have for some years been compounded, blended, and manufactured in England, by English companies, of English materials, and imported into the United States, and which products so compounded and imported have been appropriately labeled and branded for sale and distribution in various States of the United States.

Such terms as the above, when applied to toilet preparations not made of English materials or manufactured by an English company, or imported from England, are false and misleading, and a substantial portion of the purchasing public prefers to buy genuine English toilet preparations produced as aforesaid, rather than imitations thereof which are not of English origin or manufacture.

PAR. 5. In the course and conduct of its said business as aforesaid, respondent has caused and does cause its products so manufactured, sold and distributed in interstate commerce to be labeled and branded with the words, "Drury Lane," "English Lavender," "Distributed by Worthall, Ltd., London, Montreal, New York," when, in truth and in fact, the said Worthall, Ltd., is not a limited corporation, nor is it an English company, nor does it have, nor has it had, any branch or office in London or Montreal which has any connection with

the manufacture, compounding, labeling, or packaging of said products, nor are or have been any of said products so sold and distributed in interstate commerce manufactured or compounded in London, or in England, nor are or have been the same imported from England or made from English material or ingredients. On the contrary, Worthall, Ltd., is a New York corporation; all of said products have been and are manufactured and compounded in the United States, principally of materials produced in this country, and the same were not and are not in any sense products of English manufacture, or English in origin.

PAR. 6. The representations so made and being made by respondent, as above set forth, and the use of the word "Limited," or the abbreviation "Ltd.," instead of "Incorporated" or "Inc." by said corporation, in combination with the words "London Montreal New York" and the trade name "Drury Lane" together with the words "English Lavender" are calculated and intended to, and do, have the capacity and tendency to, and did and do mislead and deceive dealers and the purchasing public into the belief that the toilet preparations so caused to be manufactured and compounded, and so sold and distributed by respondent, are genuine English products, and that respondent is an English corporation with manufacturing branches or offices in London and Montreal, and that said products are prepared and compounded in England and are of English origin and imported from England into the United States, when such is not the fact. Said representations have the capacity and tendency to, and did and do induce dealers and the purchasing public, acting on such beliefs, to purchase the said imitation toilet preparations, thereby diverting trade to respondent from its competitors who do not, by their corporate trade names or by false and misleading labels and advertising, or in any other manner, misrepresent the nature and character of their products, and from competitors who actually do sell and distribute toilet preparations of English origin and manufacture, and thereby, respondent does substantial injury to competitors and to the purchasing public, 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 January 24, 1936, issued and served its complaint in this proceeding upon respondent Worthall, Ltd., 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 other evidence in support of the allegations of said complaint were introduced by Allen C. Phelps, attorney of the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Boyd and Holbrook, attorneys for respondent, and said testimony and other 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 answers thereto, testimony and other evidence, and brief in support of the complaint (no brief having been filed by respondent and no oral argument having been applied for), and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Worthall, Ltd., is a corporation, organized in 1932 and 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 160 Fifth Avenue, in the city of New York, State of New York. Since prior to September 1934, respondent, Worthall, Ltd., has been engaged in business as a distributor of cosmetics and toilet preparations, including soaps, perfumes, toilet water, face powder, rouge, lipstick, and other similar products, all of which are distributed under the name "Drury Lane English Lavender." Worthall, Ltd. ordinarily causes said toilet preparations and cosmetics to be compounded or manufactured, and packed and labeled by the manufacturer thereof. Respondent's soap sold under the name "Drury Lane English Lavender" is manufactured by Light-foot Schultz Company and the other preparations above named are manufactured by B. H. Krueger, Inc., both of which manufacturers have their plants located in the State of New York. Respondent

sells and distributes said toilet preparations and cosmetics to its customers, principally drug stores and other retail outlets, which are located at points in the various States of the United States and in the District of Columbia. Said products are in turn sold by said retail outlets to individual members of the purchasing public. In the course and conduct of its business, said respondent causes said toilet preparations and cosmetics, when sold, to be transported from the State of New York, where said products are compounded, manufactured, and labeled, to the purchasers thereof located in various States of the United States other than the State of New York and in the District of Columbia.

In the course and conduct of its business, respondent was, and is, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the manufacture, distribution, and sale, or in the distribution and sale, of similar toilet preparations and cosmetics, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Since September 1934, the respondent, Worthall, Ltd., in the course and conduct of its business, has caused Lightfoot Schultz Company and B. H. Krueger, Inc. to compound or manufacture, and to label, pack, wrap, and assemble said toilet preparations which are sold and distributed by respondent, in commerce as herein described, and which are designated and described with the name "Drury Lane English Lavender." The labels attached to the containers and packages in which said toilet preparations are packed for distribution and sale were conceived, designed, printed and prepared by said Worthall, Ltd. and by it furnished to the compounders or manufacturers of said products which attached said labels to the packages and containers thereof at the direction of the respondent.

PAR. 3. The labels and packages furnished to the manufacturers by the respondent and used by them in preparing said toilet preparations and cosmetics for distribution and sale by the respondent herein bear statements such as the following: "Drury Lane English Lavender," together with the name of the individual preparation such as toilet water, astringent lotion, and the words "Distributed by Worthall, Ltd., London, Montreal, and New York." On the bottom of the containers of the various toilet preparations, herein referred to, sometime appear small paper stickers containing the words "Made in U. S. A." These stickers are inconspicuously placed on the bottom of the container and are not in close conjunction to, or equal prominence with, the other phraseology hereinabove set out, and are not readily discernible. Said stickers bear no relation whatever to the principal labels appearing on said products and may be readily

removed from the containers of said products by retail dealers or others without in any way affecting the appearance of the labels, or the salability of the products.

For a long period of time, the terms "English," "Made in England," "Imported from England," and similar terms suggesting English origin, when used in connection with toilet preparations such as perfumes, soaps, toilet water, face powder, rouge and similar articles, have had, and still do have, a definite significance in the minds of retail dealers in, and ultimate purchasers of, said products; and the use of such terms signify to them that the toilet preparations and other products so branded and labeled have been actually compounded or manufactured in England and have been compounded, blended or manufactured from English materials by English companies and subsequently imported into the United States for sale and distribution. A substantial portion of the purchasing public prefers to buy such genuine English toilet preparations produced as aforesaid rather than similar toilet preparations which are of domestic origin and are not of English origin or manufacture.

PAR. 4. In truth and in fact, Worthall, Ltd. is a New York corporation and is not an English concern. It has never maintained any branch or offices in London, England or Montreal, Canada. None of said toilet preparations or similar products are compounded or manufactured in England and none of said products are made from English materials or ingredients. All of said toilet preparations are compounded and manufactured in the United States, principally from materials produced in this country. Said toilet preparations are not in any sense products of English manufacture and are not English in origin.

PAR. 5. The use of such terms as "English," and "Drury Lane English Lavender," particularly when accompanied with the representation that the distributor of said preparations maintains offices and places of business in Montreal and London, serves as representations to the purchasing public that said toilet preparations were made of English materials and ingredients and were manufactured by an English company in England and subsequently imported into the United States.

PAR. 6. The aforesaid misrepresentations made by the respondent through the use of the term "Drury Lane English Lavender," as descriptive of, or as a designation for, its toilet preparations, and through the use of the words "London" and "Montreal," were calculated and intended to have, and do have, the capacity and tendency to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said toilet preparations

distributed by the respondent under the name "Drury Lane English Lavender" are genuine English products prepared and compounded in England of English ingredients by an English concern, and subsequently imported from England into the United States. The respondent's aforesaid representations also have the capacity and tendency to, and do, induce members of the purchasing public, acting in said mistaken and erroneous beliefs induced as aforesaid, to purchase respondent's said toilet preparations thereby unfairly diverting trade to the respondent from its competitors who do not misrepresent the materials and place of origin of their respective products, or the ingredients thereof, and also from competitors who actually sell and distribute toilet preparations of English origin and manufacture and who truthfully represent said preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, Worthall, Ltd., 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondent, testimony and other evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief on behalf of the Commission filed herein, and the Commission having made its findings as to the facts and its conclusion that respondent Worthall, Ltd., a corporation, 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 Worthall, Ltd., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution, in interstate commerce or in the District of Columbia, of toilet preparations and cosmetics compounded and manufactured in the United States, including perfumes, soaps, toilet water, face powder, and similar articles, do forthwith cease and desist from:

1. Representing, through the use of the term "Drury Lane English Lavender," or any other term or words as a designation or brand name

for its various toilet preparations and cosmetics, or through any other means or device, or in any other manner, that said products are of English manufacture or origin, or are imported from England;

2. Representing that said products contain ingredients of English origin when such is not the fact;

3. Representing, through the use of the words "Montreal" and "London," or through the use of any other name of a foreign city or country, that it maintains branches and places of business in England, Canada, or any other foreign country.

It is further ordered, That the respondent, Worthall, Ltd., 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 has complied with this order.

IN THE MATTER OF
ENGLANDER SPRING BED 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 2602. Complaint, Oct. 30, 1935—Decision, Dec. 14, 1937

Where a corporation engaged in manufacture, sale, and distribution of bed mattresses to purchasers in other States and in the District of Columbia, in substantial competition with those similarly engaged, including those who do not misrepresent the regular and customary retail price of their respective products and do not use the below set forth methods in sale and distribution thereof in commerce; in pursuance of so-called "sales stimulator plan" adopted by it—

- (a) Furnished retailers, for their use in running advertisements in local newspapers, mats bearing such statements as "Englander's Famous Regular \$39.50 PROPEREST Mattresses ½ off sale! \$19.75. We are able to buy these nationally advertised \$39.50 damask covered mattresses and bed springs at a drastic price concession," with, in some cases, figure \$29.75 as supposed regular price, and urged use of such advertisements upon retailers in connection with offer for sale of its said products;
- (b) Attached to mattresses, to which reference was made as aforesaid, label bearing such words as "Finest Quality Since 1895. PROPEREST reg. U. S. Pat. Off. \$39.50, manufactured by ENGLANDER SPRING BED CO., INC. New York, Brooklyn," or figure \$29.75 in those cases in which such figure had been made use of in aforesaid mats; and
- (c) Supplied to retailers, in further connection with its aforesaid "sales stimulator plan" and for use in their showrooms in connection with offer and sale of its aforesaid mattresses, variously labeled as above set forth, embossed advertising cards displaying illustrations of its said products, together with dealer's name, and statement in regard to regular price, as aforesaid, of such mattresses, and including, as typical, some such statement as "Never before sold for Less than \$30.50. \$22.50 All Sizes" and "Nationally advertised at \$29.75 NOW \$19.75";

Notwithstanding fact aforesaid supposed retail prices of \$39.50 or \$29.75, as above displayed in advertisements and on labels and in display advertising cards, were not the regular and customary retail prices of the mattresses thus advertised, labeled and mentioned, nor those at which it was contemplated by it that said merchandise would be sold, but were greatly in excess of retail price at which sale by retailers involved was contemplated and intended by it, such retail price was wholly fictitious, mattresses thus advertised and labeled were greatly inferior in quality and workmanship to those which regularly and customarily retail for \$39.50 and \$29.75, and regular and customary retail price at which products in question were offered and sold was \$22.50 or \$19.75, depending upon quality of particular mattress;

With result that prospective purchasers were led to believe that mattresses thus advertised and branded were products of kind and quality that regularly and customarily sell at retail for prices indicated, and that, when offered

Complaint

and sold at their aforesaid regular prices or other sum substantially less than price indicated by such fictitious price markings, contrary to the fact, they were securing a bargain, in that products in question were made to sell for a sum greatly in excess of that at which they were offered and sold, and with effect of misleading and deceiving substantial portion of purchasing public as to value, grade, quality, and price of aforesaid mattresses and causing them erroneously to believe that regular and customary retail prices thereof were greatly in excess of those at which said mattresses were regularly and customarily offered and sold, and, as a consequence of such erroneous belief, of causing substantial portion of such public to buy its said mattresses, and of thereby unfairly diverting trade in commerce involved to it from its competitors who do not misrepresent the value, grade, quality, and price of their products; to their substantial injury and to that of the public:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Lewis, Marks & Kanter, of Brooklyn, N. Y., 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 power and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Englander Spring Bed Company, Inc., 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, Englander Spring Bed Company, Inc., is a corporation existing under and by virtue of the laws of the State of New York, but having its principal office and place of business at 3961 Lowe Avenue, Chicago, Ill., and has been and now is engaged in the manufacture of bed mattresses and the sale and distribution thereof; and in the course and conduct of its said business, has sold and distributed such bed mattresses and caused the same to be transported from the various places of business of the respondent, to wit: Chicago, Ill., Boston, Mass., and Brooklyn, N. Y.—to purchasers of such bed mattresses located in the various States of the United States other than the State or States of of origin of such shipments and in the District of Columbia and has maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

Complaint

26 F. T. C.

PAR. 2. During the course and conduct of its business the respondent, in soliciting the sale of and in selling its products in interstate commerce, has suggested and urged upon its retailer-customers the adoption of what is called a "sales stimulator" plan which consists and consisted essentially of statements and representations in advertisements that such retailers were offering the products of said respondent at greatly reduced prices; and said respondent has written and does write, in connection with the sales and distribution of its products in interstate commerce, letters in which the following statements and representations are used:

I am not offering you an untried scheme, but a definite, approved, worked-out plan that is selling thousands of mattresses for many of the country's leading dealers. I am confident that it will do for you what it is doing for others and that you will find it just the productive, yet dignified, sales stimulator you need under present conditions.

Accompanying such letter and similar letters the respondent has offered to supply and has in fact supplied and now does supply its retailer-customers with embossed advertising cards upon which appear illustrated advertisements of its products, together with the dealer's name and a statement, or statements substantially as follows:

Never before sold for
Less than \$39.50
\$22.50
All sizes

and the further statement or a statement similar thereto:

Nationally advertised
at \$29.75 NOW
\$19.75

A further custom and practice of the respondent is to manufacture, sell, and distribute in interstate commerce bed mattresses to which is attached labels bearing the following words or words similar thereto:

<p style="text-align: center;">Finest Quality Since 1895 ENGLANDER Properest Reg. U. S. Pat. Off. PRODUCTS INNER SPRING \$29.75 MATTRESS New York—Brooklyn—Boston— Chicago</p>
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OR

Complaint

<p style="text-align: center;">Finest Quality Since 1895 PRINCETONIAN Reg. U. S. Pat. Off. INNER SPRING MATTRESS Price \$39.50</p> <p style="text-align: center;">. ENGLANDER SPRING BED CO. New York, Brooklyn, Boston, Chicago</p>

PAR. 3. The products of the respondent, the retail selling price of which is stated to be variously \$29.75 and \$39.50, are in truth and in fact offered and intended to be offered to the purchasing public by the retailers thereof at \$19.75 and \$22.50 respectively.

Respondent has initiated and encouraged such so-called "cut" retail selling price among its retail customers by advising them substantially as follows:

The mattress carried a \$39.50 resale price. You can feature it at any price you see fit from \$19.75 up.

PAR. 4. In truth and in fact the mattresses so advertised are greatly inferior in quality and workmanship to those mattresses generally available on the market at the price of \$39.50 and such mattresses of the respondent are manufactured at an average cost of \$8.53 each and are offered by the respondent to retailers for \$14.00 each. The mattresses so manufactured are actually made with the intention and the purpose of being sold at varying prices from \$19.75 up and are made in such a manner and of such material as to warrant the offering of the same at such prices to the consuming or purchasing public.

PAR. 5. The labels as above set forth remain displayed upon the mattresses as affixed thereto by the respondent throughout the channels of trade and distribution to the consuming public and are used pursuant to an intention and purpose on the part of the respondent to mislead and deceive the purchasing and consuming public as to the true value of the same or as to the regular, usual, or customary retail selling price of such mattresses.

PAR. 6. There are among the competitors of the respondent in interstate commerce various individuals, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of bed mattresses and who do not, by the affixation of labels or the circularization of letters as hereinabove set forth represent their said products to be of a value in excess of the actual value thereof, and

competitors who do not suggest to their retailer-customers fictitious and grossly marked-up prices for the purpose of deceiving the purchasing public as to the real value of said mattresses.

PAR. 7. Respondent's practice of affixing such false, fictitious, and inflated price marks to be labeled upon said mattresses has a capacity to mislead and deceive and has misled and deceived the purchasing and consuming public as to the value, grade, quality, and price of such mattresses and has the capacity and tendency to aid, enable, or cause dealers to sell such mattresses to the consuming public at prices purporting to constitute a substantial reduction in such dealers' prices, which reductions are in fact false and fictitious.

PAR. 8. Such practices have the further capacity to and do mislead and deceive members of the purchasing or consuming public into the erroneous belief that the prices at which said products are offered for sale to the consuming or purchasing public are in fact prices reduced from those set forth as the original price of such merchandise and that such purported reduction is a genuine, bona fide reduction in price by which purchasers have saved sums of money equivalent to the amount of such reduction and further that the higher price mark as contained in the labels so affixed to the mattresses represent the current, regular, or retail prices for mattresses of the particular grade and qualities offered for sale and that such mattresses so offered are higher priced mattresses being offered for sale or sold at actually greatly reduced or lowered prices.

PAR. 9. The use by respondent of such false, fictitious, and inflated price marks is unfair and tends to and does prejudice and injure the public, unfairly divert trade from, and otherwise prejudice and injure, respondent's competitors, and to that extent constitutes a substantial diversion of trade and a loss to substantial competition in interstate commerce and constitutes unfair methods of competition in commerce in violation 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.

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 30, 1935, issued, and on November 6, 1935, served its complaint in this proceeding upon the respondent Englander Spring Bed Co., Inc., a corporation, charging

Findings

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 other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, before John L. Hornor, an examiner of the Commission, theretofore duly designated by it, no testimony or other evidence in opposition to the allegations of the complaint having been introduced by the respondent, that said testimony and other 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and L. B. Kanter, counsel for the respondent; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Englander Spring Bed Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, and has its principal office and place of business at Stewart and Johnson Avenues, in the city of Brooklyn, State of New York. The respondent is engaged in the manufacture, sale, and distribution of bed mattresses. It causes said mattresses, when sold, to be shipped from its place of business in the State of New York to the purchasers thereof located in various States of the United States, other than the State of New York, and in the District of Columbia, and it has for several years last past maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

Respondent is in substantial competition in said commerce with other corporations, and with firms, partnerships and individuals who are engaged in the manufacture and in the sale and distribution of bed mattresses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent in offering for sale and selling its said mattresses to retailers for resale to the ultimate users thereof, has adopted what it describes as a "sales stimulator plan." Under this so-called "sales stimulator plan" the respondent furnishes retailers with mats for use in running advertisements in local newspapers, upon which

Findings

26 F. T. C.

appear the following statement, and others of similar import and meaning:

Englander's Famous Regular \$39.50 PROPEREST
 Mattresses ½ off sale! \$19.75
 We are able to buy these nationally advertised \$39.50 damask covered mattresses and bed springs at a drastic price concession.

Retailers are urged to use these advertisements in connection with the retail offer for sale of respondent's said products. To the mattresses, to which reference is made in said advertisements, is attached a label upon which appear the following words, or words of similar import and meaning:

Finest Quality Since 1895
 PROPEREST reg. U. S. Pat. Off. \$39.50
 manufactured by
 ENGLANDER SPRING BED CO., INC.
 New York Brooklyn

In some instances, the regular retail price of the mattresses is shown in the mats supplied retailers for use in placing advertisements in local newspapers as \$29.75. In such instances, the labels affixed to the mattresses have printed thereon a price of \$29.75.

In connection with this "sales stimulator plan," the respondent supplies to retailers embossed advertising cards upon which appear illustrated advertisements of its products, together with the dealer's name, and a statement in regard to the regular price of respondent's said mattresses. The following statements are typical of those appearing on such cards:

Never before sold for
 Less than \$39.50
 \$22.50
 All sizes
 Nationally advertised
 at \$29.75 NOW
 \$19.75

These cards are supplied to retail dealers for use in their show rooms in connection with the offering for sale and sale of respondent's said mattresses, upon the labels of which is marked a price of \$39.50 or \$29.75, as the case may be.

The mats supplied by the respondent to the retailers, as above stated, were used by various retailers located throughout the United States in placing advertisements in local newspapers advertising mattresses purchased from the respondent, bearing the labels with the price marks placed thereon, as stated.

PAR. 3. The retail price of \$39.50 or \$29.75, as the case may be, as stated in the advertisements, on the labels, and in the display advertising cards by the respondent, is not the regular and customary retail price of the mattresses advertised, labeled and mentioned in the display cards, nor the retail price at which the respondent contemplated said merchandise would be sold, but is, in truth and in fact, greatly in excess of the retail price at which the respondent contemplated and intended that said mattresses would be, and were, sold by retailers. The regular and customary retail price at which said mattresses are offered for sale and sold is \$22.50 or \$19.75, depending upon the quality of the mattress. The retail price so indicated by the respondent, as aforesaid, in said advertisements, on said labels, and display cards is wholly fictitious and bears no relation to the true retail price. The mattresses so advertised and labeled are greatly inferior in quality and workmanship to mattresses which regularly and customarily retail for \$39.50 and \$29.75.

PAR. 4. The use by the respondent, as aforesaid, of said fictitious price markings in said advertisements and on said labels, and the statements made in connection therewith, leads prospective purchasers to believe that the mattresses so advertised and branded are mattresses of the kind and quality that regularly and customarily sell at retail for the prices indicated, and to believe that, when said mattresses are offered for sale and sold for \$22.50 or \$19.75, or some other sum substantially less than the retail price indicated by such fictitious price markings, they are securing a bargain in that the mattresses were manufactured to sell for a sum greatly in excess of the sum at which they are offered for sale and sold. In truth and in fact, the sums paid by purchasers, in such instances, are the regular and customary retail prices, and purchasers do not secure mattresses manufactured to sell for much greater sums.

PAR. 5. There are among the competitors of respondent other corporations, firms, and individuals engaged in the sale and distribution of mattresses in interstate commerce who do not misrepresent the regular and customary retail price of their said products and who do not use the methods used by the respondent, as hereinabove set out, in the sale and distribution of their said products in said commerce.

PAR. 6. The acts and practices of the respondent, as hereinabove, set out, have had, and do have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public as to the value, grade, quality and price of said mattresses and cause them erroneously to believe that the regular and customary retail

Order

26 F. T. C.

prices of said mattresses are greatly in excess of those at which said mattresses are regularly and customarily offered for sale and sold, and as a result of said erroneous belief cause a substantial portion of the purchasing public to purchase respondent's said mattresses, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not misrepresent the value, grade, quality, and price of their products, to the substantial injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent Englander Spring Bed Co., 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 respondent, testimony and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, briefs filed herein, and oral arguments by Alden S. Bradley, counsel for the Commission, and by L. B. Kanter, 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 Englander Spring Bed Co., Inc., and its successor, or successors, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of bed mattresses in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said mattresses retail, or were manufactured to retail, at prices in excess of the prices at which said mattresses are regularly and customarily offered for sale and sold by retailers.

2. Placing on said mattresses labels indicating retail prices in excess of the prices at which said mattresses are regularly and customarily sold by retailers.

Order

3. Furnishing retailers with "mats" for newspaper advertisements, display placards, or other advertising matter, containing figures or words indicating or implying that the retail prices of said mattresses are in excess of the prices at which retailers regularly and customarily sell said mattresses.

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

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

Docket 3063. Complaint, Feb. 16, 1937—Decision, Dec. 14, 1937

Where a corporation engaged in transportation, sale and distribution of nursery stock, in commerce among the various States, and an individual whose name it bore and who was principal stockholder and director and controller of its sales policies and operations—

Represented that they actually grew or propagated the nursery products sold and distributed by them, and owned, operated, or controlled nurseries, farms, or properties in or on which such products were grown, through catalogs depicting views including signs placed by them by roads, walks, and driveways in near-by nurseries and identified by said signs as said individual's "Visitors Drive" or "Flower Garden," as case might be, and fruit trees, flowers, shrubs, etc., and through language featuring and emphasizing the quality and extent and abundance of the nursery products displayed along said individual's "Nursery Drive"; facts being said corporation and individual did not actually grow or propagate nursery products sold by them, said signs were placed beside roads, walks, and driveways in many near-by nurseries containing many acres of land on which nursery stock was being propagated and grown, and stock sold and distributed by them was actually grown and propagated by others on their own nursery farms and properties, and thereafter sold to them in wholesale lots;

With effect of confusing and misleading members of the purchasing public into erroneous and mistaken beliefs that they actually grew or propagated products sold by them and actually owned, operated, and controlled nursery farms or other properties on which such stock was grown or propagated for sale, and with result, as a direct consequence of such mistaken and erroneous beliefs induced by their aforesaid advertisements and representations, that a substantial portion of purchasing public bought a substantial amount of their said stock, and trade was unfairly diverted to them from competitors who do not misrepresent the source of their respective products; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Mr. Varro E. Tyler, of Nebraska City, Nebr., 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 reasons to believe that the Earl E. May Seed Company, a corporation, and Earl E. May, 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 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 Earl E. May Seed Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal place of business located in the city of Shenandoah, State of Iowa. Respondent, Earl E. May Seed Company, is now and has been for a number of years last past engaged in the transportation, sale and distribution of nursery stock in commerce between and among various States of the United States. Respondent, Earl E. May, is the principal stockholder of the Earl E. May Seed Company, and directs and controls its sales policies and business operations. The respondents cause said nursery stock, when sold, to be shipped and transported in commerce from the respondents' place of business in Shenandoah, Iowa, to purchasers thereof at various points in States of the United States other than the State of Iowa. The respondents maintain a constant current of trade and commerce among and between the various States of the United States in the nursery stock which they sell and distribute.

PAR. 2. The respondents, in the course and conduct of said business, are now, and at all times herein referred to have been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of nursery stock in commerce among and between the various States of the United States, and who do not in any way misrepresent the quality or source of their product, or resort to unfair practices in offering for sale and selling their product.

PAR. 3. The respondents, in the course and conduct of the business as aforesaid, and for the purpose of inducing individuals to purchase said nursery stock, have distributed through the United States mail, and otherwise, to the purchasing public throughout the several States of the United States, circulars and catalogues, in all of which the respondents have caused the firm name, and a purported description of the product, to be prominently and conspicuously displayed.

There are located in and around the City of Shenandoah, Iowa, many nurseries containing many acres of land on which nursery stock has been, and is being propagated and grown, and in and around which are roads, walks, and driveways. The respondents have made and placed and/or have caused to be made and placed

along and on the side of said roads, walks, and driveways, many large signs on which are written, in large and conspicuous letters, the following:

Earl May's Visitors Drive.

Earl E. May's Flower Garden.

In the aforesaid catalogues the respondents have inserted and/or have caused to be inserted and made a part thereof, certain photographs of different views along said roads, walks and driveways, and in which are depicted fruit trees, flowers, shrubs, etc., and the signs as before described. On the side of said photographs and in direct connection therewith, the respondents represent:

Come take a trip with me through the nursery.

Follow the arrow through Earl E. May's Nursery Drive.

Acres of hardy phlox plants in bloom along Earl May's Nursery Drive. You will get these colorful, thrifty plants when you order them from me.

Look for this arrow. It shows the way through Earl May's Nursery Drive. These Morhelm Blue Spruce are beautiful trees, too.

These pictures on this page will give you an idea of just a few of the things you will see when you take a tour through Earl May's Nursery Drive.

Along our Nursery Drive you will see more than 1,200 acres of growing nursery stock.

Even with this soil we must use this big, extra deep tree digger in order to get all the roots and send them out to you right along with the trees.

In describing the different species of nursery stock advertised, the respondents represent:

The Special Rose Stock De-eyeing Process developed by our rose growers, make it almost impossible for our roses to sucker from the roots.

Our planting of this variety at the seed house have been blooming profusely all summer long.

We usually grow too many of some plants, so I make up the surplus into collections.

We have growers who have been growing and selecting the best of clean, pure-bred, high-yielding strains.

We had a good growing season last year and I don't believe I have ever seen a finer lot of good, plump, bright, shiny seeds.

PAR. 4. The manner and form in which the aforesaid photographs were made, and were, and are being displayed, and the representations in connection with the publication of said pictures, and otherwise, are grossly exaggerated, false and misleading. Said statements and picturizations herein referred to, and others similar thereto not specifically set out, serve as representations on the part of the respondents that the said Earl E. May Seed Company actually grows or propagates the nursery products sold and distributed by it; and that it owns, operates and controls nurseries, farms, or properties

in, or on which the said nursery products sold and distributed by it are grown.

PAR. 5. In truth and in fact, neither of the respondents actually grows or propagates the nursery products sold by them. Neither of the respondents owns, operates, or controls nurseries, farms, or properties in or on which nursery stock is grown or propagated. The nursery stock sold and distributed by them as described herein is actually grown and propagated by others on their own nursery farms or properties, and are sold to respondents in wholesale lots after being grown.

PAR. 6. Said representations on the part of the respondents had, and now have, the tendency and capacity to, and did and do, mislead a substantial portion of the purchasing public into the erroneous belief that when they purchase nursery stock from the respondents they were buying direct from the grower and would, thereby, be the recipient of the advantages to be had by buying direct from the grower.

PAR. 7. Each and all of the false and misleading statements made by the respondents wherein they represent that they grow and propagate the nursery stock sold by them was, and is, calculated to, and had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of the said representations are true. Said representations have tended to induce and have induced the purchase of respondents' nursery stock by the public in reliance upon such erroneous belief. As a result thereof trade has been unfairly diverted to respondents from competitors who do not engage in similar false and misleading representations and practices all to the injury of competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above acts and practices engaged in by respondents, as aforesaid, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce, within the intent and meaning of Section 5, of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its 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 16, 1937, issued and served its complaint in this proceeding upon the respondents herein, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said act. On April 12, 1937, the respondents filed their answer in this proceeding. Thereafter, on October 1, 1937, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent's counsel, Varro E. Tyler, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and that the Commission may proceed upon said statement of facts to make its report as to the findings of facts (including inferences which it may draw from the said stipulated 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, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Earl E. May Seed Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal place of business located in the city of Shenandoah, State of Iowa. Respondent, Earl E. May Seed Company, is now and has been for a number of years last past engaged in the transportation, sale and distribution of nursery stock in commerce between and among various States of the United States. Respondent, Earl E. May, is the principal stockholder of the Earl E. May Seed Company, and directs and controls its sales policies and business operations. The respondents cause said nursery stock, when sold, to be shipped and transported in commerce from the respondents' place of business in Shenandoah, Iowa, to purchasers thereof at various points in States of the United States other than the State of Iowa. The respondents maintain a course of trade in commerce among and between the various States of the United States in the nursery stock which they sell and distribute.

PAR. 2. The respondents, in the course and conduct of said business, are now, and at all times herein referred to have been, in substantial

competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of nursery stock in commerce among and between the various States of the United States, and who truthfully represent the quality or source of their products.

PAR. 3. The respondents, in the course and conduct of the business as aforesaid, and for the purpose of inducing individuals to purchase said nursery stock, have distributed through the United States mail, and otherwise, to the purchasing public throughout the several States of the United States, circulars and catalogues, in all of which the respondents have caused the firm name, and a purported description of the product, to be prominently and conspicuously displayed.

There are located in and around the city of Shenandoah, Iowa, many nurseries containing many acres of land on which nursery stock has been, and is being propagated and grown, and in and around which are roads, walks and driveways. The respondents have made and placed and/or have caused to be made and placed along and on the side of said roads, walks and driveways, many large signs on which are written, in large and conspicuous letters, the following:

Earl May's Visitors Drive.
Earl E. May's Flower Garden.

The tract of ground designated on said signs as "Earl E. May's Flower Garden" was, and is, a display garden on ground leased by the respondents, in the exclusive possession and control of respondents, and planted and cultivated by them, and used by them for the display of trees, shrubs, and plants taken from the stock offered for sale and sold by the respondents.

In the 1936 Spring Catalogue, the respondents have inserted and/or have caused to be inserted and made a part thereof, certain photographs of different views along said roads, walks and driveways, and in which are depicted fruit trees, flowers, shrubs, etc., and the signs as before described. On the side of said photographs and in direct connection therewith, the respondents represent:

Come take a trip with me through the nursery.

Follow the arrow through Earl E. May's Nursery Drive.

Acres of hardy phlox plants in bloom along Earl E. May's Nursery Drive. You will get these colorful, thrifty plants when you order them from me.

Look for this arrow. It shows the way through Earl May's Nursery Drive. These Morheim Blue Spruce are beautiful trees, too.

These pictures on this page will give you an idea of just a few of the things you will see when you take a tour through Earl May's Nursery Drive.

Along our Nursery Drive you will see more than 1200 acres of growing nursery stock.

Findings

26 F. T. C.

Even with this soil we must use this big, extra deep three digger in order to get all the roots and send them out to you right along with the trees.

In describing the different species of nursery stock advertised, the respondents represent:

The Special Rose Stock De-eyeing Process developed by our rose growers, make it almost impossible for our roses to sucker from the roots.

Our planting of this variety at the seed house have been blooming profusely all summer long.

We usually grow too many of some plants so I make up the surplus into collections.

We have growers who have been growing and selecting the best of clean, pure-bred, high-yielding strains.

We had a good growing season last year and I don't believe I have ever seen a finer lot of good, plump, bright, shiny seeds.

The words "Our planting of this variety at the seed house have been blooming profusely all summer long," above quoted from said catalogue, referred to a variety of roses named "Red Ideal." The respondents conduct their business at Shehandoah, Iowa, in a building known as "The Seed House," and in front of said building is an area owned by the respondent, Earl E. May Seed Company, and cultivated as a display garden by the respondents. During the summer of 1935, the respondents had a planting of "Red Ideal" roses in said display garden, and said roses bloomed profusely through the said summer. The summer of 1935 was, in fact, a good growing season for garden seeds, and respondents state that the seeds offered for sale by respondent, Earl E. May Seed Company, were good, plump, bright and shiny.

PAR. 4. The manner and form in which the aforesaid photographs were made and displayed in said catalogue and the representations in connection with the publication of said pictures, as above set forth, are susceptible of meaning, and therefore serve as representations, that the said respondents actually grow or propagate the nursery products sold and distributed by them, and also serve as a representation that the respondents own, operate, or control nurseries, farms, or properties in, or on which, the said nursery products sold and distributed by them are grown. The respondents have, since the said seed catalogue was published, recognized their obligation to eliminate the said objectionable features from future catalogues, and have embodied in the 1937 catalogue published by them many changes intended to correct the objectionable features of the said 1936 catalogue.

PAR. 5. In truth and in fact, neither of the respondents actually grows or propagates the nursery products sold by them. Neither of the respondents owns, operates or controls nurseries, farms or prop-

erties in or on which nursery stock is grown or propagated for sale. The nursery stock sold and distributed by them as described herein is actually grown and propagated by others on their own nursery farms or properties, and is sold to respondents in wholesale lots after being grown.

PAR. 6. The use by the respondents of the advertisements and representations herein set out has the tendency and capacity to, and does, confuse and mislead members of the purchasing public into the erroneous and mistaken beliefs that respondents actually grow or propagate the nursery products sold by them and actually own, operate and control nurseries, farms or other properties on which nursery stock is grown or propagated for sale. As a direct consequence of such mistaken and erroneous beliefs induced by the advertisements and representations of respondents as hereinabove enumerated, a substantial portion of the purchasing public has purchased a substantial amount of respondents' products with the result that trade has been unfairly diverted to respondents from respondents' competitors who do not misrepresent the source of their respective products. As a result thereof, injury has been done to 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 respondents have been and are to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress 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, and the agreed stipulation of facts entered into between the respondents herein, Earl E. May Seed Company, a corporation, and Earl E. May, and W. T. Kelley, chief counsel for the Commission, which provides among other things that, without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusions based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of an Act

Order

26 F. T. C.

of 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, Earl E. May Seed Company, a corporation, and its officers, representatives, agents, and employees, and the respondent Earl E. May, individually, and his agents and representatives, in connection with the advertising, offering for sale, and sale and distribution of nursery stock in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. That the respondents, or either of them, grow or propagate the nursery stock sold by them;
2. That the respondents, or either of them, own, operate, or control lands, farms, or properties in or on which nursery stock is grown for sale unless and until they own or directly and absolutely operate and control lands, farms or other properties in or on which they grow nursery stock.

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

Syllabus

IN THE MATTER OF
FOX-WEIS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3236. Complaint, Oct. 4, 1937—Decision, Dec. 22, 1937*

Where a corporation engaged in distribution and sale of furs and fur coats to members of purchasing public in other States and in the District of Columbia, in substantial competition with others similarly engaged in distribution and sale of such products, and including those who, in selling and distributing furs and fur coats made from skins of rabbit or muskrat, truthfully designate said garments as actually thus made, by use of such words as "Dyed Coney" or "Dyed Muskrat" in equally prominent type and in close proximity and hyphenated to other designations used by them in describing such garments, those engaged in sale of such products actually made from the skins of seal and so designated, and those who do not in any manner misrepresent their business status and, falsely, that they are manufacturers, for the direct purchase of the products of which there is preference on the part of substantial portion of purchasing public as securing, in their opinion, better prices, superior merchandise and other advantages not to be had after product has passed through hands of number of middlemen—

- (a) Made use of designations "Sealine," "Black Seal," "Hudson Seal," and "French Seal" in describing, in its advertisements in newspapers of interstate circulation and in other advertising media, its furs and fur coats, together with qualification, in not easily readable type and widely separated from aforesaid designations, "Dyed Coney" or "Dyed Muskrat," and without qualification in other cases, notwithstanding fact products thus described and represented were not made from the furs and skins of the seal, but, in a number of cases, from rabbit skins so dressed and dyed as to resemble, in appearance only, the more costly seal, with its superior pliability, durability, wearing quality, and luster, and number thereof were made from muskrat skins likewise so dressed and dyed as to resemble garments made from seal, to which they were inferior in aforesaid respects and for which there was a preference on the part of a substantial number of purchasing public; and
- (b) Represented itself as a "manufacturing furrier," through use of such statements on letterheads and other advertising media, and through statement "it makes a difference when you buy from the maker," notwithstanding fact it was not the manufacturer of all the furs and fur coats sold by it, but purchased a substantial majority of such products ready-made for sale to ultimate purchaser;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous beliefs that garments in question were actually made from the furs and skins of seal, and that it was the manufacturer of all such products sold by it, and with result that substantial portion of such public, by reason of such mistaken and erroneous beliefs, were induced to buy such

Complaint

26 F. T. C.

garments thus designated and described, and trade was thereby diverted to it from its competitors as aforesaid:

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

Mr. J. T. Welch for the Commission.

Hartman, Sheridan & Tekulsky, 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 Fox-Weis 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 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, Fox-Weis Company, 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 located at 1130 Chestnut Street, in the city of Philadelphia, State of Pennsylvania. It is now, and has been for some time heretofore, engaged in the business of distributing and selling to members of the purchasing public, among other items of merchandise, furs and fur coats.

The respondent causes said furs and fur coats, when sold, to be transported from its aforesaid principal place of business to the purchasers thereof located at points in States of the United States other than the State of Pennsylvania. It maintains, and for a period of more than one year last past has maintained, a constant current of trade and commerce in said furs and fur coats, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in the distribution and sale of said furs and fur coats with other corporations and with firms and individuals likewise engaged in the business of distributing and selling furs and fur coats, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Fur coats and other garments made from the furs and skins of seal have, over a period of many years, acquired a wide popularity among that portion of the public purchasing garments made from fur on account of their superior quality, including pli-

ability and durability of the leather and wearing quality and luster of the fur. Garments made from furs and skins of seal demand prices substantially greater than the prices of garments made from rabbit or muskrat furs and skins and there is a preference on the part of a substantial number of the purchasing public for garments made from furs and skins of seal. Garments made from the furs and skins of seal are commonly designated as "seal," or some derivation of said word, including the word "seal" and said designation is well-known and recognized both by the trade and the purchasing public generally.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, respondent has, from time to time, inserted advertisements in newspapers having an interstate circulation and has made use of other advertising media designed and intended to influence purchasers of said furs and fur coats. In said advertisements, respondent has caused certain of its furs and fur coats to be variously represented or designated as "sealine," "black seal," "Hudson seal," and "French seal." In certain of said advertisements, the designations above set out are made without qualification of any kind. In other of said advertisements, the words "dyed coney" or "dyed muskrat" appear in substantially smaller type so as to not be easily readable and are not in close proximity to said designations above set out, but are, in fact, widely separated therefrom.

Said designations purport to be descriptive of respondent's furs and fur coats and serve as representations that said garments are made from furs and skins of seal.

PAR. 5. In truth and in fact, the garments offered for sale and sold by the respondent, bearing the designations above set out, are made from furs and skins other than furs and skins from the seal. A number of said garments are made from rabbit skins so dressed and dyed as to resemble garments made from furs and skins of the seal in appearance only. Said rabbit skins are inferior to the skins of seal in pliability and durability of the leather and in wearing quality and luster of the fur. A number of said garments are made from muskrat skins so dressed and dyed as to resemble garments made from furs and skins of the seal. Said muskrat skins are inferior to the skins of the seal in pliability and durability of the leather and in wearing quality and luster of the fur.

PAR. 6. There are now, and have been, competitors of respondent selling and distributing furs and fur coats made from skins of rabbit or muskrat, in commerce among and between the various States of the United States, who truthfully designate said garments as ac-

tually being made from the skins of rabbit or muskrat by use of such words as "dyed coney" or "dyed muskrat" in type equally prominent to, and in close proximity and hyphenated to, the other designations used by said competitors in describing said garments. There are also other competitors of respondent selling furs and fur coats which are actually made from the skins of seal and are so designated, in commerce among and between the various States of the United States. There are also among respondent's competitors those who do not in any manner misrepresent their business status and represent that they are manufacturing furriers when such is not the case.

PAR. 7. In the course and conduct of its business and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, respondent has represented itself to be a manufacturing furrier. On its letterheads and its other advertising matter, the respondent has made use of such statements as "Fox-Weis Company, Manufacturing Furriers," and "it makes a difference when you buy from the maker." Such statements serve as representations that the respondent is the maker of the furs and fur coats which it sells to members of the purchasing public. In truth and in fact the respondent is not the manufacturer of such furs and fur coats that it sells, but purchases the same already made up and ready for sale to the ultimate purchaser. The respondent is not a manufacturer or a manufacturing furrier as that term is known and understood among the purchasing public generally.

There is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer. Such preference is brought about by the belief on the part of said members of the purchasing public that in dealing direct with the manufacturer they secure better prices, superior merchandise, and other advantages which cannot be secured when merchandise is purchased after having gone through the hands of a number of middlemen.

PAR. 8. The false and misleading representations used by the respondent in the offering for sale and sale of its furs and fur coats, as hereinabove set out, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that said garments are actually made from the furs and skins of seal and that the respondent is the manufacturer thereof. On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been induced to purchase garments so designated by the respondent and thereby trade has been unfairly diverted to the respondent from competitors named in paragraph 6 hereof. 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. 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 constitute 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 4th day of October, 1937 issued and served its complaint in this proceeding upon said respondent, Fox-Weis Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the 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 this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Fox-Weis Company, 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 located at 1130 Chestnut Street, in the city of Philadelphia,

State of Pennsylvania. It is now, and has been for some time heretofore, engaged in the business of distributing and selling to members of the purchasing public, among other items of merchandise, furs and fur coats.

The respondent causes said furs and fur coats, when sold, to be transported from its aforesaid principal place of business to the purchasers thereof located at points in States of the United States other than the State of Pennsylvania. It maintains, and for a period of more than one year last past has maintained, a constant current of trade and commerce in said furs and fur coats, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in the distribution and sale of said furs and fur coats with other corporations and with firms and individuals likewise engaged in the business of distributing and selling furs and fur coats, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Fur coats and other garments made from the furs and skins of seal have, over a period of many years, acquired a wide popularity among that portion of the public purchasing garments made from fur on account of their superior quality, including pliability and durability of the leather and wearing quality and luster of the fur. Garments made from furs and skins of seal demand prices substantially greater than the prices of garments made from rabbit or muskrat furs and skins and there is a preference on the part of a substantial number of the purchasing public for garments made from furs and skins of seal. Garments made from the furs and skins of seal are commonly designated as "Seal," or some derivation of said word, including the word "Seal" and said designation is well known and recognized, both by the trade and the purchasing public generally.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, respondent has, from time to time, inserted advertisements in newspapers having an interstate circulation and has made use of other advertising media designed and intended to influence purchasers of said furs and fur coats. In said advertisements, respondent has caused certain of its furs and fur coats to be variously represented or designated as "Sealine," "Black Seal," "Hudson Seal," and "French Seal." In certain of said advertisements, the designations above set out are made without qualification of any kind. In other of said advertisements, the words "Dyed

Coney" or "Dyed Muskrat" appear in substantially smaller type so as to not be easily readable and are not in close proximity to said designations above set out, but are, in fact, widely separated therefrom. Said designations purport to be descriptive of respondent's furs and fur coats and serve as representations that said garments are made from furs and skins of seal.

PAR. 5. In truth and in fact, the garments offered for sale and sold by the respondent, bearing the designations above set out, are made from furs and skins other than furs and skins from the seal. A number of said garments are made from rabbit skins so dressed and dyed as to resemble garments made from furs and skins of the seal in appearance only. Said rabbit skins are inferior to the skins of seal in pliability and durability of the leather and in wearing quality and luster of the fur. A number of said garments are made from muskrat skins so dressed and dyed as to resemble garments made from furs and skins of seal. Said muskrat skins are inferior to the skins of the seal in pliability and durability of the leather and in wearing quality and luster of the fur.

PAR. 6. Prior to July 1, 1937, the respondent changed its advertising literature in the following respects: Furs and fur coats made from furs and skins of rabbit and muskrat which have been dyed so as to resemble furs and skins of seal, or of any other animal, are now designated and described by use of the words "Seal," "Hudson Seal," "French Seal," "Black Seal," "Sealine," "Beaver," and "Beaverette," preceding and hyphenated to words which state that the furs and skins used in the garment are dyed and are rabbit or muskrat skins. All of such words appear in equal size type and are in close proximity and hyphenated in respondents present advertising. Such garments as have heretofore been described and represented in the manner set forth in paragraph 4 of the complaint are now described and represented as follows: "Seal-Dyed Coney," "Hudson Seal-Dyed Muskrat," "Beaver-Dyed Coney," "French Seal-Dyed Coney," "Beaverette-Dyed Coney," "Black Seal-Dyed Coney."

PAR. 7. There are now, and have been, competitors of respondent selling and distributing furs and fur coats made from skins of rabbit or muskrat, in commerce among and between the various States of the United States, who truthfully designate said garments as actually being made from the skins of rabbit or muskrat by use of such words as "Dyed Coney," or "Dyed Muskrat" in type equally prominent to, and in close proximity and hyphenated to, the other designations used by said competitors in describing said garments. There are also other competitors of respondent selling furs and fur coats which

Findings

26 F. T. C.

are actually made from the skins of seal and are so designated, in commerce among and between the various States of the United States. There are also among respondent's competitors those who do not in any manner misrepresent their business status and represent that they are manufacturing furriers when such is not the case.

PAR. 8. In the course and conduct of its business and for the purpose of inducing the purchase of its furs and fur coats by members of the purchasing public, the respondent has represented itself to be a manufacturing furrier. On its letterheads and other advertising matter, the respondent has made use of such statements as "Fox-Weis Company, Manufacturing Furriers," and "it makes a difference when you buy from the maker." Such statements serve as representations that the respondent is the maker of all the furs and fur coats which it sells to members of the purchasing public. In truth and in fact, the respondent is not the manufacturer of all the furs and fur coats which it sells. A substantial majority of the furs and fur coats sold by the respondent are purchased by it ready-made for sale to the ultimate purchaser, but the respondent does actually control and operate a plant wherein it maintains facilities for making fur garments and fur coats. In such plant, respondent employs approximately twenty-three people in the following capacities:

1 Manager	2 Cutters
15 Finishers	1 Ironer
1 Nailer	1 Cleaner
2 Operators	

In said plant, it maintains certain machinery and equipment for making fur garments and fur coats as follows:

2 Fur sewing machines	3 Ironing and glazing tables
5 Fur cutting tables	2 Nailing tables
1 Fur lining and finishing table	2 Fur drums
1 Fur staying machine	5 Fur knives
1 Machine for sewing lining	4 Sets of nailing pinchers
1 Fancy stitch machine	

From the period October 1, 1935 to September 30, 1936, respondent manufactured in its plant three hundred twenty-seven (327) coats and thirty-one (31) jackets. From October 1, 1936 to September 30, 1937, it made in its plant three hundred ninety-two (392) coats and ten (10) jackets. It does not sell any of its products to any other retail furrier but sells said products in its retail place of business.

There is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer. Such preference is brought about by the belief on the part of said members of the purchasing public that in dealing direct with the manu-

87.

Order

facturer they secure better prices, superior merchandise, and other advantages which cannot be secured when merchandise is purchased after having gone through the hands of a number of middlemen.

PAR. 9. The aforesaid representations used by the respondent prior to July 1, 1937, as set out hereinabove, in the offering for sale and sale of its furs and fur coats, have had the capacity and tendency to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that said garments were actually made from the furs and skins of seal, and that the respondent was the manufacturer of all the fur garments and fur coats which it sold. On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been induced to purchase garments so designated and described, and thereby trade has been diverted to the respondent from competitors referred to in paragraph 7 hereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Fox-Weis Company, 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, and the agreed stipulation of facts entered into between the respondent herein, Fox-Weis Company, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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, Fox-Weis Company, a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale, and sale of furs and fur garments made from dyed muskrat or dyed coney (rabbit) fur, in interstate commerce and in the District of Columbia, cease and desist from:

Order

26 F. T. C.

1. Describing furs or fur garments in any other way than by the use of the correct name of the fur as the last word of the description or designation thereof.

2. Describing furs or fur garments wherein the fur has been dyed to simulate another fur without using the correct name of the fur as the last word of the description or designation thereof immediately preceded by the word "Dyed" compounded with the name of the simulated fur.

3. Using the words "Seal," "Hudson Seal," "French Seal," "Sealine," "Black Seal," as descriptive of furs and fur garments made from muskrat or coney (rabbit), alone or in connection, combination, or conjunction with any other word or words, unless and until the word "Seal," or the words "Hudson Seal," "French Seal," "Black Seal," "Sealine," are compounded with the word "Dyed," and such words so compounded are immediately followed by the true name of the fur as "Hudson Seal-Dyed Muskrat," or "Seal-Dyed Coney."

4. Representing that it is a manufacturing furrier or that it manufactures the garments which it sells, except as to such garments as are actually manufactured by it.

It is further ordered, That the respondent shall, within 30 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.

Syllabus

IN THE MATTER OF
PENNSYLVANIA WHISKEY DISTRIBUTING
CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2576. Complaint, Oct. 11, 1935—Decision, Dec. 23, 1937*

Where a corporation engaged, as wholesale distributor and rectifier of alcoholic liquors, in purchasing and bottling whiskies and other distilled spirits and in selling its aforesaid various products to wholesaler and retailer purchasers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies and other distilled spirits and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various distilled spirits and similarly selling same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of the whiskies and other distilled spirits sold by them, truthfully use words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names and on their stationery, cartons and labels of the bottles in which they sell and ship their said products, those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth, and those who, engaged in sale of whiskies and other distilled spirits, do not, as a means of furthering and promoting sale of their said products, misrepresent as official Internal Revenue Bonded Warehouse Receipts their own unofficial paper receipts or paper writings—

- (a) Represented, through use of abbreviation "Dist." in its corporate name, as printed on its stationery, cartons, labels, contracts, and advertising, and warehouse receipts, used by it in soliciting and obtaining sale of its products, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distilling company and that the whiskies and other distilled spirits by it sold were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill said various spirits, as long definitely understood from word "distilling" used in connection with liquor industry and products thereof, in the trade and by the ultimate purchasing public, did not own, operate, or control any place or places where such spirits are made by such process, and was not a distiller, for the purchase of the bottled whiskey and other spirits of which there is a preference on the part of a substantial portion of the purchasing public; and
- (b) Falsely designated as "United States Internal Revenue Bonded Warehouse Receipts," certain paper writings or receipts delivered to its customers and covering distilled spirits stored in bonded warehouses in other States, as means of furthering and promoting sale of its said products, facts being said writings or receipts were contracts between it and customer whereby it was obligated to sell, and customer was obligated to buy, quantity of distilled spirits located in aforesaid warehouses under bond, and for which

Complaint

26 F. T. C.

It had and retained the genuine United States Internal Revenue Bonded Warehouse Receipts, and pursuant to which contracts, and upon request of purchasers, it caused such spirits to be released and delivered to it for rectification or bottling and labeling, and then shipped to such various purchasers, and said receipts or writings were not, as thus falsely represented, the official United States Internal Revenue Bonded Warehouse Receipts sufficient to release bonded spirits covered thereby upon payment by purchasers of storage charges, insurance, State and Federal taxes;

With effect of misleading and deceiving dealers and purchasing public into the belief that said whiskies and other distilled spirits sold by it were by it made or distilled from mash, wort, or wash, and of misleading and deceiving dealers into belief that, upon presentation to bonded warehouse of aforesaid unofficial warehouse receipts by them obtained from it, the whiskies and distilled spirits thus purchased would be released from bond for delivery to a duly authorized rectifier for rectifying or rebottling, or both, as desired, upon payment by said dealers of storage charges, insurance and State and Federal taxes, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other distilled spirits, and of thereby diverting trade to it from its competitors who do not make the same or similar representations; 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.

Before *Mr. John W. Addison*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Irving H. Goldin, of New York City, and *Mr. Harold N. Reinitz*, of Brooklyn, N. Y., 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 Pennsylvania Whiskey Distributing 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 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 New York, with its office and principal place of business in the city of Brooklyn in said State. It is now and for more than one year last past has been engaged in the business of a wholesale distributor and rectifier of alcoholic liquors, purchasing and bottling whiskies and other distilled spirits 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 business, it causes its said products when sold to be transported from its place of business as 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 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 other individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies and other distilled spirits 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 has been for more than one year last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits 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, 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 whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by an abbreviation of the word "Distributing" to "Dist." in its corporate name as printed on stationery, cartons, labels, contracts, advertising, and warehouse receipts used by it in soliciting and obtaining the sale of its products as aforesaid, 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 distilling company and that the whiskies and other distilled spirits by it sold 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 or other distilled spirits by it so sold and transported, and does not own, operate, or control any place

or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. In the course and conduct of its business as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent delivers to its customers certain paper writings or receipts by it falsely designated as "United States Internal Revenue Bonded Warehouse Receipts," covering distilled spirits stored in bonded warehouses located in States other than the State of New York, which said paper writings or receipts are contracts between respondent and the customer whereby the respondent is obligated to sell and the customer to buy a quantity of distilled spirits located in the aforesaid warehouses under bond, and for which distilled spirits respondent has and retains the genuine United States Internal Revenue Bonded Warehouse Receipts. Pursuant to such contracts, and upon the requests of the purchasers, respondent causes such bonded spirits to be released and delivered to it for rectification or bottling and labelling as aforesaid and then causes the said distilled spirits so released, delivered, bottled, and labelled to be shipped from its place of business as aforesaid to the purchasers thereof located in the State of New York and in various other States of the United States and in the District of Columbia. In the aforesaid manner, respondent falsely represents that its own warehouse receipts and contracts for the bonded liquor as aforesaid are official United States Internal Revenue Bonded Warehouse Receipts, sufficient to release the bonded spirits covered thereby, upon payment by the purchaser of the storage charges, insurance, State, and Federal taxes.

PAR. 5. There are, among the competitors of respondent engaged in the sale of whiskies and distilled spirits as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort or wash as aforesaid the whiskies and other distilled spirits 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 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 and other distilled spirits who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names nor on the stationery, cartons, and labels of 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 sale of whiskies and other distilled spirits who, as a means or method of furthering and promoting the sale of said products do not misrepresent as official United States Internal Revenue Bonded Warehouse Receipts their own unofficial receipts or paper writings as an inducement to the sale of their said products.

PAR. 6. The representations by respondent as set forth in paragraphs 3 and 4 hereof are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort, or wash; and do mislead and deceive dealers into the belief that upon presentation to the bonded warehouse of the aforesaid unofficial warehouse receipt by them obtained from respondent, the whiskies or distilled spirits so purchased will be released from bond for delivery to a duly authorized rectifier and bottler of their selection for rectification or rebottling or both, as desired, upon payment by the said dealers of the storage charges, insurance, and State and Federal taxes; and such representations are calculated to, have the capacity and tendency to, and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by the respondent, thereby diverting trade to the respondent from its competitors who do not make the same or similar misrepresentations, 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 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 October 11, 1935 issued, and later served its complaint in this proceeding upon the respondent, Pennsylvania Whiskey Distributing Corporation, charging it with the use of unfair methods of competition in commerce in violation of the

Findings

26 F. T. C.

provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. This respondent 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 at 135 Johnson Street in the Borough of Brooklyn, in the city of New York, in said State. For more than one year last past, it has been engaged in the business of a wholesale distributor and rectifier of alcoholic liquors, purchasing and bottling whiskies and other distilled spirits 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 business, it causes its said products when sold to be transported from its place of business as 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 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 other individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies and other distilled spirits 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 has been for more than one year last past, in substantial competition with other corporations and with individual firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other distilled spirits 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, 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 whiskey and other distilled spirits by a process of original distillation from mash, wort, or wash; and a substantial portion of the purchasing public prefers to buy whiskey and other distilled spirits prepared or bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has abbreviated the word "Distributing" to "Dist." in its corporate name, as printed on its stationery, cartons, labels, contracts, advertising, and warehouse receipts used by it in soliciting and obtaining the sale of its products as aforesaid. In this way and in various other ways respondent has represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distilling company and that the whiskies and other distilled spirits by it sold 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 or other distilled spirits by it so sold and transported, and does not own, operate, or control any place or places where such spirits are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. Also in the course and conduct of its business as aforesaid, and as a means or method of furthering and promoting the sale of its said products, respondent delivers to its customers certain paper writings or receipts by it falsely designated as "United States Internal Revenue Bonded Warehouse Receipts," covering distilled spirits stored in bonded warehouses located in States other than the State of New York, which said paper writings or receipts are contracts between respondent and the customer whereby the respondent is obligated to sell and the customer to buy a quantity of distilled spirits located in the aforesaid warehouses under bond, and for which distilled spirits respondent has and retains the genuine United States Internal Revenue Bonded Warehouse Receipts. Pursuant to such contracts, and upon the requests of the purchasers, respondent causes such bonded spirits to be released and delivered to it for rectification or bottling and labelling as aforesaid and then causes the said distilled spirits so released, delivered, bottled, and labelled to be shipped from its place of business as aforesaid to the purchasers thereof located in the State of New York and in various other States of the United States and in the District of Columbia. In the

aforesaid manner, respondent falsely represents that its own warehouse receipts and contracts for the bonded liquor as aforesaid are official United States Internal Revenue Bonded Warehouse Receipts, sufficient to release the bonded spirits covered thereby, upon payment by the purchaser of the storage charges, insurance, State and Federal taxes.

PAR. 5. There are, among the competitors of respondent engaged in the sale of whiskies and distilled spirits as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash as aforesaid the whiskies and other distilled spirits 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 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 and other distilled spirits, who do not use the words "distillery," "distilleries," "distillers," "distilling," or "distilled products" as a part of their corporate or trade names nor on the stationery, cartons, and labels of 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 sale of whiskies and other distilled spirits who, as a means or method of furthering and promoting the sale of said products do not misrepresent as official United States Internal Revenue Bonded Warehouse Receipts their own unofficial receipts or paper writings as an inducement to the sale of their said products.

PAR. 6. The representations by respondent as set forth in paragraphs 3 and 4 hereof are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the whiskies and other distilled spirits sold by respondent are manufactured and distilled by it from mash, wort or wash; and do mislead and deceive dealers into the belief that upon presentation to the bonded warehouse of the aforesaid unofficial warehouse receipt by them obtained from respondent, the whiskies or distilled spirits so purchased will be released from bond for delivery to a duly authorized rectifier and bottler of their selection for rectification or rebottling or both, as desired, upon payment by the said dealers of the storage charges, insurance and State and Federal taxes, and such representations are calculated to, have the capacity and tendency to, and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies and other distilled spirits sold by the respondent, thereby diverting trade to the

respondent from its competitors who do not make the same or similar misrepresentations, and thereby respondent does substantial injury to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Pennsylvania Whiskey Distributing 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on the 21st day of December 1937, by respondent, admitting all the material allegations of the complaint to be true, waiving hearing on the charges set forth in the said complaint, and consenting that without further evidence or other intervening procedure the Commission may issue and serve upon it findings as to the facts and conclusion drawn therefrom and an order to cease and 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, Pennsylvania Whiskey Distributing Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of whiskies and other distilled spirits in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing by the use of the abbreviation "Dist." in its corporate name, as printed on stationery, cartons, labels, contracts, advertising, and all other paper writings used by it in soliciting and obtaining the sale of its 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 alcoholic beverages; or (b) that the said whiskies, gins, and 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 beverages are manufactured by the process of distillation unless and until the said

Order

26 F. T. C.

respondent shall own, operate, or control a place or places where such whiskies, gins, and other alcoholic 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.

2. Representing that its own warehouse receipts or contracts for the sale of liquors by it to its customers are United States Internal Revenue bonded warehouse receipts sufficient to release the bonded spirits covered thereby upon payment by the purchaser of the storage charges, insurance, State and Federal taxes, or in any other manner representing that the purchaser is buying an official warehouse receipt for liquors stored in bonded warehouses when such is not the fact.

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.

Complaint

IN THE MATTER OF

LAWTON V. CROCKER AND HENRY F. CROCKER, TRADING AS THE NATIONAL SURVEY COMPANY, THE NATIONAL SURVEY, AND NATIONAL SURVEY

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

Docket 3103. Complaint, Apr. 10, 1937—Decision, Dec. 23, 1937

Where a firm engaged, as "The National Survey Company" and "The National Survey," in publication of maps and sale and shipment thereof in interstate commerce, in competition with others similarly engaged—

Made use of such designations, in advertising and conspicuously labeling their various maps, as "The National Survey Map of," etc., "The Official National Survey Map of," etc., together with imprint facsimile, in certain cases, of coat of arms of States involved, and together with legend in small type "Compiled from U. S. Government Surveys, Official State Surveys, and original sources," and "Published by The National Survey Co.," etc., notwithstanding fact that while some of said maps were purchased and used by certain State departments and organizations, none of them had been published by, or upon the order of, or with the sanction of, any authority of any Federal, State, or other political entity;

With tendency to deceive and mislead public into erroneous belief that said maps were official, national survey maps and Federal or State Government publications, and unfairly to divert trade to them from competitors similarly engaged in business of distributing and selling maps, and who do not use such false and deceptive labels and designations; to their substantial injury:

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. Joseph Fairbanks, of Washington, D. C., 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 Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., The National Survey, and National Survey, 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 Commis-

Complaint

26 F. T. C.

sion 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, Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., The National Survey, and National Survey, have their principal office and place of business in the city of Chester, State of Vermont. Respondents are now, and for many years last past have been, engaged in the business of publishing, distributing, and selling, in commerce as herein set out, certain advertising folders and maps.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their office and place of business in the State of Vermont to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondents now maintain a constant current of trade in commerce, in said products distributed and sold by them, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling advertising folders and maps 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 their said maps, respondents, in their advertising folders and on their maps transmitted in commerce, represented, designated and labelled their maps as "official." Some of these were as follows:

- Official Map of the World
- Official Map of the United States
- Official Map of New England
- Official Map of New York
- Official Map of Maine

In the course of the operation of said business, and for the purpose of inducing the purchase of their maps, respondents have caused, and now cause, one or another of their several trade names, The National Survey Co., National Survey and The National Survey, to appear on their advertising folders and maps together with such designations and labels, among others, as "Official National Survey Maps," "Official Map of the World," "Official Map of the United States," "Official Map of New England," "Official Map of New York,"

and "Official Map of Maine." On some of said maps respondents also make use of an imprint of a State seal together with statements such as "The Official Map of Maine." Through use of such statements as herein set out, and others similar thereto, respondents represent, directly and by implication, that their maps have been prepared by, or under the direction of, or authorized, adopted or recognized by proper or duly authorized State or Federal officials.

PAR. 4. The representations, designations and labellings made by respondents as above set out, are deceptive, misleading, and untrue, in that none of said maps had been prepared by, or under the direction of, or authorized, adopted, or recognized by any proper or duly authorized officials of any State or of the Federal Government, and no authority or permission had been so granted to respondents to represent, designate or label any of their maps as official.

The designation and labelling of some of their maps by respondents as "Official National Survey Maps" are misleading and deceptive, in that said maps are not prepared or made or authorized to be made from any "Official National Survey," although many maps are in fact so made and issued by various departments of the United States Government. Such representations, designations, and labelling have a tendency to confuse and mislead purchasers and prospective purchasers into the belief that respondents' maps are some of such official maps.

PAR. 5. There are among respondents' competitors many who distribute and sell maps who do not thus or in any way misrepresent their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondents as to their maps, as hereinabove set out, in the course of distributing their products, 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 their maps are official State or Federal Government publications. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' maps with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling maps, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to 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 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 April 10, 1937, issued, and on April 12, 1937 served, its complaint in this proceeding upon respondents, Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., The National Survey, and National Survey, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint and the filing of respondents' answer, a stipulation as to the facts, in lieu of testimony and documentary evidence, which waived further and all other intervening procedure, was entered into between the chief counsel for the Commission and counsel for respondent, and was duly accepted and approved by the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, and stipulation, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Lawton V. Crocker and Henry F. Crocker, are copartners doing business under the firm name and style of "The National Survey Company" and "The National Survey," having their principal place of business at Chester, Vt., and part of their business has been and is the publication and sale of maps and the sale and shipment of some of said maps in interstate commerce in competition with others similarly engaged.

PAR. 2. Of maps so sold and shipped by respondents, during five years last past, maps to the average annual aggregate sales price of \$2,069, were labeled or designated "Official Map" or "Official National Survey Map," followed by the name of the States, State, Territory or region shown by such maps, and for the purpose of promoting the sale of these maps, certain advertising material has been circulated in interstate commerce by the respondents, describing these maps by the aforesaid designations.

PAR. 3. Of such maps so labeled, designated, advertised, and sold:

None of "The Official Map of the World" has been sold during the last four years, and said item has been abandoned;

Of "The Official Map of the United States" the annual sales during the four years last past have not exceeded \$25, and its publication has been discontinued;

Of New England, since 1926, respondents have advertised, published and sold as aforesaid, maps, in various forms and sizes, and variously labeled and designated. Among such designations were:

1. The National Survey Map of New England.
2. The Official National Survey Map of New England.
3. Official National Survey Maps of New England.
4. Official National Survey Map—New England.

Within the latter, which is in book form, appears designations as follows:

(a) "The Official Map of Maine," with an imprint facsimile of the coat of arms of Maine within such large type wording.

(b) Official National Survey "Bookform" Maps of Vermont and New Hampshire.

(c) Official National Survey "Bookform" Maps of Southern New England.

Following such designations which are in large type, appears the following in small type:

Compiled from U. S. Government Surveys, Official State Surveys, and original sources.

and the following:

Published by
The National Survey Co.
Chester, Vermont.
L. V. Crocker, Topographer.

Of the State of Maine, in addition to the one aforementioned, respondents have advertised, published and sold as aforesaid, a certain large map designated in large type "The Official Map of Maine", with an imprint facsimile of the coat of arms of Maine within such wording.

Of the State of New York, respondents have advertised, published and sold as aforesaid, maps labeled and designated in large type—"The Official National Survey Map of New York", with a facsimile imprint of the coat of arms of New York within said lettering.

Following the foregoing designations on said maps of Maine and New York appears the same wording as appears in the various New England maps, as above set out.

Order

26 F. T. C.

PAR. 4. No one of the aforementioned maps were in fact "Official," or "National," or "National Survey" maps, as having been either published by, or upon the order of, or with the sanction of, any authority of any federal, state, or other political entity, although certain of said maps were purchased and used by certain State departments and organizations.

PAR. 5. Certain Federal agencies publish maps using the words "National" and "Survey" as a part of their designation of source.

PAR. 6. The use of the words "Official," "National," and "National Survey" in labels and designations by respondents in the manner hereinbefore described, signifies to some of the public that such maps were in fact issued by, or with the authorization or sanction and approval of, properly constituted national, Federal, or State authorities, as the case might be, and such labeling and designation constitute, and are, false representations that such maps have been issued or sanctioned by such proper authorities, and such advertising, labeling, and designation have the tendency to deceive and mislead the public into the erroneous belief that said maps are official, national survey maps, and Federal or State government publications.

PAR. 7. The foregoing actual and implied misrepresentations and erroneous beliefs induced thereby have a tendency unfairly to divert trade to respondents from individuals, firms, and corporations similarly engaged and competing in the business of distributing and selling maps who do not use such false and deceptive labels and designations, to the substantial injury of said competitors engaged in interstate commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents Lawton V Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co., and The National Survey, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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 answer of respondents and the stipulation as to the facts in lieu of evidence, 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, Lawton V. Crocker and Henry F. Crocker, copartners doing business under the firm names of The National Survey Co. and The National Survey, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of maps in interstate commerce or in the District of Columbia, do forthwith cease and desist, directly or indirectly, either personally or through any corporate or other device, from:

Representing, directly or by implication, by or through use of the word "Official," either alone or in conjunction or connection with the words "National" or "National Survey" printed on their maps, or in any other manner, that said maps are "Official" publications of, or are authorized or sanctioned by federal or state authorities, unless said maps are in fact official publications of Federal or State authorities and have been authorized and sanctioned by such authorities; provided, however, that whenever the respondents print, issue, and distribute maps sanctioned, adopted and used by any organization, they are not hereby prohibited from using the word "official" in conjunction, and connection with the name of such organization actually sanctioning, adopting and authorizing the issuance of said maps when the name of said organization appears in close connection and conjunction with the word "official" in letters of equal prominence.

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

IN THE MATTER OF

ANTHONY J. HILDRETH AND JOSEPH FISCHLER, TRADING AS SANITAS FUNDOSHI COMPANY

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

Docket 2797. Complaint, May 5, 1936—Decision, Dec. 28, 1937

Where a firm engaged, as "Sanitas Fundoshi Company," in selling and distributing combination loin cloth and suspensory to purchasers in other States, in substantial competition with those engaged in sale and distribution of undergarments and other articles designed for the same general uses and purposes; in advertising their said product in various periodicals of nation-wide circulation and in folders mailed to customers and prospective customers in the various States—

Represented that the same was a builder and restorer of health and was scientifically designed to preserve, and would preserve, the strength, vigor, vitality and nervous energy of the wearer and relieve him of fatigue, through such statements, among others, as " * * * of specially treated hand-woven Oriental fabric * * * Conserves vitality," etc., " * * * new, scientific article of clothing, for men * * * American adaptation of a garment centuries old in the Orient," etc., " * * * every thread * * * has been treated by a secret, scientific and sanitary process," etc., " * * * preserves strength and vigor to a marked degree," etc., "HEALTH BUILDER—HEALTH RESTORER," facts being cloth was not specially treated, etc., or unlike other cloths on the market with respect to its functions and properties, other similar articles had same functional characteristics, said article would not restore or correct anatomical conditions, was not a builder or restorer of health, or constructed to fill particular requirements, developed as result of scientific investigation, or scientifically designed to preserve the strength, vigor, etc., of the wearer, and was incapable of so doing, and belonged to a class not required by normal persons; With capacity and tendency to mislead and deceive members of purchasing public into erroneous belief that their said product, thus advertised, offered and sold, would build health and restore lost health, and that it was scientifically designed to and would accomplish the various results claimed therefor, and to induce members of buying public to purchase said article because of such erroneous beliefs thus engendered, and to unfairly divert trade to them from competitors engaged in sale of garments with such features or other articles designed for same general usage and purposes; to the substantial injury of competition in commerce:

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

Before *Mr. Edward M. Averill* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Astor Hogg 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 Anthony J. Hildreth and Joseph Fischler, 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, Anthony J. Hildreth and Joseph Fischler are copartners trading under the name and style of Sanitas Fundoshi Company, with their office and principal place of business located at 7508 Linwood Avenue, Cleveland, Ohio, and are now and have been for more than one year last past engaged in the business of manufacturing from cloth made in and imported from Japan a combination loin cloth and suspensory for the use of men, and in the sale and distribution thereof to members of the purchasing public as herein set out.

PAR. 2. The respondents, being engaged in business, as aforesaid, cause said loin cloth and suspensory, when sold by them, to be transported from their office and principal place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio, and in the District of Columbia. There is now, and has been at all times since the respondents have been in business as aforesaid, a constant current of trade and commerce in said loin cloth and suspensory so distributed and sold by the respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business, are now, and have been at all times mentioned herein, engaged in substantial competition with other partnerships and with corporations, firms, and individuals engaged in commerce among the various States of the United States and in the District of Columbia in the sale and distribution of similar products.

PAR. 4. In the course and conduct of their business, as hereinabove set out, respondents, Anthony J. Hildreth and Joseph Fischler, trading as Sanitas Fundoshi Company, in offering for sale and selling their said products in interstate commerce, cause advertisements thereof to be inserted in various periodicals having a wide circulation

Complaint

26 F. T. C.

in the various States of the United States, and also in advertising folders mailed by respondents to customers and prospective customers in the various States of the United States. In such advertisements and advertising matter, the following statements and representations have been and are made:

A one-piece garment of specially treated hand-woven Oriental fabric * * *. Conserves vitality. Absorbs body moisture * * *.

Absorbs moisture like a blotter. Simple Sanitary Scientific * * *. The SANITAS FUNDOSHI is a new, scientific article of clothing for men * * *. The SANITAS FUNDOSHI is the American adaptation of a garment centuries old in the Orient. It is made from a specially hand-woven fabric, every thread of which has been treated by a secret, scientific and sanitary process which imparts wonderfully soft, absorbent and resilient qualities * * *. It * * * allows free circulation and instantly absorbs perspiration and other body moisture * * *. It preserves strength and vigor to a marked degree. It is a boon to men who are much on their feet. To those inclined to weakness or debility, the Sanitas Fundoshi will prove a definite preserver of vitality and nervous energy. It has been worn in the Orient for centuries. Japanese soldiers, noted for their physical endurance, always wear the FUNDOSHI—not only because it is clean and healthful, but because it conserves energy and relieves fatigue.

The following appears on the outside of the containers in which said product is packed and sold:

HEALTH BUILDER—HEALTH RESTORER.

All of said statements, together with many similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' product. In all of their advertising literature, respondents represent through statements and representations herein set out and other statements of similar import and effect that:

1. Their product is a builder of health and a restorer of health;
2. Their product is a scientific article of clothing for men and was scientifically designed to preserve and had the properties of preserving and did preserve the strength, vigor, vitality, and nervous energy of the wearer and relieved the fatigue of the wearer;
3. Their product contained greater absorbent qualities than other similar products.

In truth and in fact, the product so described and referred to was not, and is not, a health builder or a health restorer, nor is it a scientific article of clothing for men; it was not scientifically designed to preserve, nor has it properties of preserving, and it does not preserve the strength, vigor, vitality or nervous energy of the wearer and it does not relieve the fatigue of the wearer; it contains no greater absorbent or resilient qualities than other similar garments made of cloth.

PAR. 5. Representations of respondents, as hereinabove set out, and other similar representations, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the false and erroneous belief that respondents' said product will build health and restore lost health; that the product is a scientific article of clothing and is scientifically designed to preserve and does preserve the strength, vigor, vitality and nervous energy of the wearer and relieves fatigue; that it contains greater absorbent qualities than other similar products. The said representations of the respondents have had, and do have, the capacity and tendency to induce members of the public to buy and use said product because of the erroneous beliefs engendered as above set out. Further, said representations have the capacity and tendency to unfairly divert trade from competitors of respondent engaged in the sale, in interstate commerce, of similar products, which said competitors truthfully and rightfully advertise and represent their said products, and in no wise misrepresent the properties, functions, uses or effects of their said competing products. As the 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. 6. The acts and practices of respondents are to the injury and prejudice of the public and to 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 May 5, 1936, issued and served its complaint in this proceeding upon respondents Anthony J. Hildreth and Joseph Fischler, individuals trading as Sanitas Fundoshi 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Edward M. Averill and W. W. Sheppard, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Joseph Fischler,

one of the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Anthony J. Hildreth and Joseph Fischler are individuals trading and doing business under the name of Sanitas Fundoshi Company with their office and principal place of business located at 7508 Linwood Avenue, Cleveland, Ohio. For several years last past they have been engaged in advertising, selling, and distributing a combination loin cloth and suspensory. Respondents sell and distribute said article in commerce between and among the various States of the United States and in the District of Columbia. They cause said article when sold to be shipped from their place of business in the State of Ohio to the purchasers thereof located in the various States of the United States other than the State of Ohio. In the conduct of their business they are, and at all times herein mentioned have been, in substantial competition with other partnerships and with persons, firms and corporations engaged in the business of selling and distributing undergarments with suspensory features, and suspensories and other article designed for the same general uses and purposes in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, in offering for sale and selling their said product in interstate commerce, respondents have represented in various periodicals having a nation-wide circulation and in advertising folders mailed by respondents to their customers and prospective customers in the various States of the United States that their product is a builder of health and a restorer of health; that their product is a scientific article of clothing for men and is scientifically designed to preserve and has such properties as to preserve the strength, vigor, vitality, and nervous energy of the wearer and relieve the fatigue of the wearer. Among the representations and claims made by respondents are:

A one-piece garment of specially treated hand-woven Oriental fabric * * *
Conserves vitality, absorbs body moisture * * *

Absorbs moisture like a blotter. Simple Sanitary Scientific * * * The SANITAS FUNDOSHI is a new, scientific article of clothing, for men * * * The SANITAS FUNDOSHI is the American adaptation of a garment centuries old in the Orient. It is made from a specially hand-woven fabric, every thread of which has been treated by a secret, scientific and sanitary process which imparts wonderfully soft, absorbent and resilient qualities * * * It * * * allows free circulation and instantly absorbs perspiration and other body moisture * * * It preserves strength and vigor to a marked degree. It is a boon to men who are much on their feet. To those inclined to weakness or debility, the SANITAS FUNDOSHI will prove a definite preserver of vitality and nervous energy. It has been worn in the Orient for centuries. Japanese soldiers, noted for their physical endurance, always wear the FUNDOSHI—not only because it is clean and healthful, but because it conserves energy and relieves fatigue.

HEALTH BUILDER—HEALTH RESTORER

PAR. 3. The article advertised and sold by respondents is hand-loomed and made from cotton cloth on sewing machines. The edge of the cloth is woven so as to prevent the garment from raveling. Attached to the cloth is a tape, referred to by respondents as a belt, that is used by the wearer in fastening the garment to the body. The garment is wrapped about the body, and the loose end is pulled up through the tape or belt. In that way it acts as a support for the genital organs. The garment can also be used as an undergarment as well as a suspensory.

PAR. 4. The Commission finds that the cloth from which the garment is made is not specially treated with any secret chemical properties and is not unlike other cloths on the market with respect to its functions and properties. There are other athletic supporters that have the same supporting characteristics as respondents' article. The article will not restore or correct anatomical conditions of the human body and such article when worn is not a builder of health or a restorer of health. The article involved is not constructed to fill particular requirements that have been developed as the result of scientific investigations. The article is not scientifically designed to preserve the strength, vigor, vitality, or nervous energy of the wearer, nor to relieve the fatigue of the wearer. Normal persons do not generally have any need for or benefit from the use of suspensories except when engaged in some strenuous sport or when specifically prescribed by a physician to relieve some particular physical ailment. The article is incapable of and it does not preserve the strength, vigor, vitality, or nervous energy of the wearer and it does not relieve the fatigue of the wearer.

PAR. 5. The representations made by respondents, as hereinbefore set out, have the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous belief that respond-

Order

26 F. T. C.

ents' product so advertised, offered for sale and sold, will build health and restore lost health; that the product is scientifically designed to, and does, preserve the strength, vigor, vitality, and nervous energy of the wearer and that by the use of said article the wearer will be relieved of fatigue. Said representations of respondents have the capacity and tendency to induce members of the buying public into buying said article because of such erroneous beliefs engendered as above set forth, and to unfairly divert trade to respondents from competitors engaged in the sale of undergarments with suspensory features, and in the sale of suspensories and other articles designed for the same general uses and purposes in commerce among and between the various States of the United States. Thereby, substantial injury has been done, and is being done, to competition in commerce as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondents, Anthony J. Hildreth and Joseph Fischler, individuals, trading as Sanitas Fundoshi Company, are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 other evidence taken before Edward W. Averill and W. W. Sheppard, examiners of the Federal Trade Commission theretofore duly designated by it, in support of the allegations 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 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 Anthony J. Hildreth and Joseph Fischler, individuals, trading as Sanitas Fundoshi Company, their representatives, agents, servants and employees in connection with the offering for sale, sale and distribution of a combination loin cloth and suspensory in interstate commerce or the District of Columbia, do forthwith cease and desist from:

Order

1. Representing in any manner, directly or indirectly, that said product is a builder of health or a restorer of health.

2. Representing in any manner, that the product is scientifically designed to preserve, or that when worn, it will preserve the strength, vigor, vitality, or nervous energy of the wearer or that it will relieve the fatigue of the wearer.

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

IN THE MATTER OF
RALEIGH CANDY COMPANY

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

Docket 2707. Complaint, Jan. 31, 1936—Decision, Dec. 29, 1937

Where a corporation engaged in manufacture and sale of packages or assortments of candy, so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, or so-called "draw" or "deal" assortments, sale and distribution of which type candy, affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who constitute substantial number of purchasers and consumers of such type of candy, and particularly where prize is such as to them is attractive, and appearance of which "draw" or "deal" assortments in the markets of many manufacturers selling their "straight" merchandise only, in competition with the other, has been followed by marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with so-called "draw" or "deal" candy—

Sold, to wholesalers and jobbers, their aforesaid lottery assortments, including, among others, those composed of—

(a) Large candy doll, together with push card, for sale and distribution to purchasing public under a plan by which person paid for chance amount ranging from 1¢ to 15¢, in accordance with disc selected and number disclosed, and secured, or failed to secure, such doll and anything other than privilege of selection for money paid, in accordance with success of particular purchaser in selecting feminine name corresponding to that concealed under card's large disc;

(b) Number of one-pound boxes of assorted candies and other articles of merchandise, with push card, for sale and distribution to purchasing public under plan, in accordance with which purchaser received, for 5¢ paid, one of said boxes, in accordance with success or failure in securing certain specified numbers, and purchaser found to have obtained, after sale of all chances, number corresponding to that under large seal, received, without further charge, aforesaid other article of merchandise included with such assortment, value of which, as of the one-pound boxes, exceeded 5¢ paid, and under which purchasers not thus qualifying received nothing for their money other than privilege of making such chance selection; and of

(c) Number of boxes of candy, together with punch board, for sale and distribution to purchasing public under plan in accordance with which person received, for penny paid, one of such boxes, in accordance with success or failure in selecting one of certain specified numbers, and purchasers of last punches in each of the sections into which said board was divided received one of such boxes likewise, value of which was in excess of the penny paid, and purchasers failing to make one of aforesaid selections received nothing for their money other than privilege of making punch;

122

Complaint

So assembled and packed that they were designed to be, and were, exposed and used by numerous retail dealer purchasers thereof for distribution to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge and intent that such candy should thus be resold to public by lot or chance by said retail dealers, in violation of public policy, and in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with a means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed that it can be resold to public by lot or chance;

With result that such competitors were put to a competitive disadvantage and retailers, finding that they could dispose of more candy by "draw" or "deal" method, bought from it and others employing similar methods of sale, and trade was thereby diverted from such competitors to it and others using such methods:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

Leahy, Walther, Hecker & Ely, of St. Louis, 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, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Raleigh Candy 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 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 is a corporation, organized under the laws of Missouri with its principal office and place of business in the city of St. Louis, State of Missouri. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of St. Louis, State of Missouri, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent

in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to wholesale and retail dealers, various 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. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a large candy doll baby, together with a device commonly called a push card. The candy doll baby in said assortment is distributed to purchasers in the following manner:

The push card has fifteen partially perforated discs, and when a push is made and the disc separated from the card, a price is disclosed. The prices on said discs run from 1¢ to 15¢, but are not arranged in numerical sequence. The price on said disc is the amount which the customer pays. Above each disc is a girl's name and all the names are different. There is on said card one large partially perforated disc, and when the fifteen pushes on said card have all been punched, this large disc is to be removed and a name is then disclosed. The customer having selected the disc bearing the name corresponding to the name under this large disc, is entitled to receive, and is to be given without further charge, the large candy doll baby. Purchasers who do not qualify by selecting the name shown under the large disc receive nothing for their money other than the privilege of pushing said disc from the card. The amount of money which the customer pays is determined wholly by lot or chance, and the fact as to whether a customer receives the candy doll or receives nothing for his money is also determined wholly by lot or chance.

The respondent manufactures and distributes numerous variations of the above described assortment where the details are different but where the principle involved is similar.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of one-pound boxes of assorted candies and another article of merchandise, together with a device

commonly called a push card or punchboard. The candy contained in said assortment is distributed to purchasers in the following manner:

Sales from said push card or punchboard are 5¢ each, and when a push is made, a number is disclosed. The numbers run from one to the number of pushes or punches there are on the board but are not arranged consecutively. The numbers are effectively concealed from customers and prospective customers until a push or punch has been made and the numbers separated from the card or board. The purchasers obtaining certain specified numbers are entitled to receive, and are to be given without additional cost one of the one-pound boxes of assorted candies. The board also contains a seal, under which a number is concealed. The number under this seal is effectively concealed until all the sales have been made from said board and the seal removed. The purchaser who obtains the number shown under the large seal, is entitled to receive without additional cost the other article of merchandise contained in said assortment. The one-pound boxes of assorted candies and the other article of merchandise are each worth more than 5¢. The purchaser who obtains one of the numbers calling for one of the boxes of candy receives the same, and purchasers not qualifying by receiving one of said numbers, receive nothing for their money other than the privilege of pushing a number from the card or board. The fact as to whether a purchaser receives nothing for his money, or receives one of the one-pound boxes of candy for the price of 5¢, or the other article of merchandise for the price of 5¢ is thus determined wholly by lot or chance.

The respondent manufactures and distributes numerous assortments involving the same principle but differing in details.

(c) Respondent also manufactures and distributes an assortment consisting of a number of boxes of candy, together with a device commonly called a punchboard. The candy in said assortment is distributed in the following manner:

The board has a number of partially perforated holes, and in each hole is inserted a slip of paper bearing a number. The holes on said board are arranged in sections. Sales are 1¢ each, and the board bears a statement informing customers and prospective customers that certain specified numbers entitle the purchaser to one of the boxes of candy, and that the purchaser punching the last punch in each section, is entitled to receive one of the boxes of candy. The numbers on said slips are effectively concealed from purchasers and prospective purchasers until a punch has been made, and the slip separated from the board. Purchasers who do not qualify by ob-

taining one of the numbers specified, or by punching the last punch in one of the sections, receive nothing for their money other than the privilege of making a punch from the board. Those qualifying by receiving one of the numbers specified or by punching the last punch in one of the sections receive one of the boxes of candy. The boxes of candy are each worth more than 1¢. The fact as to whether a purchaser receives one of the boxes of candy or nothing for his money is determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. 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 plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure candy or an article of merchandise of a value in excess of the amount paid.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit; that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

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 31, 1936, issued and served its complaint upon the respondent, Raleigh Candy 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 other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition thereto by John S. Leahy, Herbert E. Barnard, and Leroy R. Krein, attorneys for the respondent, before

Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Raleigh Candy Company is a corporation, organized under the laws of the State of Missouri, with its principal office and place of business located in the city of St. Louis, Mo. Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located in twenty-four States of the United States, and causes its products, when so sold, to be transported from its principal place of business in the city of St. Louis, Mo., to purchasers thereof in the State of Missouri and in twenty-three of the other States of the United States, at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In so carrying on said business, respondent is, and has been, engaged 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. In the course and conduct of its business as described in paragraph 1 above, the respondent has sold in commerce between and among the States of the United States, to wholesale dealers and jobbers, various 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. The said assortments were described by an officer of the respondent, called as a witness on behalf of the Commission, and are shown in the catalog of the respondent which was offered as an exhibit. Certain of said assortments are hereafter described for the purpose of showing the methods used by the respondent, but these descriptions do not include all of the assortments nor the details of the several sales plans which

respondent has been, or is, using in the distribution of candy by lot or chance;

(a) One of said assortments is composed of a large candy doll baby, together with a device commonly called a push card. The candy doll baby in said assortment is distributed to purchasers in the following manner:

The push card has fifteen partially perforated discs, and when a push is made and the disc separated from the card, a price is disclosed. The prices on said discs run from 1¢ to 15¢, but are not arranged in numerical sequence. The price on said disc is the amount which the customer pays. Above each disc is a girl's name and all the names are different. There is on said card one large partially perforated disc, and when the fifteen pushes on said card have all been punched, this large disc is to be removed and a name is then disclosed. The customer having selected the disc bearing the name corresponding to the name under this large disc, is entitled to receive, and is to be given without further charge, the large candy doll baby. Purchasers who do not qualify by selecting the name shown under the large disc receive nothing for their money other than the privilege of pushing said disc from the card. The amount of money which the customer pays is determined wholly by lot or chance, and the fact as to whether a customer receives the candy doll or receives nothing for his money is also determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of one-pound boxes of assorted candies and another article of merchandise, together with a device commonly called a push card or punchboard. The candy contained in said assortment is distributed to purchasers in the following manner:

Sales from said push card or punchboard are 5¢ each, and when a push is made, a number is disclosed. The numbers run from one to the number of pushes or punches there are on the board but are not arranged consecutively. The numbers are effectively concealed from customers and prospective customers until a push or punch has been made and the numbers separated from the card or board. The purchasers obtaining certain specified numbers are entitled to receive, and are to be given without additional cost one of the one-pound boxes of assorted candies. The board also contains a seal, under which a number is concealed. The number under this seal is effectively concealed until all the sales have been made from said board and the seal removed. The purchaser who obtains the number shown under the large seal is entitled to receive, without additional

cost, the other article of merchandise contained in said assortment. The one-pound boxes of assorted candies and the other article of merchandise are each worth more than 5¢. The purchaser who obtains one of the numbers calling for one of the boxes of candy receives the same, and purchasers not qualifying by receiving one of said numbers, receive nothing for their money other than the privilege of pushing a number from the card or board. The fact as to whether a purchaser receives nothing for his money, or receives one of the one-pound boxes of candy for the price of 5¢, or the other article of merchandise for the price of 5¢ is thus determined wholly by lot or chance.

(c) Respondent also manufactures and distributes an assortment consisting of a number of boxes of candy, together with a device commonly called a punchboard. The candy in said assortment is distributed in the following manner:

The board has a number of partially perforated holes, and in each hole is inserted a slip of paper bearing a number. The holes on said board are arranged in sections. Sales are 1¢ each, and the board bears a statement informing customers and prospective customers that certain specified numbers entitled the purchaser to one of the boxes of candy, and that the purchaser punching the last punch in each section, is entitled to receive one of the boxes of candy. The numbers on said slips are effectively concealed from purchasers and prospective purchasers until a punch has been made, and the slip separated from the board. Purchasers who do not qualify by obtaining one of the numbers specified, or by punching the last punch in one of the sections, receive nothing for their money other than the privilege of making a punch from the board. Those qualifying by receiving one of the numbers specified or by punching the last punch in one of the sections receive one of the boxes of candy. The boxes of candy are each worth more than 1¢. The fact as to whether a purchaser receives one of the boxes of candy or nothing for his money is determined wholly by lot or chance.

PAR. 3. Candy assortments involving the lot or chance feature as described in paragraph 2 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without any lot or chance feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" merchandise. These terms will be used hereafter in these findings to distinguish the various types of assortments.

PAR. 4. The wholesale dealers or jobbers, to whom respondent sells its assortments, resell the same to retail dealers. Numerous retail dealers purchase the said assortments from said wholesale dealers

and jobbers, and such retail dealers display said assortments for sale to the public as packed by the respondent, and the candy contained in the majority of said assortments is sold and distributed to the consuming public by means of said push cards or punch boards in the manner hereinbefore described.

PAR. 5. All sales made by respondent to wholesale dealers and jobbers are absolute sales and respondent retains no control over said assortments after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such manner that they are, and have been, used, and may be used, by retail dealers for distribution to the purchasing public by lot or chance without alteration or rearrangement.

In the sale and distribution to wholesale dealers and jobbers of the assortments of candy hereinbefore described, respondent has knowledge that the said candy is to be resold to the purchasing public by retail dealers by lot or chance, and it packs such candy in the way and manner described so that, without alteration, addition, or rearrangement thereof, it will be, and may be resold to the public by lot or chance by said retail dealers. Such packing and distribution is contrary to public policy.

PAR. 6. There are in the United States many manufacturers of candy who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" merchandise in interstate commerce in competition with the "draw" or "deal" candy, and manufacturers of "straight" merchandise have noted a marked decrease in the sales of their products whenever or wherever the "draw" or "deal" assortments have appeared in their market. This decrease in the sale of "straight" merchandise is due to the gambling or lottery feature connected with the "draw" or "deal" candy.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase "draw" or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "draw" or "deal" 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. Particularly is this true where the prize is attractive to children; for instance, where the prize is a candy doll baby or is a child's wagon.

PAR. 7. The sale and distribution of candy by the methods described herein is the sale and distribution of candy by lot or chance, and constitutes a lottery, gaming device or gift enterprise. Com-

Order

26 F. T. C.

petitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds that many competitors regard such sale and distribution as morally bad and as encouraging gambling, especially among children, and as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy and has provided retail merchants with a means of violating the laws of the several States. Because of these reasons, some competitors of respondent refuse to sell candy so packed that it can be resold to the public by lot or chance. These competitors are thereby put to a competitive disadvantage. The retailers, finding that they can dispose of more candy by the "draw" or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted from said competitors to respondent and others using similar methods.

CONCLUSION

The aforesaid acts and practices of the respondent, Raleigh Candy Company, 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, testimony and other evidence, taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by P. C. Kolinski, counsel for the Commission, and John S. Leahy, 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, Raleigh Candy Company, a corporation, its officers, agents, representatives, and employees, in the offering for sale, sale and distribution of candy and candy products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Order

1. Selling and distributing 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 dealers 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 contained in the said assortment to the public;

3. Supplying to or placing in the hands of dealers assortments of candy together with a device commonly called a push card, or a device commonly called a punchboard, for use or which may be used in distributing or selling the said candy to the public at retail;

4. Furnishing to dealers a device commonly called a push card, or a device commonly called a punchboard, either with packages or assortments of candy or separately, which push card or punchboard is to be used or may be used in distributing or selling said candy to the public.

It is further ordered, That the respondent, Raleigh Candy Company shall, within 30 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
JOHNSON & JOHNSON

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

Docket 3029. Complaint, Jan. 8, 1937—Decision, Dec. 29, 1937

Where a corporation engaged in manufacture of absorbent cotton, gauze, bandage, and other first-aid and surgical-dressing products, and in sale and distribution thereof to purchasers in other States, in substantial competition with those engaged in manufacture, sale, and distribution of similar products in commerce among the various States and in the District of Columbia, and including manufacturers, sellers, and distributors of like and similar products, who truthfully advertise and represent nature, merit, therapeutic, and remedial value thereof, and those who do not falsely advertise and otherwise represent that their products have merits and values not possessed by competitive goods or articles not so well-known or extensively advertised, and do not unwarrantedly disparage products of competitors; in advertising certain of its said products in newspapers, magazines, and other publications circulated among the various States and in aforesaid District—

Unfairly disparaged competitors' products through statements inferring that, because such competitors did not extensively advertise their respective goods and products and they were not widely known, such goods subjected users thereof to dangers of infection, and were not safe and in sanitary condition when opened for use, through such statements as " * * * this young mother is wrapping around her son's wrist a bandage that may invite infection. It is a 'first-aid' dressing of unknown make which can betray the trust imposed in it," and that while probably "sterilized at some period," as in the "original bleaching process," "in subsequent cutting and packing, it may have been handled by dirty hands * * * hands that couldn't help but rob this dressing of its cleanliness—and safety," and accompanying depiction of crutches, and under caption "Monuments to a Misplaced Trust," among others, "You just can't take chances with germs of infection," "The 'sterilized' dressings that you use must be sterilized in fact as well as in name," and "You can't afford to gamble with any 'first-aid' product that is merely marked 'sterilized,'" and " * * * some 'first-aid' dressings of unknown make, which may be sterilized only in an early process of manufacture and subsequently be exposed to germ-laden dirt," etc., facts being there is no necessary relationship between antiseptic properties or safety of any of products in question and fact that manufacturer is known or unknown;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of first-aid and surgical-dressing goods or articles into purchase of its said products in erroneous belief that its aforesaid representations were true, and with result that a number of the consuming public, as a direct consequence of such mistaken and erroneous beliefs, purchased substantial volume thereof, and trade was unfairly diverted to it from those

Complaint

likewise engaged in manufacture, sale and distribution of similar goods and articles; to the substantial injury of competition in commerce:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Kenneth Perry, of New Brunswick, 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 Johnson & Johnson, a corporation, has been and now 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, Johnson & Johnson, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located in the city of New Brunswick, in the State of New Jersey. It is now, and has been for more than one year last past, engaged in the business of manufacturing, selling and distributing absorbent cotton, gauze, bandage, and other first-aid and surgical-dressing products. It ships said products, or causes them to be shipped, when sold, to purchasers located at various points in States of the United States other than New Jersey. It maintains, and has at all times maintained, a constant current of trade and commerce in the products distributed and sold by it among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent has been, at all times referred to herein, in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the manufacture, sale, and distribution of similar products in commerce 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, as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain of its products to be inserted in newspapers and magazines, and other publications having a circulation between and among the various

States of the United States and in the District of Columbia. In said ways and by said means, the respondent has caused and now causes its said products to be advertised and represented as follows: Following the picture of a young woman binding the wrist of a child are the statements:

In all innocence, this young mother is wrapping around her son's wrist a bandage that may invite infection.

It is a "first-aid" dressing of unknown make which can betray the trust imposed in it.

True, it probably was sterilized at some period of its manufacture * * * as in the original bleaching process.

But in subsequent cutting and packing, it may have been handled by dirty hands * * * hands that couldn't help but rob this dressing of its cleanliness—and safety.

Following the picture of a pair of crutches and as part of an advertisement entitled "Monuments to a Misplaced Trust" appear the following representations:

You just can't take chances with germs of infection.

No matter how small the cut, the greatest care must be exercised in dressing the wound—or something serious * * * tragic may happen.

The "sterilized" dressings that you use must be sterilized in fact as well as in name * * *.

You can't afford to gamble with any "first-aid" product that is merely marked "sterilized."

* * * some "first-aid" dressings of unknown make, which may be sterilized only in an early process of manufacture and subsequently be exposed to germ-laden dirt * * *.

PAR. 3. In truth and in fact, the statements and representations thus made by respondent as set out in paragraph 2 hereof, and others similar thereto, are misleading and deceptive in that they represent, directly or by inuendo, that users of first-aid and surgical-dressing products of unknown make, or which are manufactured by other than well-known and extensively advertised organizations, run grave risk of infecting wounds or cuts upon which such dressings are used. Further, respondent's said statements and representations constitute an unwarranted disparagement of the products of those competitors who, although they do not advertise their products extensively and may not be as well known, manufacture first-aid and surgical-dressing products that are equal in antiseptic properties and are as safe for use and in as sanitary condition when opened for use as are the products manufactured and sold by the respondent.

PAR. 4. There are, among the competitors of the respondent in commerce, as herein set out, manufacturers, sellers, and distributors of like and similar products who truthfully advertise and represent the nature, merit, therapeutic and remedial value of their respective

products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that their products have merits and values not possessed by competing products that are not so well known or as extensively advertised, when such is not the case, and who do not unwarrantedly disparage the products of competitors.

PAR. 5. The above-alleged acts and practices of respondent have and have had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of first-aid and surgical-dressing products into the purchase of respondent's products in the erroneous beliefs that respondent's representations, as aforesaid, are true. Further, as a direct consequence of the mistaken and erroneous beliefs aforesaid, a number of the consuming public purchase and have purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to respondent from corporations, firms, and individuals likewise engaged in the business of manufacturing, selling and distributing similar products, and thereby substantial injury has been done, 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 aforesaid methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged, and said methods, 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.

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 January 1937, issued and served its complaint in this proceeding upon respondent, Johnson & Johnson, 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 and amended 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, by which it was agreed that, subject to the approval of the Commission, the statement

of facts so agreed upon should 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 by which stipulation it was further agreed that the Commission might proceed upon said statement of facts to issue 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 enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission and approved by it. Thereafter the proceeding came on for final hearing before the Commission on said complaint, the answer thereto and the statement of facts as agreed upon in lieu of testimony, briefs and argument 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. Respondent, Johnson & Johnson, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located in the city of New Brunswick, in the State of New Jersey. It is now, and has been for more than one year last past, engaged in the business of manufacturing, selling, and distributing absorbent cotton, gauze, bandage, and other first-aid and surgical-dressing products. It ships said products, or causes them to be shipped, when sold, to purchasers located at various points in States of the United States other than New Jersey. It maintains, and has at all times maintained, a constant current of trade and commerce in the products distributed and sold by it among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent has been, at all times referred to herein, in substantial competition with other corporations, firms, partnerships and individuals likewise engaged in the manufacture, sale, and distribution of similar products in commerce 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, as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain of its products to be inserted in newspapers and magazines, and

other publications having a circulation between and among the various States of the United States and in the District of Columbia. In said ways and by said means, the respondent has caused its said products to be advertised and represented as follows: Following the picture of a young woman binding the wrist of a child are the statements:

In all innocence, this young mother is wrapping around her son's wrist a bandage that may invite infection.

It is a "first-aid" dressing of unknown make which can betray the trust imposed in it.

True, it probably was sterilized at some period of its manufacture * * * as in the original bleaching process.

But in subsequent cutting and packing, it may have been handled by dirty hands * * * hands that couldn't help but rob this dressing of its cleanliness—and safety.

Following the picture of a pair of crutches and as part of an advertisement entitled "Monuments to a Misplaced Trust" appear the following representations:

You just can't take chances with germs of infection.

No matter how small the cut, the greatest care must be exercised in dressing the wound—or something serious * * * tragic may happen.

The "sterilized" dressings that you use must be sterilized in fact as well as in name * * *.

You can't afford to gamble with any "first-aid" product that is merely marked "sterilized."

* * * some "first-aid" dressings of unknown make, which may be sterilized only in an early process of manufacture and subsequently be exposed to germ-laden dirt * * *.

Respondent's advertisements as above set out were discontinued in or about the month of February, 1937.

PAR. 3. The statements and representations made by respondent as set out in paragraph 2 hereof, and others similar thereto have a capacity and tendency to deceive and mislead the public in that they represent indirectly, that users of first-aid and surgical products of unknown make, or those manufactured by other than well-known manufacturers, run grave risk of infecting wounds or cuts upon which such dressings are used. Further, respondent's said statements and representations have the capacity and tendency to disparage the products of those competitors, if any, who, although their products may not be well-known, manufacture first aid and surgical dressing products that are safe for use and sanitary when opened for use. There is no necessary relationship between the antiseptic properties or safety of any of the products in question and the fact that the manufacturer is known or unknown.

Order

26 F. T. C.

PAR. 4. There are, among the competitors of the respondent in commerce, as herein set out, manufacturers, sellers, and distributors of like and similar products who truthfully advertise and represent the nature, merit, therapeutic and remedial value of their respective products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that their products have merits and values not possessed by competing products that are not so well known or as extensively advertised, when such is not the case, and who do not unwarrantedly disparage the products of competitors.

PAR. 5. The above-alleged acts and practices of respondent have had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of first-aid and surgical-dressing products into the purchase of respondent's products in the erroneous beliefs that respondent's representations, as aforesaid, are true. Further, as a direct consequence of the mistaken and erroneous beliefs aforesaid, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to respondent from corporations, firms, and individuals likewise engaged in the business of manufacturing, selling, and distributing similar products, and thereby substantial injury has been 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 aforesaid acts and practices of respondent, Johnson & Johnson, 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer and amended answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, Johnson & Johnson, a corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence

134

Order

or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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, Johnson & Johnson, a corporation, its representatives, agents, and employees, in connection with the advertising, offering for sale, sale, distribution and manufacture of absorbent cotton, gauze, bandages and other first-aid and surgical dressing products in interstate commerce or in the District of Columbia, do forthwith cease and desist:

From unfairly disparaging competitors or their products through use of statements which, directly or indirectly, infer that because said competitors do not extensively advertise their respective products and are not widely known such competitive products subject the users thereof to the dangers of infection and are not safe and in a sanitary condition when opened for use, or through any other such means or device or in any similar manner.

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
BUILDING MATERIAL DEALERS ALLIANCE, 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 2191. Complaint, Oct. 18, 1935¹—Decision, Dec. 30, 1937

Where a trade association which included in its membership over 150 dealers in building materials and builders' supplies in the Cleveland-Pittsburgh Trade Area, and organized local or sectional associations of such dealers; and certain local or sectional organizations of such dealers, affiliated with said trade association as members or through common membership or common officers and representation on its council, and active cooperators with it in furthering their common basic object and purpose or program of controlling and confining retail distribution of building materials and builders' supplies exclusively through "recognized" dealers as established by them, and preventing direct sale of such materials to consumers, non-recognized dealers, vendors, contractors, and State Governments and other political sub-divisions, and of requiring all such purchasers to buy their materials and supplies through recognized dealer channels affording a commission or profit to recognized dealers, and with further objectives of (1) limiting distribution of such materials to carload quantities by railroad only, with participation in pool car shipments denied to other than recognized dealers, (2) preventing manufacturers of cement blocks from purchasing their raw materials direct from manufacturers and producers, (3) requiring sale and distribution of all cement requirements for all buildings and private construction, and for highway, bridge, and culvert maintenance, and for cities, counties, and other political sub-divisions, to be made through the medium of the members and recognized dealers, and at prices affording them a profit, (4) facilitating price fixing among such dealers in their respective communities, and (5) eliminating brokers in distribution of such materials and supplies; and the officers, counsellors and members of such associations and organizations: and—

Where a national federation which included 41 federated local and sectional associations of dealers in such materials and supplies in '32 States, and which was formed to succeed to, and apply on a national scale and under same leadership, principles, and programs of aforesaid trade associations; and certain local or sectional affiliated or member organizations of said national federation, acting in cooperation with one another and with it and the active officers thereof, as the case might be; and officers, etc., of said various organizations.

In concertedly pursuing their common objectives and purposes, as above indicated, and as the case might be, and representing, in the aggregate, predominant interests in the fields and sections concerned—

(a) Prepared, published, and circulated among manufacturers and producers of building materials and builders' supplies, lists, or directories containing names of recognized dealers, with intent and effect of indicating that per-

¹ Amended and supplemental.

Syllabus

- sons or concerns thus specified were entitled to buy direct from such manufacturers and producers, and that others were not thus entitled;
- (b) Solicited, accepted, and acted upon reports from their various officers or members concerning the arrival, delivery, or origin of shipments made to persons or concerns not recognized by them as entitled to buy direct from manufacturers or producers, for the purpose of preventing further dealings between such buyers and former, and made use of boycott and threats thereof to persuade, induce or compel manufacturers and producers to refrain from selling materials and supplies concerned to so-called "irregular" dealers or others, or to refrain from so selling, except on unfairly discriminatory or prohibitive terms and conditions fixed by them;
 - (c) Made and circulated among manufacturers and producers reports concerning status, equipment, and business methods of dealer-competitors to induce former not to sell such competitors, and stated or intimated to former that so-called "regular" or recognized dealers would withhold or withdraw their patronage if manufacturers and producers sold them, and cooperated with other dealer organizations and manufacturers and producers to confine sale and distribution of materials and supplies involved to so-called regular channels, and prevent sale and distribution otherwise, and intimidated representatives or agents of manufacturers and producers from having or continuing business relations with buyers or prospective buyers not recognized by them as entitled to buy direct;
 - (d) Prepared, published, and circulated among the members, lists, bulletins, extracts of minutes, etc., conveying information to them concerning sales or prospective sales by manufacturers and producers to irregular or non-recognized dealers or prospective buyers, for the purpose of having such members withdraw or withhold their patronage from manufacturers and producers concerned;
 - (e) Took concerted and cooperative action to prevent manufacturers and producers of materials and supplies involved from selling freely to consumers, contractors, United States Government, State governments or political sub-divisions thereof, or other irregular dealers or retailers, and to prevent such consumers, contractors, United States Government, etc., from purchasing freely from manufacturers and producers involved;
 - (f) Fixed and established uniform prices at which members and others should sell their materials and supplies in particular communities; and
 - (g) Held meetings of their officers, directors, counselors, and members for discussion and interchange of information and adoption of plans and measures for executing and carrying out programs and policies as aforesaid indicated;

With results that—

- (a) Interstate commerce in sale and distribution of materials and supplies involved was restrained by elimination or attempted elimination therefrom of so-called irregular dealers and manufacturers and producers selling thereto, and by restriction or attempted restriction of said commerce to such manufacturers, producers and dealers as would and did abide by and support aforesaid program and plan, and there was tendency otherwise to restrain and obstruct natural flow of commerce in channels of trade;
- (b) Competition in sale and distribution of such materials and supplies was substantially lessened, hindered, and suppressed in territories served by members of organizations and associations involved;

- (c) Manufacturers and producers of materials and supplies involved in the various States, who sold and distributed their products in markets in which dealers concerned had their places of business quite generally confined such sale and distribution to recognized dealers;
- (d) Members withdrew and withheld their patronage from manufacturers and producers reported and published as selling through so-called irregular channels and not through recognized dealers;
- (e) Manufacturers and producers frequently refused to sell and discontinued selling to those not on membership lists of aforesaid organizations, etc., or reported to them, as aforesaid, as not entitled to buy direct, and members' competitors in retail sale and distribution of materials and supplies involved frequently were unable to obtain interstate shipments of their requirements because not recognized;
- (f) Manufacturers and producers were injured in their business by restriction of demand for their products and of freedom to sell same direct, by confining their sales to lists of dealers published and distributed by aforesaid organizations, etc., and would not sell to many to whom they wished to sell and considered as dealers, nor direct to consumers, contractors, vendors, Government and political sub-divisions, but limited their sales through "recognized dealer distribution";
- (g) Competition was further substantially interfered with and lessened by activities of such organizations, etc., in preventing dealer competitors from obtaining from manufacturers and producers small quantities of supplies for transportation by truck; and
- (h) Costs to consuming public were increased by issuance and observance of price lists by aforesaid associations and organizations, etc., in certain communities, and by their policy of exclusive dealer distribution, through thereby denying consuming public advantages in price which it otherwise would have obtained from natural flow of commerce under conditions of free competition:

Held, That such practices constituted combination and conspiracy to engage in and further unfair methods of competition in and affecting interstate commerce, within intent and meaning of Section 5.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Walter B. Wooden and *Mr. Daniel J. Murphy* for the Commission.

Mr. Lawrence I. MacQueen, of Pittsburgh, Pa., for building Material Dealers Alliance, Pittsburgh Builders Supply Club, Building Material Institute, Western Pennsylvania Builders Supply Alliance, Allied Construction Industries of Cleveland, Ohio, Inc., National Federation of Builders Supply Associations, and various officers, councillors, and members of said organizations and associations, and also as below set forth.

Mr. Webster C. Tall and *Hoen & Hughes*, of Baltimore, Md., for Lime & Cement Exchange of Baltimore City, Maryland Builders Supply Association, and various officers and members thereof, and *M. B. Segall & Sons, Inc.*

Mr. M. D. Wedner, of Pittsburgh, Pa., for *Lawrence I. MacQueen*.

Complaint

Mr. Charles A. Wolfe, of Philadelphia, Pa., for Joseph M. Pusey.

Mr. John H. Kapp, of Cleveland, Ohio, with *Mr. MacQueen*, for Cleveland Builders Supply Co.

Simon & Simon, of Cleveland, Ohio, with *Mr. MacQueen*, for E. E. Elias Co.

Henninger & Ehrman, of Butler, Pa., with *Mr. MacQueen*, for F. A. W. Green and Shufflin & Green.

Catharine Pauline Reed Templeton, Executrix, Estate of C. C. Reed, of Houston, Pa., with *Mr. MacQueen*, for C. C. Reed.

Mr. Edward A. Ferrari, of Baltimore, Md., with *Mr. Webster C. Tall* and *Hoen & Hughes*, for Geo. Sack & Sons, Inc.

Brewster & Steiwer, of Washington, D. C., for Alabama Lumber & Building Material Ass'n, Carolina Retail Lumber & Building Supply Dealers Ass'n, Mississippi Retail Lumber Dealers Ass'n, Building Material Men's Ass'n of Westchester County, L. R. Stewart, Harris Mitchell, J. A. Hagan, Colman Lumber Co., James S. Gibson, Paul J. Haight & Co., Joseph S. Keating, J. B. Reed & Son, Van Voorhis Bros., Inc., Anthony L. Wathley, Willson & Eaton Co., Inc.; and, along with *Mr. MacQueen*, for Virginia Lumber & Building Supply Dealers Ass'n, Inc., Florida Lumber & Millwork Ass'n, Kentucky Builders Supply Ass'n, and West Virginia Lumber & Builders Supply Ass'n.

Miller, Gorham, Wescott & Adams, of Chicago, Ill., for Illinois Lumber & Material Dealers Ass'n, Inc.

Dey, Hampson & Nelson, of Portland, Ore., for Building Supply Dealers Ass'n of Oregon.

Mr. Samuel Saffron, of Passaic, N. J., for Campbell, Morrell & Co.

Snyder, Seagrave, Roudeshush & Adrion, of Cleveland, Ohio, for Turner Lumber & Supply Co.

Mr. Herman A. Harper, of Coraopolis, Pa., for George W. Blank Supply Co.

Mr. Robert M. Gilkey, of Greenville, Pa., for Greenville Coal & Ice Co.

Hanna & Morton, of Los Angeles, Calif., for A. E. Crowell.

Fitzsimmons & Keefe, of Albany, N. Y., for Albany Builders Supply Co.

Raines & Raines, of Rochester, N. Y., for Whitmore, Rauber & Vicinus.

Sturman & Rothblatt, of Liberty, N. Y., for Gerow & Francisco.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 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 said respondents hereinabove designated 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent Building Material Dealers Alliance, also known as Building Material Dealers Alliance of the Cleveland-Pittsburgh Trade Area, is an unincorporated trade organization or association of members, respondents herein, which membership is composed (a) of various dealers in and vendors of building materials and builders' supplies having their principal places of business within, or doing business in, an area embracing the States of Pennsylvania, West Virginia, and Ohio and the States or counties adjacent or contiguous thereto, which area is known in such trade and industry, and hereinafter referred to, as The Cleveland-Pittsburgh trade area; and (b) of organized local associations of such dealers and vendors. Said dealers and vendors, members of said Alliance and of said organized local associations are persons, partnerships, and corporations who, as such dealers and vendors, are engaged in the business of buying, selling, and distributing, to contractors, builders, dealers, consumers, and other purchasers, building materials and builders' supplies, which embrace such materials and supplies as cement, brick, tile, clay products, sewer pipe, plaster, sand, gravel, stone, lime, mortar, and products thereof, lumber, lath, roofing, and other builders' supplies and building materials used in the building and construction industry. Said respondent Alliance was organized under articles of organization in the year 1931. Its affairs are and have been managed and executed by executive officers including a chairman, a vice chairman, and a secretary-treasurer, and by an executive board or committee designated by said Alliance as its Council or Board of Councillors, also known as the Board of Trustees and hereinafter referred to as the Council. Such council, board or committee functions as or in the nature of a board of directors of said organization, meeting from time to time for the transaction of business of the Alliance. The several members of said Council are known in said respondent organization as councillors, and they are delegated or elected to membership in said Council as representatives of the members of said Alliance and of various groups or subdivisions of such members. For the more effective operation of the Alliance, the membership thereof is divided or organized into local associations,

groups, divisions, or districts, each constituting a branch or subdivision of said Alliance. The membership of each such subdivision or branch is composed principally of dealers in building materials and builders' supplies who are members of said Alliance and do business in Cleveland-Pittsburgh trade area. The principal or head offices of said Alliance are and have been maintained at the office of the chairman in the city of Youngstown, Ohio, and at the office of the secretary-treasurer in the city of Pittsburgh, Pa. Respondents E. J. Holway and Lawrence I. MacQueen are such chairman and secretary-treasurer, respectively, and are also members of said Council; and they have actively engaged in organizing said Alliance, in promoting and managing its affairs, in organizing affiliated associations or groups of building materials and builders' supplies dealers and in securing their support and active cooperation in carrying out or enforcing the purposes, policies and aims of said Alliance and its members. Certain persons who are members of said Council and as such have served as councillors of said Alliance, and the respective companies or organizations by or with which such persons are employed or connected, which companies and organizations are members of said Alliance, are as follows:

Name of Councillor	Name of Concern With Which Respective Councillor Is Connected as Officer or Employee, Such Concerns Being Members of Said Alliance
G. H. Lanz.....	Geo. H. Lanz & Sons, Pittsburgh, Pa.
E. J. Holway.....	Youngstown Ice Co., Youngstown, Ohio.
Lawrence I. MacQueen.....	Pittsburgh Builders Supply Club, Pittsburgh, Pa.
J. A. Thomas.....	W. E. Wright Co., Akron, Ohio.
Wm. R. Jones.....	Alliance Builders Supply Co., Alliance, Ohio.
M. C. Robinson.....	M. C. Robinson & Co., Ashtabula, Ohio.
I. W. Royer.....	Ohio Builders & Milling, Inc., Canton, Ohio.
Howard Tolerton.....	The Tolerton Company, Alliance, Ohio.
C. R. Boyd.....	H. C. Boyd Lumber Co., Coraopolis, Pa.
E. C. Holloway.....	The Kensington Supply Co., Kensington, Ohio.
Chas. H. McAlister.....	Allied Construction Industries of Cleveland, Ohio, Inc., Cleveland, Ohio.
D. O. Fonda.....	Collingwood Shale Brick & Supply Co., Cleveland, Ohio.
Harry Dubroy.....	Lakeshore Builders Supply Co., Cleveland, Ohio.
H. C. McCoy.....	Inter-City Coal & Supply Co., Elyria, Ohio.
Jas. N. Thayer.....	O. C. Thayer & Son, Erie, Pa.
E. B. Bye.....	Bye & Bye, Lisbon, Ohio.
H. W. Pattison.....	Penn Coal & Supply Co., New Castle, Pa.
Ralph Wright.....	D. W. Challis & Sons, Inc., Sewickley, Pa.
B. N. Hamilton.....	Hamilton & Meigs, Warren, Ohio.
Joseph Alcorn.....	Alcorn-Hahn Supply Co., Youngstown, Ohio.
E. H. Schory.....	Hursh & Schory Coal Co., Canton, Ohio.

The above named councillors and members of said Alliance do not constitute the entire membership of said council or Alliance but are representative members thereof, respectively.

PAR. 2. Respondent Pittsburgh Builders Supply Club is an association of members organized and existing as a corporation under the laws of the State of Pennsylvania, having its headquarters or executive office in the city of Pittsburgh in said State. Said members are certain persons, partnerships, and corporations doing business in the trade area in and about Pittsburgh, Pa., and embracing the near-by sections of the States of Ohio, West Virginia, and Pennsylvania. Said corporation is organized, without shares of capital or capital stock, as an instrument for promoting the business interest of its members. The business of said members is the purchase, sale and distribution of building materials and builders' supplies including such items of building materials and builders' supplies mentioned in paragraph 1 hereof. Said respondent Pittsburgh Builders Supply Club constitutes a member and a branch or subdivision of respondent Building Material Dealers Alliance, and said Club and Alliance and their members actively cooperate with each other in carrying out the program, purposes, policies and aims of respondent organizations and associations. Respondent Lawrence I. MacQueen is the secretary and manager of said Pittsburgh Builders Supply Club; respondent George Lanz is president and respondent Elliott Keller is vice-president of said Club. Said officers are also representatives of said Club on the Council of respondent Building Material Dealers Alliance and they are and have been actively engaged in organizing said Club, managing its affairs, securing its support of, and cooperation with said Building Material Dealers Alliance and the program, policies, purposes and aims thereof. The members of said Pittsburgh Builders Supply Club are also members of said Building Material Dealers Alliance. The following persons and concerns are building material and builders' supplies dealers who are representative members of said Club and are also members of said Alliance, but do not constitute the entire membership of said Club or Alliance.

Nathan Bilder Co., Pittsburgh, Pa.
Wm. H. Brant Sons, West View, Pa.
Frank Bryan, McKees Rocks, Pa.
H. G. Dettling Co., Pittsburgh, Pa.
Duncan & Porter Co., Pittsburgh, Pa.
Heppenstall & Marquis, Pittsburgh, Pa.
Hillside Stone & Supply Co., Aspinwall, Pa.
Houston-Starr Co., Pittsburgh, Pa.
Iron City Sand & Gravel Co., Pittsburgh, Pa.
Keller Brothers, Pittsburgh, Pa.

D. J. Kennedy Co., Pittsburgh, Pa.
 Knox Strouss & Bragdon Co., Pittsburgh, Pa.
 Geo. Lanz & Sons, Pittsburgh, Pa.
 W. T. Leggett Co., Pittsburgh, Pa.
 McCrady-Rodgers Co., Pittsburgh, Pa.
 Morrison Bros., Emsworth, Pa.
 Pittsburgh Plaster & Supply Co., McKees Rocks, Pa.
 Ed. Vero Company, Millvale, Pa.

PAR. 3. Said respondent Building Material Institute formerly named Building Material Men's Welfare Association, is an unincorporated trade association or organization of certain persons, partnerships, and corporations engaged in business as dealers or vendors of building materials or builders' supplies, at, or in the trade area surrounding, Cleveland, Ohio. The headquarters or principal office of said Building Material Institute are maintained in the Builders Exchange Building in the city of Cleveland, Ohio. Respondent George W. Dennison (an officer or employee of the Ohio Clay Company, Cleveland, Ohio) is president and respondent B. E. Reid is secretary of said Institute. The said Dennison and Reid are and have been, individually and as such executive officers, actively engaged in promoting and executing the affairs and purposes of said Institute. Said Institute is affiliated with and is one of the members and subdivisions of said respondent Building Material Dealers Alliance, and is and has been actively engaged in carrying out the program, purposes, policies and aims of the said Building Material Dealers Alliance. Respondents Lawrence I. MacQueen, E. J. Holway, and Chas. H. McAlister have actively engaged in promoting the organization of said Institute and in securing its affiliation with said Building Material Dealers Alliance and its active support and cooperation in carrying out the program, purposes, policies and aims thereof. The members of said Institute are also members of said Building Material Dealers Alliance and are represented on the Council of said Alliance by one or more councillors or representatives elected or appointed by or for the members of said Institute. Respondents Don Fonda and H. A. DuBroy are and have been representing said Institute as councillors on the Council of said Building Material Dealers Alliance. The following concerns, among others, are and have been such members of said Institute and also of said Alliance:

City Material & Coal, Inc., Cleveland, Ohio.
 The Tom George Co., Cleveland, Ohio.
 St. Clair Coal & Supply Co., Cleveland, Ohio.
 Vanis Builders Supply & Lbr. Co., Cleveland, Ohio.
 Collingwood Shale B & S Co., Cleveland, Ohio.
 Geist Kemper Material Co., Cleveland, Ohio.
 Ideal Builders Supply & Fuel Co., Cleveland, Ohio.

Complaint

26 F. T. C.

Lake Shore Builders Supply Company, Cleveland, Ohio.
 Medal Brick & Tile, Cleveland, Ohio.
 Ohio Building Material Co., Cleveland, Ohio.
 Ohio Clay Co., Cleveland, Ohio.
 Bagley Road Lumber Co., Berea, Ohio.
 Quincy Coal & Supply Co., Cleveland, Ohio.
 Geo. D. Barriball Co., Cleveland, Ohio.
 Zone Coal & Supply Co., Cleveland, Ohio.
 Bennett Concrete Stone Co., Cleveland, Ohio.
 The Clinton Co., Cleveland, Ohio.
 Pompei Coal & Supply Co., Cleveland, Ohio.
 Mayfield Builders Supply Co., Cleveland, Ohio.
 Cleveland Builders Supply Co., Cleveland, Ohio.
 Builders Supply & Fuel Co., Cleveland, Ohio.
 City Material & Coal, Inc., Cleveland, Ohio.
 E. E. Elias Company, Cleveland, Ohio.
 Herot Builders Supply Co., Cleveland, Ohio.
 Neff Coal & Supply Co., Cleveland, Ohio.
 Chas. E. Phipps Company, Cleveland, Ohio.
 Quincy Cement Block & Coal Co., Cleveland, Ohio.
 Scheuer Bros. Builders Supply Co., Cleveland, Ohio.
 Vanis Builders Supply Co., Cleveland, Ohio.

PAR. 4. Respondent Western Pennsylvania Building Material Dealers Alliance, also named Western Pennsylvania Builders Supply Alliance of Recognized Dealers and hereinafter referred to as the Western Pennsylvania association, is an unincorporated association or organization having its headquarters or principal office in the city of Pittsburgh, State of Pennsylvania, and a membership composed of certain persons, partnerships, and corporations engaged in the business of buying, selling, and distributing building materials and builders' supplies of all kinds, as specified in paragraph 1 hereof, which members are generally known as building materials and builders' supplies dealers. The said members of such association are concerns which operate or do business in the western half of Pennsylvania and in trade area adjacent thereto which territory is part of the aforesaid Cleveland-Pittsburgh trade area. Said Western Pennsylvania association has executive officers and a Board of Councillors representative of the membership of said association and functioning as a board of directors or executive committee of such association. Such officers and board manage and execute the affairs of said association. The following persons are and have been such officers and councillors of the association.

S. D. Ritchey, Ambridge, Pa., president and councillor;
 W. H. Shafer, Kittanning, Pa., vice-president and councillor;
 W. R. McFarland, Greensburg, Pa., treasurer and councillor;
 Lawrence I. MacQueen, Pittsburgh, Pa., executive secretary and councillor;
 F. A. W. Green, Butler, Pa., councillor;

Complaint

Richard Fullington, Clearfield, Pa., councillor;
 J. V. Scowden, Meadville, Pa., councillor;
 B. W. Schafer, Erie, Pa., councillor;
 O. C. Thayer, Erie, Pa., councillor;
 O. C. Cluss, Uniontown, Pa., councillor;
 W. W. Campbell, New Wilmington, Pa., councillor;
 John T. White, Bradford, Pa., councillor;
 Albert Ball, McKeesport, Pa., councillor;
 C. H. Wilson, Grove City, Pa., councillor;
 Eli Hatfield, West Brownsville, Pa., councillor;
 R. H. Adams, Cheswick, Pa., councillor;
 Ralph Wright, Sewickley, Pa., councillor;
 Geo. H. Lanz, Pittsburgh, Pa., councillor;
 C. H. Russell, Washington, Pa., councillor;
 C. C. Reed, Houston, Pa., councillor;
 F. H. Hudson, Greensburg, Pa., councillor.

Said Western Pennsylvania association is affiliated with and is one of the members and subdivisions of respondents Building Material Dealers Alliance, and the National Federation of Builders Supply Associations, and it has been and is actively engaged in cooperating with said Alliance and Federation and in carrying out the purposes, program, policies and aims of the said Building Material Dealers Alliance, and said National Federation of Builders Supply Associations. The members of said Western Pennsylvania association are also members of respondent Building Material Dealers Alliance. Respondent Lawrence I. MacQueen, individually and as such executive secretary and councillor of the Western Pennsylvania association has actively engaged in promoting the affairs of said association and in securing the cooperation of such association and its members in actively carrying out and effecting the purposes, programs, policies and aims of said Building Material Dealers Alliance and said National Federation of Builders Supply Associations. Although not comprising the entire membership, the following concerns are members of said Western Pennsylvania association and also members of said respondent, Building Material Dealers Alliance:

Kittanning Limestone Supply Co., Kittanning, Pa.
 Shufflin & Green, Butler, Pa.
 E. M. Fullington's Sons, Clearfield, Pa.
 F. B. Scowden & Son, Meadville, Pa.
 Boyd & Schafer, Erie, Pa.
 O. C. Thayer & Son, Erie, Pa.
 O. C. Cluss Lumber Co., Uniontown, Pa.
 Campbell Co., New Wilmington, Pa.
 E. W. Bissett & Son, Bradford, Pa.
 Builders Supply Co., McKeesport, Pa.
 King Company, Grove City, Pa.
 Colbert Supply Co., West Brownsville, Pa.

Complaint

26 F. T. C.

River Sand & Supply Co., Cheswick, Pa.
D. W. Challis Co., Sewickley, Pa.
Geo. Lanz & Sons, Pittsburgh, Pa.
Russell Bros., Washington, Pa.
C. L. Reed Lumber Co., Houston, Pa.
Greensburg Builders Supply Co., Greensburg, Pa.
Clinton Coal & Supply Co., Meadville, Pa.
Keystone Supply Co., Foxburg, Pa.
T. R. Bolton, Cochran, Pa.
City Coal & Supply Co., Meadville, Pa.
Peoples Coal & Builders Supply Co., Sharon, Pa.
J. A. Walker, W. Middlesex, Pa.
B. Scott McFarland, Ambridge, Pa.
Hornbake Bros., Coal Center, Pa.
Patterson Supply Co., Monongahela, Pa.
Monessen Sand & Gravel Co., Monessen, Pa.
Dunbar & Wallace Lumber Co., Washington, Pa.
State Construction Co., New Kensington, Pa.
Clarion Lumber Co., Inc., Clarion, Pa.
Woodwork Supply Co., Reynoldsville, Pa.
Taylor Supply Co., Inc., Sharon, Pa.

PAR. 5. Respondent Allied Construction Industries of Cleveland, Inc., is an association of persons, partnerships, and corporations engaged in various lines of business related to the building and construction industry and including among its members certain building materials and builders' supplies dealers in and about Cleveland, Ohio. Such association is organized as a corporation under the laws of the State of Ohio, and has its headquarters and principal office in the city of Cleveland, Ohio. The said corporation is organized without shares of capital stock to promote the business interests of its members, to enhance their volume of trade and profit and to cooperate with and carry out the purposes, program, policies, and aims of respondent Building Material Dealers Alliance, of which said corporation is a member and a subdivision or branch. Respondent Charles H. McAlister is an executive officer and the manager of said respondent Allied Construction Industries and is and has been actively engaged in directing the affairs of said Allied Construction Industries and in securing and maintaining the active cooperation of said corporation and members thereof in carrying out the purposes, program, policies and aims of the respondent Building Material Dealers Alliance and of its affiliated organizations. The said Allied Construction Industries is represented upon the Council of said Building Material Dealers Alliance by one or more councillors. Respondent McAlister is and has been one of such councillors and representatives.

PAR. 6. Respondent Lime & Cement Exchange of Baltimore City is an association of members organized and existing as a corporation under the laws of the State of Maryland, having its office and principal place of business in the city of Baltimore, in said State. Said members are certain persons, partnerships and corporations having places of business in the trade area in and about said Baltimore and towns adjacent thereto, engaged in the sale and distribution in Maryland and adjoining States of building materials and builders' supplies enumerated in paragraph 1 hereof. Said respondent Exchange constitutes a member or subdivision of respondents National Federation of Builders Supply Associations and Middle Atlantic Council Builders Supply Associations and said respondents Exchange, Federation and Council and their members actively cooperate with each other in carrying out the program, purposes, policies, and aims of respondent organizations and associations.

(a) Respondent H. C. Thompson is the executive secretary of said Lime & Cement Exchange of Baltimore City; respondent H. W. Classen is president, and respondent Clarence E. Wheeler is vice-president of the said Exchange; and they are and have been actively engaged in organizing said respondent Exchange; managing its affairs, securing its support and cooperation with said Middle Atlantic Council of Builders Supplies Associations and National Federation of Builders Supply Associations and the program, policies, and aims thereof.

(b) The following persons and concerns are building material and builders' supplies dealers who are representative members of said Exchange and are also members of respondent Maryland Builders Supply Association but do not constitute the entire membership of said Exchange:

Abbott Bros., Inc., Havre de Grace, Md.	D. Edgar Coale, Churchville, Md.
Baltimore Clay Products Co., Baltimore, Md.	Cumberland Cement & Supply Co., Cumberland, Md.
Alan E. Barton, Baltimore, Md.	Cumberland Lumber Co., Cumberland, Md.
Belair Road Supply Co., Baltimore, Md.	V. Cushman & Sons, Williamsport, Md.
Buchanan Lumber Co., Cumberland, Md.	T. C. Davis Bldg. Supply Co., Baltimore, Md.
Builders Paint & Supply Co., Cumberland, Md.	J. S. Devore & Sons, Ellerslie, Md.
Central Building Supply, Inc., Baltimore, Md.	Fred Elenbrok, Baltimore, Md.
Cessna Lumber Corporation, Cumberland, Md.	Harry Exline, Hancock, Md.
Clark Lumber Co., Havre de Grace, Md.	Frederick Brick Works, The, Frederick, Md.
	Fullerton Supply Co., Raspeburg, Md.
	John H. Geis & Co., Inc., Baltimore, Md.

Complaint

26 F. T. C.

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| C. C. Gnegy, Mountain Lake Park, Md. | Meredith Supply Co., Annapolis, Md. |
| Grant Lumber & Supply Co., Cumberland, Md. | Metger Bros., Inc., Cumberland, Md. |
| Green Brier Quarry Co., Cumberland, Md. | W. V. Miller, Cheltenham, Md. |
| Robert S. Green, Inc., Baltimore, Md. | Monumental Brick & Supply Co., Baltimore, Md. |
| Harrison Bros. Cont. Co., Inc., Westernport, Md. | H. J. Mueller & Sons, Essex, Md. |
| Harting Supply Co., Lansdowne, Md. | National Bldg. Supply Co., Inc., Baltimore, Md. |
| Hudson Building Supply Co., Baltimore, Md. | Northeastern Supply Co., Baltimore, Md. |
| J. Scott Hunter, Inc., Baltimore, Md. | Pen Mar Co., Inc., Baltimore, Md. |
| Ideal Concrete Stone Co., Yellow Springs, Md. | The Richard Corp., Frostburg, Md. |
| C. S. Jeffries Lumber Co., Frostburg, Md. | The Reisterstown Lumber Co., Reisterstown, Md. |
| J. F. Johnson Lumber Co., Glen Burnie, Md. | Geo. Sack & Sons, Inc., Baltimore, Md. |
| J. F. Johnson Lumber Co., Annapolis, Md. | F. G. Sheppard & Son, Upper Falls, Md. |
| King Coal & Supply Co., Inc., Baltimore, Md. | Wm. T. Sigler Co., Inc., Luke, Md. |
| Lee Lumber & Supply Co., Inc., Sparrows Pt., Md. | Sleeman Bros., Inc., Frostburg, Md. |
| Lutherville Lumber Co., Lutherville, Md. | South Cumberland Planing Mill Co., Cumberland, Md. |
| McComas Bros., Belair, Md. | Stebbins-Anderson Co., Towson, Md. |
| Robert S. Marshall Lumber Co., Lonaconing, Md. | Steffey & Findlay, Inc., Hagerstown, Md. |
| Maryland Lime & Cement Co., Inc., Baltimore, Md. | A. J. Twiford, Marbury, Md. |
| Robert S. Mead & Bro., North Beach, Md. | F. O. Vielo & Co., Aberdeen, Md. |
| | James H. Warthen, Baltimore, Md. |
| | Wheeler Supply Co., The, Glyndon, Md. |
| | Willison Bros., Frostburg, Md. |
| | John S. Wilson Co., Catonsville, Md. |
| | United Clay & Sup. Co., Baltimore, Md. |
| | Quincy L. Morrow Co., Towson, Md. |

PAR. 7. Said respondent Middle Atlantic Council of Builders Supply Associations is an unincorporated trade association or organization of several builders' supply associations whose members are engaged in business as dealers of building materials and builders' supplies in the middle Atlantic States, including Pennsylvania, Delaware, Maryland, New Jersey, Virginia, and also in the District of Columbia.

(a) The headquarters or principal office of said respondent are maintained at Baltimore, in the State of Maryland. Respondent H. C. Thompson is secretary and treasurer, and respondent Joseph M. Pusey, who is also treasurer of respondent National Federation of Builders Supply Associations, is chairman of said respondent Council. The said Thompson and Pusey are and have been individually and as such executive officers actively engaged in promoting and executing affairs and purposes of said respondent.

(b) The respondents Lime & Cement Exchange of Baltimore City and Maryland Builders Supply Association are members of respondent Council. The members of both said Exchange and said Association actively cooperate with respondent Council and its other affiliated organizations and members thereof in the execution and promotion of the program, purposes, policies, and aims of respondent organizations and associations.

(c) Membership in respondent Council includes the following:

- Builders Supply Dealers Association of Eastern Pennsylvania, Easton, Pa.;
- Del-Mar, Virginia, Builders Supply Association, Wilmington, Del.;
- Greater Washington Builders Supply Association, Washington, D. C.;
- Maryland Builders Supply Association, Baltimore, Md.;
- Philadelphia Builders Supply Association, Philadelphia, Pa.;
- Lime and Cement Exchange of Baltimore City, Baltimore, Md.;
- New Jersey Mason Material Dealers Association, Newark, N. J., and the Virginia Lumber and Building Supply Dealers Association, Inc., Richmond, Va.

PAR. 8. The respondent Maryland Builders Supply Association is an unincorporated trade association or organization of certain persons, firms, partnerships, and corporations having places of business in the State of Maryland and engaged in the purchase, sale, and distribution in Maryland and adjoining States of building materials and builders' supplies.

(a) The headquarters or principal office of said Maryland Builders Supply Association are maintained in the city of Baltimore, in the State of Maryland, at the same address as the principal offices of respondents Lime & Cement Exchange of Baltimore City and Middle Atlantic Council of Builders Supply Associations.

(b) The respondent H. C. Thompson, who is also executive secretary of the respondent Lime & Cement Exchange of Baltimore City and secretary and treasurer of Middle Atlantic Council of Builders Supply Associations, is also secretary and treasurer of said respondent Maryland Builders' Supply Association; that said Thompson is and has been individually and as such executive officer actively engaged in promoting and executing the affairs and purposes of said Association. Said Association is affiliated with and is one of the members or subdivisions of said respondent Middle Atlantic Council of Builders Supply Associations and is and has been actively engaged in carrying out the program, purposes, policies and aims of said Middle Atlantic Council of Builders Supply Associations.

(c) The concerns, among others who are or have been members of said Association are as enumerated in paragraph 6 hereof as members of the Lime & Cement Exchange of Baltimore City.

PAR. 9. Respondent National Federation of Builders Supply Associations is a corporation under the laws of the State of New Jersey, having its headquarters or executive office in the city of Pittsburgh, in the State of Pennsylvania. The members of said Federation are certain associations of dealers engaged in the several States of the United States in the sale and distribution of building materials and builders' supplies and federated together for the purpose of promoting the business interests of the members. The affairs of said Federation are and have been managed and executed by executive officers including a president, vice-presidents, treasurer, secretary and an executive committee. Said executive committee functions as or in the nature of a board of directors meeting from time to time for the transaction of business of the Federation.

(a) Respondent John M. Stoner is the president and L. I. MacQueen, who is also executive secretary of the respondent Building Material Dealers' Alliance, is the secretary of said respondent Federation, and they have actively engaged in organizing said Federation and promoting and managing its affairs, in organizing affiliated associations of building materials and builders' supply dealers and in securing their support and active cooperation in carrying out or enforcing the purposes, aims and policies of said Federation and its members. The following persons are other such officers and members of the executive committee of said Federation:

Vice-Presidents:

Harry B. Finnegan

W. N. Hagerman

L. F. LeHane

E. S. Spencer

Charles Thompson

Treasurer: Joseph M. Pusey

Executive Committee:

E. H. Norblom

Thomas G. Bradshaw

C. Claude Cooke

Lawrence F. Kramer

John M. Stoner

(b) Although not comprising the entire membership the following associations are members of said Federation:

Alabama Lumber & Building Material Association, Birmingham, Ala.

Builders Supplies Dealers Association of Northern California, Hayward, Calif.

Building Material Dealers Association of San Diego, San Diego, Calif.

Complaint

Los Angeles County Building Material Dealers Association, Los Angeles, Calif.
 Carolina Retail Lumber & Building Supply Dealers Association, Charlotte, N. C.
 Colorado Association of Builders Supply Dealers, Denver, Colo.
 Mason Material Dealers Association of New Castle County, Del., Wilmington, Del.
 Greater Washington Builders Supply Association, Washington, D. C.
 Florida Lumber & Millwork Association, Orlando, Fla.
 Georgia Retail Lumber & Building Supply Association, Inc., Atlanta, Ga.
 Building Material Merchants of Chicago District, Chicago, Ill.
 Illinois Lumber & Material Dealers Association, Inc., Springfield, Ill.
 Indiana Builders Supply Association, Indianapolis, Ind.
 Iowa State Builders Supply Association, Cedar Rapids, Iowa.
 Kentucky Builders Supply Association, Lexington, Ky.
 Southern Builders Supply Association, New Orleans, La.
 Lime & Cement Exchange of Baltimore City, Inc., Baltimore, Md.
 New England Builders' Supply Association, Boston, Mass.
 Michigan Builders Supply Association, Ypsilanti, Mich.
 Tri-County Division of Michigan Builders Supply Dealers Assn., Detroit, Mich.
 Minnesota Building Supply Dealers Association, Minneapolis, Minn.
 Mississippi Retail Lumber Dealers Association, Jackson, Miss.
 Missouri Valley Builders Supply Association, Kansas City, Kans.
 Building Material Dealers Assn. of Greater St. Louis, St. Louis, Mo.
 New Jersey Mason Material Dealers Association, Newark, N. J.
 Building Material Men's Assn. of Westchester County, Scarsdale, N. Y.
 New York State Builders Supply Association, Utica, N. Y.
 New York Builders Supply Trade Area Association, Inc., New York, N. Y.
 Building Material Institute, Cleveland, Ohio.
 Ohio Builders Supply Association, Columbus, Ohio.
 Building Material Credit Association, Inc., Cincinnati, Ohio.
 Building Supply Dealers Association of Oregon, Portland, Oreg.
 Builders Supply Dealers Association of Eastern Pennsylvania, Easton, Pa.
 Philadelphia Builders Supply Association, Philadelphia, Pa.
 Western Pennsylvania Builders Supply Alliance, Pittsburgh, Pa.
 Mason Material Dealers Association, Inc., Memphis, Tenn.
 Texas Builders Supply Dealers Association, Houston, Tex.
 Virginia Lumber & Building Supply Dealers Association, Richmond, Va.
 Building Material Dealers Assn. of Western Washington, Seattle, Wash.
 West Virginia Lumber & Builders Supply Association, Fairmont, W. Va.
 Builders Supply Dealers Association of Wisconsin, Milwaukee, Wis.

PAR. 10. Those hereinabove specifically named as members, officers, or councillors of respondent associations and organizations do not embrace the entire list or number of such members, officers, or councillors. The building materials and builders' supplies dealers and the affiliated associations or organizations which are members of the associations and organizations hereinabove specifically named parties respondent, and the officers and councillors thereof, number several

thousand persons, partnerships, corporations, and associations. Such memberships constitute a class so numerous and changing as to make it impracticable to specifically name them all as parties respondent herein. Those specifically named herein are fairly representative of the whole. All members of aforesaid respondent associations and organizations and all their officers and councillors are also made parties respondent herein as a class of which those specifically named are representative of the whole.

PAR. 11. Said building materials and builders' supplies dealers, members of said associations and organizations and respondents herein, purchase their materials and supplies in the course and conduct of their business from manufacturers, producers, and distributors in various States and cause such materials and supplies to be shipped and transported to the warehouses, places of business and to customers of such purchasing respondents from points in States other than the States in which such respective points of destination are located. In the course of the sale and distribution of their merchandise said respondent members of said organizations and associations cause materials and supplies when sold to be shipped and transported pursuant to purchase orders from their warehouses, places of business or direct from their suppliers to their customers at points in States other than the State in which such respective shipments originate. In the course and conduct of the business of respondents as hereinabove described, all respondents are and have been engaged in commerce among the several States and in trade, business, and commerce having a direct effect upon interstate commerce in building materials and builders' supplies. Except insofar as competition has been restrained, stifled, lessened, suppressed, eliminated, or destroyed by the respondents as hereinafter alleged, each of the said dealers in building materials and builders' supplies, members of respondent associations and organizations, is and has been engaged in the course of such business in actual and potential competition with other respondent members and "recognized" dealers and with non-members and other dealers and vendors who market or desire to market building materials and builders' supplies.

PAR. 12. The respective members of the respondent associations and organizations hereinabove described constitute a large and important part of the dealers in building materials and builders' supplies in the several States of the United States in which the members of respondent organizations and associations are engaged in business; and such members 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 building materials and builders' supplies

within, to and from the several trade areas. Said members as allied and banded together in said associations and organizations are enabled thereby to more effectively exercise control and influence over such trade and commerce for the promotion and enhancement of their own volume of trade and profits. The volume of consumption of building materials and builders' supplies in the several trade areas and the volume of trade and commerce in such materials and supplies in, to and from said areas constitute a large and important part of the trade and commerce of the United States in the building and construction materials and supplies industry. Said trade areas are large and important outlets and markets for the sale of building materials and builders' supplies by manufacturers, producers, and distributors within said several trade areas in the several States of the United States.

PAR. 13. Respondents are banded and allied together in aforesaid associations and organizations to carry into effect the program and practices hereinbelow described and to enhance and promote the volume of trade, business and profits of said respondent members and "recognized" dealers. And the respondents, namely said associations and organizations, their members, officers and councillors, parties respondent herein, during and in the period of more than three years last past have agreed, conspired, combined, and confederated together and with others, and have united in and pursued a common and concerted course of action and undertaking among themselves and with others, to adopt, follow, carry out, enforce and maintain, in the said several trade areas, a program, to wit:

1. To establish the respondent members and building materials and builders' supplies dealers approved by respondent associations and organizations as a class of "recognized" building materials and builders' supplies dealers in such trade and industry in the said several trade areas; and to confine and require the sale and distribution of such materials and supplies by manufacturers and producers thereof to or through the medium of such respondent members and "recognized" dealers exclusively.

2. To induce, require or compel manufacturers and producers of building materials and builders' supplies to refrain and to cease or desist from selling or distributing such materials or supplies to non-recognized competitors of respondent members or to dealers, vendors, contractors, consumers, or other purchasers who are not members of respondent associations and organizations and are not such "recognized" dealers; to prevent such non-recognized or non-member competitors, dealers, contractors, vendors, consumers, and other purchasers from purchasing or securing such materials and supplies di-

rect from manufacturers or producers, and to compel them to purchase their requirements of such materials and supplies from or through the medium of respondent members and such "recognized" dealers exclusively and upon terms or conditions of sale which afford a commission, profit, or allowance to such "recognized" dealers and respondent members.

3. To induce, require or compel manufacturers and producers of building materials and builders' supplies to refrain and desist from soliciting trade or business from, or quoting prices to, non-recognized competitors or respondent members or to dealers, vendors, contractors, and other purchasers who are not such "recognized" dealers, except upon terms and conditions of sale which include or afford an allowance, commission or profit to a respondent member and "recognized" dealer; and to induce, require, or compel such manufacturers and producers to solicit their direct trade or business from, and to quote manufacturer's or producer's prices to, such "recognized" dealers exclusively.

4. To prevent competing dealers, vendors, contractors and other purchasers of building materials and builders' supplies from participating with said respondent members and "recognized" dealers in pool car shipments of such materials and supplies; to induce, require or compel manufacturers and producers of building materials and builders' supplies to confine and limit their distribution thereof to carload quantities and to shipments by railroad only; and to induce, require, or compel such manufacturers and producers to refrain from and to refuse to permit such distribution of their materials and supplies to be made by motortruck or motor vehicle; and to eliminate, prevent, or lessen and restrain the use of motortrucks or motor vehicles for such transportation as well as the actual and potential competition afforded respondent members and such "recognized" dealers by contractors, dealers, vendors, consumers, and other purchasers who because of economy of operation, lack of railroad, storage, or other facilities, or for other good and sufficient reasons on the part of the seller or purchaser, desire to have their requirements of building materials and builders' supplies distributed and delivered by motortruck or motor vehicle from the plants, warehouses, or distributing points of the manufacturers or producers.

5. To interfere with the business and trade in building materials and builders' supplies of dealers, vendors, and other sellers who are not members of respondent organizations or associations who are not such "recognized" dealers, for the purpose of enabling or assisting said respondent members and "recognized" dealers to appropriate and

acquire the patronage or trade and obstruct the competition of such non-member or non-recognized dealers, vendors and other sellers.

6. To prevent manufacturers of cement blocks and building materials of similar type from purchasing or continuing to purchase their raw materials and supplies direct from manufacturers and producers of such raw materials and supplies, and to require such manufacturers of cement blocks and building materials of similar type to purchase their raw materials and other supplies exclusively from said respondent members and "recognized" dealers and at prices which include or afford such dealers and members an allowance, commission or profit upon such purchases.

7. To require and compel the sale and distribution of all cement requirements for all buildings and other private construction as well as for highway, bridge, and culvert construction and maintenance, and the cement requirements for cities, counties, and all other political subdivisions, to be made through the medium of said respondent members and "recognized" dealers and at prices or conditions of sale which include or afford such members and "recognized" dealers an allowance, commission, or profit on such cement purchases; and to induce, require or compel manufacturers and producers of cement to cease or desist from making any sales of cement for such purposes direct to the contractors, States, counties, political subdivisions, and non-recognized dealers or purchasers, and to cease and desist from making sales in any way which does not afford such "recognized" dealers or respondent members a commission, allowance, or profit on the purchase of such cement.

8. To exclusively warehouse, promote, advertise, and advance the sale and use of the brands of building materials and builders' supplies of the respective manufacturers and producers who (a) confine and limit the marketing and distribution of their products to or through the medium of respondent members and said "recognized" dealers, and (b) who refrain or desist from selling or distributing their products direct to competitors of respondents or to contractors, dealers, vendors, consumers, and other purchasers which are not included among such "recognized" dealers or members of respondent organizations and associations; to urge contractors, builders, consumers, and other purchasers to buy or use the brands or products of such manufacturers and producers to the exclusion of the brands and products of manufacturers or producers who do not so confine or limit the sale and distribution of their products to or through the medium of said respondent members and "recognized" dealers or who do not otherwise conform to the foregoing program of respondents;

and to refuse to warehouse or deal in, or to promote, advertise, advance, or urge the sale and use of, the products and brands of building materials and builders' supplies of those manufacturers or producers who fail or refuse to so confine the marketing and distribution of their products to or through the medium of said respondent members and "recognized" dealers or who make any sales of their products direct to competitors of respondents or to non-recognized dealers, vendors, contractors, builders, consumers, or other purchasers.

9. To prevent dealers, vendors, distributors, and other sellers of building materials and builders' supplies who are not such "recognized" dealers from selling any building materials or building supplies for new construction or new work to contractors, builders, consumers, or other purchasers; to monopolize such trade and business in respondent members and such "recognized" dealers, and to destroy all such business enjoyed by non-recognized dealers, vendors, contractors, or other sellers.

10. To eliminate, lessen, and destroy the business and competition of those engaged or desiring to engage in said building materials and builders' supplies trade and industry as jobbers or brokers.

11. To prohibit, prevent, and restrain the sale or distribution of building materials and builders' supplies by manufacturers or producers to ultimate purchasers or users through the medium of jobbers or brokers, and to thereby secure for such "recognized" dealers and respondent members the trade and business ordinarily enjoyed or conducted by such jobbers and brokers.

12. To accord and limit said "recognition" to concerns who are or become members in good standing of respondent associations and organizations.

13. To eliminate, lessen, restrain, and control actual and potential competition among or with such respondent members and "recognized" dealers (*a*) by denying such "recognition" and membership in respondent organizations and associations to persons, partnerships, and corporations who are engaged, or desire to engage, in the business of dealing in, selling or vending building materials and builders' supplies in competition with such members or "recognized" dealers, or who desire to do business in communities served by such members or "recognized" dealers; and (*b*) by hindering, obstructing, and hampering such persons, partnerships, and corporations in the conduct of their business; and (*c*) by driving or attempting to drive such concerns out of business; and (*d*) by denying membership in respondent organizations and associations and such "recognition" to any dealer, vendor, or other seller of building materials and builders' supplies who fails or refuses to support, agree to, and abide

by the said program, conspiracy, and undertaking of respondents as herein described, and (e) by other united, cooperative, or concerted action on the part of respondents.

14. To acquire and maintain a monopoly in such respondent members and "recognized" dealers of the trade and business of dealing in or distributing building materials and builders' supplies.

15. To fix and establish, by agreement, schedules of uniform prices for the sale of building materials, and builders' supplies. The prices thus established were enhanced beyond the price which would prevail under natural and normal competition, in the absence of said price agreements and the other agreements herein alleged.

16. To require all members of respondent organizations and associations and all "recognized" dealers to carry out, and to agree and pledge themselves to support and carry out, the foregoing program; and to enhance and increase the volume of business and profits of said respondent members and "recognized" dealers by effecting and maintaining the foregoing program and by other united and concerted action.

PAR. 14. The parties respondent herein have agreed, combined, confederated and conspired together for the purpose and with the intent of carrying out the aforesaid program; and they have been and are now engaged in carrying into effect and maintaining said program and the said agreement, combination, confederation, conspiracy and undertaking as set forth in paragraph 13 hereof. Pursuant to and for the purpose of effecting and carrying out the said program and said agreement, combination, confederation, conspiracy, and undertaking, the respondents have, among other things done the following:

(a) Exacted and procured written pledges and other promises and agreements from each such "recognized" dealer, from each member of respondent associations and organizations, and from manufacturers and producers of building materials and builders' supplies to the effect that such dealers, members, manufacturers, and producers will support, adhere to and enforce the foregoing program of respondents set forth in paragraph 13 hereof.

(b) Used and continued to use, 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.

(c) Held meetings of respondent associations and organizations, their members, officers, and councillors, to devise means of exerting

influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, producers, distributors, and others engaged in said building materials and builders' supplies trade and industry to abide by and adhere to said program.

(d) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, informed and advised such manufacturers and producers of the names of said "recognized" dealers in the several trade areas and of respondent's 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 aforesaid program of respondents; and also advised such manufacturers and producers that their sale and distribution of building materials or builders' supplies direct to certain non-recognized dealers and purchasers, or their failure to conform to aforesaid program in the distribution of their materials and supplies, would be considered by respondents and such "recognized" dealers as "unfriendly" acts against respondents and such "recognized" dealers.

(e) Denied and revoked membership in respondent associations and organizations 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.

(f) 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, combinations, conspiracy, confederation, and undertaking set forth in paragraph 13 hereof.

PAR. 15. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents, set forth in paragraphs 13 and 14 hereof, are and have been in various trade areas and other related or connected territory, frequently comprising more than one State or portions of more than one State.

(a) To monopolize, in said respondent members and "recognized" dealers, the business of dealing in and distributing building materials and builders' supplies.

(b) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said building materials and builders' supplies trade and industry, and to deprive the purchasing and consuming public of advantages in price, service, and other consideration which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to

the freedom of fair and legitimate competition in such trade and industry.

(c) To substantially increase the cost to purchasers of such building materials and builders' supplies and consequently to increase the cost of construction, repair, maintenance, and remodeling of homes, dwellings, buildings, highways, and all kinds of construction and building works.

(d) To oppress, eliminate, and discriminate against small business enterprises which are or have been engaged in selling, distributing, manufacturing, or using building materials and builders' supplies.

(e) To restrain or restrict employment in the construction and building industry and trade and to reduce the purchasing power or capacity of purchasers and users of such building materials and builders' supplies.

(f) To restrain, restrict, hamper, and lessen employment in, and the business of, the manufacture, sale, and use of motortrucks and motor vehicles for the distribution of building materials and builders' supplies.

(g) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in building materials and builders' supplies in, to and from various trade areas; and to injure respondent's competitors in unfairly diverting business and trade from them, depriving them thereof, and otherwise oppressing or driving them out of business.

(h) To prejudice and injure the public and manufacturers, producers, dealers, distributors, and others who do not conform to respondent's program or who do not desire, but are compelled, to conform to said program.

PAR. 16. The above alleged acts and things done by respondent as set forth in paragraphs 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 October 18, 1935, issued and served its amended and supplemental complaint in this proceeding upon

respondents Building Material Dealers Alliance, et al., 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and respondents did not introduce any testimony in opposition to the allegations of the complaint; and said testimony and other 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 answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel for the Commission and for the respondents; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Building Material Dealers Alliance, hereinafter referred to as the Alliance, was organized in 1931 as a voluntary unincorporated trade association. Its membership consisted of (a) over 150 dealers in building materials and builders' supplies, having their principal places of business within, and doing business in, an area known in the trade as The Cleveland-Pittsburgh Trade Area; and (b) organized local associations or units of such dealers. Said dealer members of said Alliance and of said organized local units are persons, partnerships, and corporations engaged in the business of buying, selling, and distributing building materials and builders' supplies, which embrace such materials and supplies as cement, brick, tile, clay products, sewer pipe, plaster, sand, gravel, stone, lime, mortar, and products thereof, lumber, lath, roofing, and other builders' supplies and building materials used in the building and construction industry. The Cleveland-Pittsburgh Trade Area consists of all that portion of the States of Ohio and Pennsylvania included in a line from Cleveland to Massillon to Pittsburgh to Erie, and is one of the largest markets in the country for the sale of building materials and builders' supplies; and the business of the dealer members of said Alliance represents the preponderance of business in said materials and supplies in said market. The affairs of said Alliance were managed and conducted by executive officers, in-

cluding a chairman, a vice-chairman, and a secretary-treasurer, and by an Executive Board of Councillors, hereinafter referred to as the Council. The said Council met at frequent intervals for the transaction of business of the Alliance. The members of said Council are known in said respondent organization as councillors, and they are delegated or elected to membership in said Council as representatives of the members of said Alliance and of various groups or subdivisions of such members. For the more effective operation of the Alliance, the membership thereof was divided or organized into local associations, or districts, each constituting a branch or sub-division of said Alliance. The principal offices of said Alliance were maintained at the office of the chairman in the city of Youngstown, Ohio, and at the office of the secretary-treasurer in the city of Pittsburgh, Pa. Respondents E. J. Holway and Lawrence I. MacQueen were such chairman and secretary-treasurer, respectively.

Certain persons who are members of said council and as such have served as councillors of said Alliance, and the respective companies or organizations by or with which such persons are employed or connected, which companies and organizations are representative members of said Alliance, are as follows:

Name of Councillor	Name of Concern With Which Respective Councillor Is Connected as Officer or Employee, Such Concerns Being Members of Said Alliance
G. H. Lanz.....	Geo. H. Lanz & Sons, Pittsburgh, Pa.
E. J. Holway.....	Youngstown Ice Co., Youngstown, Ohio.
Lawrence I. MacQueen.....	Pittsburgh Builders Supply Club, Pittsburgh, Pa.
J. A. Thomas.....	W. E. Wright Co., Akron, Ohio.
Wm. R. Jones.....	Alliance Builders Supply Co., Alliance, Ohio.
M. C. Robinson.....	M. C. Robinson & Co., Ashtabula, Ohio.
I. W. Royer.....	Ohio Builders & Milling, Inc., Canton, Ohio.
Howard Tolerton.....	The Tolerton Co., Alliance, Ohio.
C. R. Boyd.....	H. C. Boyd Lumber Co., Coraopolis, Pa.
E. C. Holloway.....	The Kensington Supply Co., Kensington, Ohio.
Chas. H. McAlister.....	Allied Construction Industries of Cleveland, Ohio, Inc., Cleveland, Ohio.
D. O. Fonda.....	Collingwood Shale Brick & Supply Co., Cleveland, Ohio.
Harry Dubroy.....	Lakeshore Builders Supply Co., Cleveland, Ohio.
H. C. McCoy.....	Inter-City Coal & Supply Co., Elyria, Ohio.
Jas. N. Thayer.....	O. C. Thayer & Son, Erie, Pa.
E. B. Bye.....	Bye & Bye, Lisbon, Ohio.
J. W. Pattison.....	Penn Coal & Supply Co., New Castle, Pa.
Ralph Wright.....	D. W. Challis & Sons, Inc., Sewickley, Pa.
B. N. Hamilton.....	Hamilton & Meigs, Warren, Ohio.
Joseph Alcorn.....	Alcorn-Hahn Supply Co., Youngstown, Ohio.
E. H. Schory.....	Hursh & Schory Coal Co., Canton, Ohio.

PAR. 2. The respondent Pittsburgh Builders Supply Club is a corporation organized under the laws of the State of Pennsylvania, having its executive headquarters in the city of Pittsburgh, in said State of Pennsylvania at the office of its secretary and manager, to wit: respondent Lawrence I. MacQueen. The members of said respondent Club consisted of dealers in building materials and builders' supplies having places of business in the trade area in and about Pittsburgh, Pa. Respondents George Lanz and Elliot Keller were the president and vice-president, respectively, of said Club, and were its representatives on the Council of the respondent Alliance. The said respondent George Lanz also served as a councillor of the respondent Western Pennsylvania Builders Supply Alliance. The members of said Club, with a few exceptions, were also members of the respondent Alliance, and said Club and Alliance, and their officers and members, actively cooperated with each other in carrying out the program and policies of the respondent organizations and associations. The members of the Club were the largest business firms in the building and material industry in Pittsburgh, and they sold over 75% of the builders' supplies sold in Pittsburgh and the metropolitan area.

The following persons and concerns are building material and builders' supplies dealers who are representative members of said Club and are also members of said Alliance, but do not constitute the entire membership of said Club or Alliance:

Nathan Bilder Co., Pittsburgh, Pa.
Wm. H. Brant Sons, West View, Pa.
Frank Bryan, McKees Rocks, Pa.
H. G. Dettling Co., Pittsburgh, Pa.
Duncan & Porter Co., Pittsburgh, Pa.
Heppenstall & Marquis, Pittsburgh, Pa.
Hillside Stone & Supply Co., Aspinwall, Pa.
Houston-Starr Co., Pittsburgh, Pa.
Iron City Sand & Gravel Co., Pittsburgh, Pa.
Keller Brothers, Pittsburgh, Pa.
D. J. Kennedy Co., Pittsburgh, Pa.
Knox Strouss & Bragdon Co., Pittsburgh, Pa.
Geo. Lanz & Sons, Pittsburgh, Pa.
W. T. Leggett Co., Pittsburgh, Pa.
McCrary-Rodgers Co., Pittsburgh, Pa.
Morrison Bros., Emsworth, Pa.
Pittsburgh Plaster & Supply Co., McKees Rocks, Pa.
Ed. Vero Company, Millvale, Pa.

PAR. 3. The respondent Building Material Institute is an unincorporated trade association of dealers in building materials and builders' supplies, having a place of business in the trade area surrounding

Cleveland, Ohio, where its headquarters or principal offices are maintained. The respondents George W. Denison and B. E. Reid were the president and secretary, respectively, of said Institute. The said Institute was affiliated with and cooperated with, the respondent Alliance in carrying out its program and policies, and contributed to its support. The members of said Institute, with a few exceptions, were also members of said Alliance, and were represented on the Council of said Alliance by respondents D. A. Fonda and Harry DuBroy. The following concerns, among others, are and have been members of said institute:

City Material & Coal, Inc., Cleveland, O.
 The Tom George Co., Cleveland, O.
 St. Clair Coal & Supply Co., Cleveland, O.
 Vanis Builders Supply & Lbr. Co., Cleveland, O.
 Collingwood Shale B & S Co., Cleveland, O.
 Geist Kemper Material Co., Cleveland, O.
 Ideal Builders Supply & Fuel Co., Cleveland, O.
 Lake Shore Builders Supply Co., Cleveland, O.
 Medal Brick & Tile, Cleveland, O.
 Ohio Building Material Co., Cleveland, O.
 Ohio Clay Co., Cleveland, O.
 Bagley Road Lumber Co., Berea, O.
 Quincy Coal & Supply Co., Cleveland, O.
 Geo. D. Barriball Co., Cleveland, O.
 Zone Coal & Supply Co., Cleveland, O.
 Bennett Concrete Stone Co., Cleveland, O.
 The Clinton Co., Cleveland, O.
 Pompei Coal & Supply Co., Cleveland, O.
 Mayfield Builders Supply Co., Cleveland, O.
 Cleveland Builders Supply Co., Cleveland, O.
 Builders Supply & Fuel Co., Cleveland, O.
 City Material & Coal, Inc., Cleveland, O.
 E. E. Elias Company, Cleveland, O.
 Herot Builders Supply Co., Cleveland, O.
 Neff Coal & Supply Co., Cleveland, O.
 Chas. E. Phipps Company, Cleveland, O.
 Quincy Cement Block & Coal Co., Cleveland, O.
 Scheuer Bros. Builders Supply Co., Cleveland, O.
 Vanis Builders Supply Co., Cleveland, O.

PAR. 4. The respondent Western Pennsylvania Builders Supply Alliance is an unincorporated association formed in the early part of 1932, and was a reorganization of the Western Pennsylvania Building Supply Dealers Association. Its membership consisted of dealers in building materials and builders' supplies doing business in the western half of Pennsylvania and in the trade area adjacent thereto, which territory is part of the aforesaid Cleveland-Pittsburgh Trade Area. The said Western Pennsylvania Building Material

Dealers Alliance had executive officers and a board of councillors representative of its membership, which functioned as a board of directors of said association. The said Western Pennsylvania Building Material Dealers Alliance was affiliated with, and actively cooperated with, respondents Building Material Dealers Alliance and the National Federation of Builders Supply Association, and its officers and members cooperated in carrying out the program and policies of said respondent organizations and associations. The officers and councillors of the said Western Pennsylvania Alliance held joint meetings with its "sister" respondent Alliance, to wit: the Building Material Dealers Alliance, and said Alliances issued joint letters or bulletins. The members of said Western Pennsylvania Alliance included all the members of respondent Alliance who had a place of business in Pennsylvania, and said members were the outstanding dealers in Western Pennsylvania and sold the preponderance of building materials and builders' supplies sold in that market. The headquarters of said Western Pennsylvania Alliance were in the city of Pittsburgh, Pa., at the office of its executive secretary, to wit: respondent Lawrence I. MacQueen.

Although not comprising the entire membership, the following concerns are members of said Western Pennsylvania association and also members of respondent Alliance:

Kittanning Limestone Supply Co., Kittanning, Pa.
 Shufflin & Green, Butler, Pa.
 E. M. Fullington's Sons, Clearfield, Pa.
 F. B. Scowden & Son, Meadville, Pa.
 Boyd & Schafer, Erie, Pa.
 O. C. Thayer & Son, Erie, Pa.
 O. C. Cluss Lumber Co., Unlontown, Pa.
 Campbell Co., New Wilmington, Pa.
 E. W. Bissett & Son, Bradford, Pa.
 Builders Supply Co., McKeesport, Pa.
 King Company, Grove City, Pa.
 Colbert Supply Co., West Brownsville, Pa.
 River Sand & Supply Co., Cheswick, Pa.
 D. W. Challis Co., Sewickley, Pa.
 Geo. Lanz & Sons, Pittsburgh, Pa.
 Russell Bros., Washington, Pa.
 C. L. Reed Lumber Co., Houston, Pa.
 Greensburg Builders Supply Co., Greensburg, Pa.
 Clinton Coal & Supply Co., Meadville, Pa.
 Keystone Supply Co., Foxburg, Pa.
 T. R. Bolton, Cochranton, Pa.
 City Coal & Supply Co., Meadville, Pa.
 Peoples Coal & Builders Supply Co., Sharon, Pa.
 J. A. Walker, W. Middlesex, Pa.
 B. Scott McFarland, Ambridge, Pa.

Hornbake Bros., Coal Center, Pa.
Patterson Supply Co., Monongahela, Pa.
Monessen Sand & Gravel Co., Monessen, Pa.
Dunbar & Wallace Lumber Co., Washington, Pa.
State Construction Co., New Kensington, Pa.
Clarion Lumber Co., Inc., Clarion, Pa.
Woodwork Supply Co., Reynoldsville, Pa.
Taylor Supply Co., Inc., Sharon, Pa.

PAR. 5. The respondent Allied Construction Industries of Cleveland, Inc., is a corporation organized under the laws of the State of Ohio, having its principal headquarters in the city of Cleveland, in said State of Ohio. Its membership consisted of firms engaged in various lines of business related to the building and construction industry, and included among its members certain building materials and builders' supplies dealers in and about Cleveland. Respondent Charles H. McAlister was the manager of said respondent Allied Construction Industries of Cleveland, Inc., and was at the same time a councillor of the respondent Building Material Dealers Alliance, and said respondent McAlister was active in organizing said Alliance and in securing the cooperation of the respondent Allied Construction Industries with the Alliance program. Of the twelve concerns listed as members of the respondent Allied Construction Industries, five are classified as builders' supplies dealers and are listed as members of the said respondent Building Material Dealers Alliance.

PAR. 6. The Lime and Cement Exchange of Baltimore City is an association of members organized and existing as a corporation formed in 1898 under the laws of the State of Maryland, having its office and principal place of business in the city of Baltimore, in said State. Said members were certain persons, partnerships, and corporations having places of business in the trade area in and about said Baltimore and towns adjacent thereto engaged in the sale and distribution of building materials and builders' supplies. The said respondent Lime and Cement Exchange of Baltimore City is an affiliated unit, or a sub-division, of respondents National Federation of Builders Supply Associations and Middle Atlantic Council of Builders Supply Associations, and the officers and members of said respondents Exchange, Federation, and Council actively cooperated with each other in carrying out the program and policies of respondent organizations and associations. Respondent H. C. Thompson was the executive secretary of the Exchange and was also the secretary and treasurer of respondent Middle Atlantic Council of Builders Supply Associations and also secretary and treasurer of the respondent Maryland Builders Supply Association. The said respondent

Findings

26 F. T. C.

Thompson conducted the business of each of the three said respondent organizations from the same address in Baltimore, Maryland, and over the same telephone. Respondent H. W. Classen was president of the said Exchange in 1934, and was also president of the respondent Middle Atlantic Council of Builders Supply Associations. The following persons and concerns are building material and builders' supplies dealers who are representative members of said Exchange and are also representative members of respondent Maryland Builders Supply Association, but do not constitute the entire membership of said exchange or Association:

Baltimore Clay Product Company,
Alan E. Barton
Belair Road Supply Company, Inc.
Central Building Supply, Inc.
T. C. Davis Building Supply Company
Fred Elenbrok
Fullerton Supply Company
Robert S. Green, Inc.
Hudson Building Supply Company
J. Scott Hunter
King Coal & Supply Company
Maryland Lime & Cement Co., Inc.
Monumental Brick & Supply Company
National Building Supply Co., Inc.
Northeastern Supply Company
The Patapsco Supply Co. (Lee Lumber and Supply Co., Inc.)
Pen-Mar Company, Inc.
Geo. Sack and Sons, Incorporated
M. B. Segall and Sons, Incorporated
Stebbins-Anderson Co.,
James H. Warthen
United Clay and Supply Company
Quincy L. Morrow Company

PAR. 7. The respondent Middle Atlantic Council of Builders Supply Associations was an unincorporated trade association or organization, formed about October 1934, consisting of eight builders' supply associations whose members were engaged in business as dealers of building materials and builders' supplies in the Middle Atlantic States, including Pennsylvania, Delaware, Maryland, New Jersey, Virginia, and also the District of Columbia. The respondents Lime and Cement Exchange and Maryland Builders Supply Association were units of said respondent Council, and were also units of respondent National Federation of Builders Supply Associations, and of the other six associated units of said respondent Council, five others were also federated units of the National Federation. The headquarters of said respondent Council were located in

Baltimore, in the State of Maryland, at the office of its secretary and treasurer, to wit: respondent H. C. Thompson, who also, as above stated, was the executive secretary of the respondent Lime and Cement Exchange of Baltimore City and secretary and treasurer of the respondent Maryland Builders Supply Association, all having their principal office at the same location in said city of Baltimore. Respondent Joseph M. Pusey was the chairman of said Council, and was also the treasurer of respondent National Federation.

PAR. 8. The respondent Maryland Builders Supply Association was an unincorporated trade association organized in 1934, and its membership consisted of dealers in building materials and builders' supplies having places of business in that part of the State of Maryland which is west of Chesapeake Bay and west and south of the Susquehanna River. Said respondent association was a unit of the respondents Middle Atlantic Council and National Federation, and the officers and members of said respondent Association actively cooperated in carrying out the program and policies of the respondent organizations and associations. Respondent H. C. Thompson, who was also the executive secretary of the respondent Lime and Cement Exchange, and secretary and treasurer of the respondent Middle Atlantic Council of Builders Supply Associations, was also the secretary and treasurer of the said respondent Maryland Builders Supply Association, and conducted the affairs of all three organizations from the same office in the city of Baltimore, in said State of Maryland. Respondent H. W. Classen, who was the president of the respondent Exchange, was also president of the respondent Maryland Builders Supply Association. The members of the respondent Lime and Cement Exchange were also members of the respondent Maryland Builders Supply Association.

PAR. 9. The respondent National Federation of Builders Supply Associations is a corporation organized under the laws of the State of New Jersey in 1933, comprising certain associations of dealers engaged in the several States of the United States in the sale and distribution of building materials and builders' supplies and federated together for the purpose of promoting the business interest of the dealer members of said associations. The membership of said respondent Federation consisted of forty-one federated units located in approximately thirty-two States throughout the United States. The said federated units were as follows: the respondents Building Material Institute of Cleveland, the Western Pennsylvania Builders Supply Alliance, Lime and Cement Exchange of Baltimore City, Maryland Builders Supply Association, New Jersey Mason Material

Dealers Association, New York State Builders Supply Association, Ohio Builders Supply Association, the Building Material Merchants of Chicago District, Michigan Builders Supply Association, Builders Supply Dealers Association of Eastern Pennsylvania, Greater Washington Builders Supply Association, Philadelphia Builders Supply Association, Virginia Lumber and Building Supply Dealers Association, Inc., Alabama Lumber and Building Material Association, Builders Supply Dealers Association of Wisconsin, Building Material Credit Association, Inc., Building Material Dealers Association of Greater St. Louis, Building Material Dealers Association of San Diego, California, Building Material Dealers Association of Western Washington, Building Material Men's Association of Westchester County, Building Supply Dealers Association of Northern California, Building Supply Dealers Association of Oregon, Carolina Retail Lumber and Building Supply Dealers Association, Colorado Association of Builders Supply Dealers, Florida Lumber and Millwork Association, Georgia Retail Lumber and Building Supply Association, Inc., Illinois Lumber and Material Dealers Association, Indiana Builders Supply Association, Iowa State Builders Supply Association, Kentucky Builders Supply Association, Los Angeles County Building Material Dealers Association, Mason Material Dealers Association, Inc., Mason Material Dealers Association of New Castle County, Delaware, Minnesota Building Supply Dealers Association, Missouri Valley Builders Supply Association, Inc., New England Builders Supply Association, Southern Builders Supply Association, Texas Builders Supply Dealers Association, Tri-County Division of Michigan Builders Supply Association, West Virginia Lumber and Builders' Supply Association, New York Builders Supply Trade Area Association, Inc., and Mississippi Retail Lumber Dealers Association. The affairs of said respondent Federation were managed by executive officers, including a president, vice-presidents, treasurer, secretary, and an executive committee which functioned in the nature of a board of directors, meeting from time to time for the transaction of business of the Federation. Respondent John M. Stoner was the president of said respondent Federation, and respondent Lawrence I. MacQueen, who was also the executive secretary of the respondent Building Material Dealers Alliance, manager of the respondent Pittsburgh Builders Supply Club, and executive secretary of respondent Western Pennsylvania Builders Supply Alliance, was also the secretary of the said respondent Federation, and the headquarters of said respondent Federation were maintained in the office of its secretary in Pittsburgh, Pa. The officers and executive

committee of said respondent Federation were actively engaged in securing the cooperation of all its affiliated units in maintaining the respondents' program and policies.

PAR. 10. The respondent members of respondent organizations and associations purchase building materials and builders' supplies from manufacturers and producers located in various States of the United States other than the States in which the respective members have their places of business, and cause said materials and supplies to be transported from the various States in which they are manufactured and produced to respondents at their respective places of business. Respondent members sometimes cause materials and supplies to be shipped and delivered to their customers from the respective places of manufacture of such materials and supplies in States other than those in which the respective customers are located. The activities of the respondent organizations and associations and the members thereof, have affected interstate commerce to the extent and in the manner hereinafter set forth. In the course of their respective businesses, the members of the respective respondent organizations and associations, but for the matters and things hereinafter set out, would be naturally and normally in competition with each other, and are in competition with other individuals, partnerships and corporations also engaged in the sale and distribution of building materials and builders' supplies.

I. Paragraphs 11 to 15, inclusive, refer primarily to the following respondent organizations, their officers, and their members, to wit: Building Material Dealers Alliance, Pittsburgh Builders Supply Club, Building Material Institute, Western Pennsylvania Builders Supply Alliance, Allied Construction Industries of Cleveland, Ohio, Inc., and to their cooperation in maintaining and enforcing the said respondents' program known as the Alliance program.

PAR. 11. The respondent organizations as aforesaid established a class of dealers in building materials and builders' supplies known as "recognized" dealers. These recognized dealers were the members of the respondent organizations and associations and building materials and builders' supplies dealers approved by the respondents. The articles of organization of the respondent Alliance provided as follows:

The recognized dealers in the Cleveland-Pittsburgh Trade Area shall be construed as those holding membership in, cooperating with, an organized dealer group within this territory, or who hold membership in the Alliance.

Membership in the respondent organizations was restricted, theoretically, to the ability of a dealer seeking recognition to establish an economic necessity for his business in the community which he served or proposed to serve, but, practically, it was the arbitrary decision of the officers and leaders representing the respondent members, competitors, or prospective competitors of the said dealer seeking recognition, in determining whether the said dealer should be classed as "recognized."

PAR. 12. The basic object and purpose of the Alliance program which all the respondents actively cooperated in maintaining was to control and confine the retail distribution of building materials and builders' supplies exclusively through such recognized dealers, and to prevent the direct sale of such materials and supplies by manufacturers to all others, to wit: consumers, non-recognized dealers, vendors, contractors, and State Governments and other political sub-divisions; and to require all such purchasers to purchase their materials and supplies through recognized dealer channels upon terms or conditions of sale which afforded a commission or profit to such recognized dealers.

PAR. 13. Further objectives of the respondents' Alliance program were (a) to limit the distribution of building materials and builders' supplies to carload quantities by railroad only, and thus eliminate distribution by motor truck or motor vehicles, so preventing competing dealers, vendors, contractors, and other purchasers from obtaining their requirements in truckload quantities; only recognized dealers could participate in pool car shipments, and all others were to be prevented from so participating with the recognized dealers; (b) to prevent manufacturers of cement blocks from purchasing their raw materials direct from manufacturers and producers, and to require such manufacturers to purchase their raw materials exclusively from the respondent members and recognized dealers at prices which afforded a profit to such dealers and members; (c) to require the sale and distribution of all cement requirements for all buildings and other private construction, as well as for highway, bridge, and culvert construction and maintenance, and the cement requirements for cities, counties, and all other political sub-divisions of states to be made through the medium of said respondent members and recognized dealers and at prices affording a profit to said members and dealers; (d) to facilitate price fixing among recognized dealers in their respective communities; and (e) to eliminate brokers in the distribution of building materials and builders' supplies.

PAR. 14. For the accomplishment of the aforesaid objects and purposes of the respondents' Alliance program, the respondent organizations, their officers and members, under the leadership of respondent Lawrence I. MacQueen, have used the following methods and practices:

(a) They have exacted and procured written pledges and other promises and agreements from each respondent member and from manufacturers and producers of building materials and builders' supplies to the effect that such members and manufacturers will support and adhere to the respondents' Alliance program. The articles of the Alliance organization provided: "A member of the Alliance shall be required to pledge support to such principles and policies as may at that time represent the mind of the Alliance, and to such later policies as may be duly and properly adopted." The Alliance membership pledge is as follows:

BUILDING MATERIAL DEALERS ALLIANCE

In recognition of the value and importance of a closer relationship and co-operation between those dealers in building material who have an obvious community of interest, we do hereby accept membership in the Building Material Dealers Alliance and do pledge ourselves to the observance and maintenance, in so far as it is within our power, of the following principles:

1. It is the sole right and prerogative of the organized dealers in Building Material serving any community to determine who shall be qualified as a recognized dealer in that community and when such recognition shall be accorded.

2. The interests of the building industry are conserved and protected when producers of Building Material distribute their products exclusively through recognized dealers in such material.

3. Our mutual interests are best served and the welfare of the industry is advanced when the solicitation of business and the quotation of prices by producer's representatives and salesmen are confined to recognized dealers.

4. The maintenance both by ourselves and by our sources of supply of definite terms of sale and proper credit practices is a fundamental necessity for the continuity of our business.

5. Where equitable practice and market stability requires, the shipment of all building material shall be made in carload quantities by rail.

6. The use of jobbers and brokers as a medium for the distribution of building material in an area served by recognized dealers is unnecessary and uneconomic.

SIGNED:-----

(b) For the purpose of inducing and compelling manufacturers and producers to conform to said program, membership lists of the respondent organizers were mailed to large numbers of such manufacturers and producers in the various States of the United States, together with statements of policy and letters which implied boycott, or contained threats of boycott, against the materials of manufac-

turers and producers who failed to cooperate. For example, secretary MacQueen addressed the following form letter:

To all manufacturers of Building Material serving the Cleveland-Pittsburgh Area:

GENTLEMEN:

By direction of the councilors of the Building Material Alliance representing the recognized dealers in the Cleveland-Pittsburgh Trade Area, I am sending to you certain statements which represent the basic policy of each member of the Alliance * * *.

It would be very pleasing to this group of more than 150 recognized dealers in this area, if you would inform your salesmen or sales representatives of these statements of policy, and it's our earnest hope that you may see your way clear to insist that they give to these recognized dealers their sincere and wholehearted support. * * *

Naturally, a statement from any manufacturer of his desire and willingness to cooperate with the Alliance—will be appreciated and all members will be fully informed of such evidence of understanding helpfulness.

You will find enclosed a list of the membership of the Building Material Alliance of the Cleveland-Pittsburgh Trade Area, representing the recognized dealers in this territory of March 1, 1933. This is sent you in the expectation that it will be helpful to you in the proper distribution of your product in this district.

Very sincerely yours,

(S) L. I. MACQUEEN,
Secretary.

The following statements of policy were enclosed with the above letter:

STATEMENT OF POLICY

NUMBER THREE

It is the fixed policy of each member of the Building Material Dealers Alliance of the Cleveland-Pittsburgh Trade Area that they will only warehouse and push the sale of those brands of commodities which are marketed exclusively through the recognized dealers in this trade area.

NUMBER FOUR

The members of the Building Material Dealers Alliance will construe as an unfriendly act the sale of any type of building material, usually and customarily sold through building supply dealers, directly to contractor or consumer at any point within the Cleveland-Pittsburgh trade area where recognized dealer distribution is available. Further, it is held by the members of the Alliance that on new business, on and after March 1st, the shipment by manufacturers of any building material within this trade area other than in car lots by rail will be detrimental to the interests of the recognized building material dealers and subversive to the dealer structure.

(c) Consistent and combined pressure of the respondent dealers was exerted on manufacturers and producers to accept and cooperate with the respondents' program. This pressure took the form of

official letters, personal contacts, telephone calls, and telegrams containing implied threats that if a manufacturer did not so abide the members of the respondent organizations would not do further business with him.

(d) The respondent officers and members conducted a system of espionage upon the business of manufacturers, members, non-recognized dealers, and others; complaints against manufacturers for violations of the respondents' program were made directly to secretary MacQueen, or indirectly through a councillor, and said complaints were brought to the attention of the respondent members and discussed at the meetings of the respondent organizations; letters to secretary MacQueen from manufacturers and producers indicating cooperation with respondents' program were also brought to the notice of respondent members at their meetings; secretary MacQueen, through various sources of information, particularly through members, received reports relative to the conduct of other members and the observance or nonobservance of their pledges.

(e) In conformity to secretary MacQueen's advocacy of "publicity for the facts" to insure an effective working unit, the officers of respondent organizations transmitted information, either orally or by official bulletins and communications, to respondent dealer members in regard to manufacturers who were not abiding by the respondents' program, the obvious inference being that the members should not further do business with these non-conforming manufacturers.

(f) Official letters and resolutions of respondents were addressed to, and oral conferences were had with manufacturers and railroad officials in order to promote and enforce the respondents' policy of "shipments of carload lots by rail only" and to eliminate the trucking of building materials and builders' supplies.

(g) Price-lists were issued from the office of Lawrence I. MacQueen as an official of respondent organizations, to which lists the dealers in the Pittsburgh and Western Pennsylvania markets were supposed to adhere. Changes of prices were furnished from Mr. MacQueen's office by supplemental pages forwarded or handed to the members to insert in their "price books." If a dealer failed to adhere to said prices, pressure was brought to bear by the respondents on the source of supply of that dealer, and other respondent dealers would not purchase materials from a manufacturer who insisted upon selling to a dealer who was not adhering to the price-list.

PAR. 15. The respondent organizations and associations actively cooperated in the enforcement and maintenance of the Alliance program. Lawrence I. MacQueen was the executive secretary in two of the organizations, to wit: Building Material Dealers Alliance and

Western Pennsylvania Builders Supply Alliance, and manager of the Pittsburgh Builders Supply Club, and operated as the official of these three organizations from the same office in Pittsburgh; and the president and manager, respectively, of the other two organizations, to wit: Building Material Institute, and Allied Construction Industries were councillors of Building Material Dealers Alliance. Reports, bulletins, pamphlets, letters, extracts from meetings, rosters of membership, and other data were mailed by Mr. MacQueen to the members of the respondent organizations, most of whom were listed as members of the respondent Alliance. The officers of said respondent organizations cooperated in reporting and disseminating information identifying the manufacturers who violated the Alliance program.

II. Paragraphs 16 to 33 refer primarily to the activities of the other named respondent organizations and associations, their officers, and their members, to wit: Lime and Cement Exchange of Baltimore City, Middle Atlantic Council of Builders Supply Associations, Maryland Builders Supply Association, and the National Federation of Builders Supply Associations and its federated units and members thereof.

PAR. 16. On May 19, 1933, secretary L. I. MacQueen sent a form letter, entitled "A Call to Action," over the entire country to secretaries and presidents of organized groups and to various dealers in the building supply industry. The letter is in part as follows:

To the responsible executives of organized groups within the construction industry:

At the regular meeting of the councillors of the Building Material Dealers Alliance in the Cleveland-Pittsburgh area, it was directed that a general call be issued to all organized groups of dealers in builders supplies—requesting that they delegate representatives to a conference to be held in Cleveland, on Monday, June 5.

The said meeting on June 5, 1933, is the last recorded meeting of the Building Material Dealers Alliance as such. The meeting resulted in the formation of the respondent National Federation of Builders Supply Associations, which was to apply on a national scale the principles and programs of the Alliance under the same leadership, with its headquarters at Pittsburgh, Pa., at the office of its secretary, respondent L. I. MacQueen, who was the author of the booklet entitled "Alliance Program," which contained the principles and policies of the Alliance movement.

PAR. 17. The directors of the respondent National Federation, in convention assembled in December 1934, adopted a "Resolution of Dealer Definition," which set forth the qualifications necessary for

recognition as a dealer in builders' supplies. This dealer definition was mailed to the officers of the affiliated units of the National Federation for distribution among its members. At about the same time, the respondent National Federation issued "A Declaration of Business Policy," which was widely distributed among the dealer members of the units of said respondent National Federation. Many of the dealer members signed said declaration on perforated coupons attached to the bottom of said declarations, and mailed the said signed coupons to secretary MacQueen's office, indicating their acceptance thereof. The members were requested to hang said declarations in their offices. Said declaration is in part as follows:

We resolve, therefore, that whenever possible, we will hereafter purchase builders supplies from those manufacturers or producers of builders supplies who merchandise their products to dealers in builders supplies, when sold for use within a recognized marketing area which is constantly and regularly served by dealers or from those manufacturers who comply with the provisions of the Code of Fair Competition for the Builders Supply Trade.

The purpose and intention of the above resolution was to keep the sale and distribution of building materials and builders' supplies within clearly circumscribed limits, to wit: To the qualified recognized dealers under the respondent Federation's definition, as represented by the members of its affiliated units; and to have said dealer members limit their patronage to those manufacturers and producers who sold exclusively to those dealers so recognized by the Federation.

PAR. 18. The directors of the National Federation, at a meeting in Kansas City, Mo., on June 3 and 4, 1935, voted the following: "Executive Committee goes on record as definitely opposed to the practice of receiving builders' supplies in any other way than by rail, preferably in carload quantities."

PAR. 19. Secretary MacQueen of the respondent National Federation issued a form letter dated August 30, 1935, to officers and directors of federated units. Said letter is in part as follows: "Local markets must be stabilized. In some way we must control those dealers or alleged dealers who * * * are destroying the stability of our markets."

PAR. 20. Harloe S. Chaffee, a director of the National Federation, and the president of the New York State Builders Supply Association, an affiliated unit of the National Federation, was the chairman of a cement committee, consisting of twelve other dealer members located in various States of the United States, representing the said National Federation, which met with representatives of the cement industry, and as a result of negotiations, a large number of cement companies, in April 1935, announced a "Revised Distribution Policy." This revised policy contained a definition of an "equipped cement

dealer" to whom the cement companies were to confine all sales of cement, with certain specific exceptions stated in said policy. Secretary MacQueen, in a circular letter mailed to all the secretaries of the federated units, stated "a most important element in this revised distribution policy is the definition of an equipped cement dealer." Secretary MacQueen, in an official communication to the federated units on June 19, 1935, stated: "The splendid service to the industry rendered by the Federation in connection with the sales policy generally announced by cement companies is illustrative of the necessity of the Federation and of its value to all federated groups. Without a doubt this recently announced cement policy will turn not less than \$25,000,000 worth of business into dealer channels * * *."

PAR. 21. At the meeting of the respondent National Federation in June 1935, secretary MacQueen stated:

First, the responsibility devolved upon every dealer in builders' supplies to ascertain whether or not the cement manufacturer from whom he purchased cement has issued a statement of policy as to distribution * * *.

It was suggested therefore that unless the dealer had received notice from his cement manufacturer of the adoption of this policy that he communicate with the manufacturer, inquiring whether such policy had been issued, and if not, why not. Unquestionably dealers should give their patronage to those manufacturers who had indicated in writing their policy of distribution.

Second, since the policy was to distribute through "equipped cement dealers" the speaker outlined a definite program which he recommended to all markets as the procedure to be followed in developing accurate lists of equipped dealers in every market.

Third, all markets were urged to maintain as a fixed mark-up the addition of 15¢ per barrel for Portland cement f. o. b. cars.

Secretary MacQueen's plan was that a committee be appointed within each federated unit to prepare a list of "equipped cement dealers," and that the list be presented personally to each cement manufacturer who sells within a given market. The secretary of each federated unit would then send his list to the secretary of the National Federation, and master lists would then be compiled which would include all the selected "equipped cement dealers" within the territories of all the federated units.

PAR. 22. The respondent National Federation, in calling its convention to be held January 9, 10, and 11, 1936, issued, on November 29, 1935, "A Call to Arms * * * to the 500 odd dealers throughout the United States who have always sold more than one-half of all hard material distributed through dealer channels in this country." The National Federation appointed major commodity committees to work in conjunction with the commodity committees of the federated units. The object of these commodity committees was to assist in the maintenance of a policy of dealer distribution for the par-

ticular major commodities of the building supply industry. The major commodity committees included committees on cement, clay products, metal lath, lime, gypsum products, metal sash, mineral aggregates, ready mixed concrete, brick, roofing, and sewer pipe. At said convention the Federation adopted the recommendations of the cement committee, which were in brief:

1. That cement manufacturers should not ship to dealers outside their particular dealer territory.

2. That the organized units, with the assistance of their dealer members, determine the selling territory of each dealer.

3. That the cement manufacturers desist from all warehouse operations.

4. That all trucking of cement be stopped.

5. That the dealers maintain a minimum differential of 15¢ per barrel on all sales of Portland cement in carload quantities.

6. That the federated units make revised lists of established dealers, these to be furnished to all cement manufacturers shipping into their territory.

7. That all ethical manufacturers of cement be given recognition in all metropolitan markets, even at some possible inconvenience to dealers in that market.

Chairman Chaffee of the said cement committee was appointed by the Federation as Special Liaison Officer to receive complaints from dealer members in regard to cement sales by cement companies throughout the country which the secretaries of the federated units of the Federation were unable "to effect a satisfactory settlement." Mr. Chaffee received a large number of these complaints which were "regularly destroyed as soon as they were cleaned up," and a large number of said complaints were made and handled entirely by long distance telephone. Mr. Chaffee testified, "I can assure you that I put nothing on paper." In response to complaints made by a dealer in Harrisonburg, Va., Mr. Chaffee, as chairman of the National Cement Committee, wrote to the Keystone Portland Cement Company of Philadelphia, Pa., because of a direct sale made by said cement company to the Nielsen Construction Company for delivery at Shenandoah, Va., and in regard to other prospective deliveries at Staunton, Va., for the same firm; Chairman Chaffee also wrote to the Superior Cement Company of Portsmouth, Ohio, in regard to a direct sale by that company to J. I. Barnes of Logansport, Ind., for use on the United States post office building at Orange, Va. The said Nielsen Construction Company and J. I. Barnes were not considered "equipped cement dealers" by the respondents.

Mr. Chaffee wrote, "The Dealers represented at this coming meeting (directors' meeting of the National Federation) are vitally interested in knowing the policy and position of the various manufacturers of cement throughout the country. Your cooperation will be keenly appreciated."

PAR. 23. In 1935, the United States Government, through the Procurement Division for the Relief Administration, announced a policy of buying directly from manufacturers. Secretary MacQueen of the respondent Federation announced that this policy "must be stopped" in a form letter dated July 8, 1935.

The United States Government, in connection with F. E. R. A., sent out an inquiry "for 100,000 barrels of cement to manufacturers within the State of Ohio." The following excerpt is taken from a report on Federation activities, signed by Lawrence I. MacQueen, Secretary, dated August 22, 1935:

As a result of the prompt action on the part of the State organization (Ohio Builders Supply Association, an affiliated unit of the National Federation), and with the leadership of the president of the Federation, no cement company quoted. This same inquiry was then issued to manufacturers outside of the State, and again no direct bids were made. A committee headed by the president of the Federation met with the purchasing agent for relief work in the State of Ohio, and negotiated for a recognition of the rights and privileges of dealers. This work in Ohio unquestionably served to assist in bringing the Government to see the position of the dealer in connection with Government bidding.

The National Federation was successful in having the United States Government change its announced policy of direct purchase of materials for relief purposes, and Secretary MacQueen, on August 28, 1935, addressed a form letter to the units of the Federation which refers to said activity of the Federation as "one of the finest pieces of cooperative work this industry ever engaged in" in "bucking a department of the Government" and thereby secured for "dealer distribution \$50,000,000 worth of business" which the Government "was determined to buy direct."

PAR. 24. The respondents Lime and Cement Exchange of Baltimore City and the Maryland Builders Supply Association, affiliated units of the respondent National Federation, and the Middle Atlantic Council of Builders Supply Associations, which included in its membership of eight associations seven affiliated units of the said National Federation, actively cooperated with the said National Federation in enforcing and maintaining the principles and program of the said National Federation, as above set forth. Respondent H. C. Thompson was the secretary of each of the three above named respondent organizations, as heretofore stated. Secretary Thompson

received from Secretary MacQueen of the National Federation copies of the "Resolution of Dealer Definition" above referred to, and adopted said definition in determining who was a dealer in building materials. Secretary Thompson also received from Secretary MacQueen at least 100 copies of "Declarations of Business Policy" referred to above, and he distributed at least 50 of the same. It was the duty of respondent Thompson, as secretary of these organizations, which he fulfilled, to notify members of the names of manufacturers who made direct sales to those whom the respondents did not consider as dealers in builders' supplies.

PAR. 25. Secretary Thompson of the Lime and Cement Exchange sent membership lists of said Exchange, together with the names of a few other approved dealers, to several manufacturers located in various States, to wit: New York, Pennsylvania, New Jersey, Illinois, Ohio, and Maryland, who shipped, sold, and distributed their products in the markets where the dealer members of said Exchange have their places of business, with the implied suggestion that sales be confined to said list. Replies from several manufacturers were received indicating cooperation. The respondent Exchange adopted a resolution stating that the Lehigh Portland Cement Company had accepted a contract in Baltimore without a dealer being a party thereto, and said resolution condemned the action of any cement manufacturer or any other manufacturer of building materials in selling direct to the United States Government, the State, or any political sub-division, concrete block manufacturers, ready-mix plants, or any other purchaser of building materials for manufacturing and/or construction. In accordance with the said resolution, copies were sent to all members and to all manufacturers selling to the dealers in the Baltimore area.

Secretary Thompson forwarded a copy of said resolution to the secretary of the National Federation, with the suggestion that a copy of this resolution be broadcast from the National Federation office among all of its units, "as this will be direct evidence that at least one cement company has already started to sell direct rather than through a building supply dealer."

PAR. 26. The respondent L. H. Thompson, as secretary of the Maryland Builders Supply Association, mailed a "Special Notice to all Members," calling attention to a direct sale to a contractor by the Lehigh Portland Cement Company. The Maryland Builders Supply Association included in its membership the members of the respondent Lime and Cement Exchange.

PAR. 27. The Baltimore Lumber Company, a competitor of the members of said Exchange, was unable to purchase cement in car-

load lots from several manufacturers because of the interference of the said Exchange and its unwillingness to classify the firm as a dealer. The said firm, in 1935, did about \$340,000 worth of business in lumber and building materials, both within and outside the State of Maryland; the said firm applied for membership in said Exchange, and it was refused membership.

PAR. 28. The Middle Atlantic Council of Builders' Supply Association was formed "for the sole purpose of getting representation from adjoining trade areas of the builders' supply industry; thereby having a council to solve problems in the different overlapping areas which are more or less of the same character." The Council, at a meeting on January 18, 1935, adopted the following resolution:

First. "That manufacturers should distribute builders supplies through established and recognized builders supply dealers."

Second. "That a new dealer account * * * should not be opened by any manufacturer * * * until after such manufacturer had communicated * * * to ascertain if the contemplated account is a builders supply dealer in the trade area."

These resolutions, as adopted, are being mailed to manufacturers of the principal commodities sold by builders supply dealers in the territory in order that all manufacturers may know the distribution policies acceptable to the members of these associations.

Respondent Thompson, as secretary of said Council, sent the above resolution to several manufacturers located in various States of the United States who service the markets of the members of its associations, and several responses were received from said manufacturers indicating cooperation. The following reply is typical:

We are pleased to advise you that we are taking steps to give you complete cooperation by advising our sales representatives to conform with the distribution policies which are acceptable to the members of your association * * *

PAR. 29. The New Jersey Mason Material Dealers Association is a New Jersey corporation, with its principal headquarters in Newark in said State. The said Association was a member of the respondent Middle Atlantic Council of Builders Supply Associations, and is an affiliated unit of the respondent National Federation, and actively cooperated with said Federation in maintaining and enforcing the policies and program of said Federation as hereinabove set forth. The membership of said Association consists of: (a) Active members who are dealers in building materials with places of business in New Jersey, and (b) associate members who are manufacturers located in various States of the United States, who service the building material markets in New Jersey. W. M. Staubus was secretary of said association during the years 1929-1933, and Edward J. Kernahan is now its secretary and manager. The said Association and its

officers were active in maintaining the principle that all building materials should be distributed through recognized dealers as represented by the members of said Association. Manufacturers were warned not to sell direct to those not recognized, and the dealer members were requested to buy only from those manufacturers who sold through the recognized dealers, and said dealer members were requested to consult the directories of the associate members of the Association, which were distributed to dealer members, when needing their supplies. The qualification of the associate members, who paid \$25.00 a year dues, is that they abide by the policies of the said Association. The dues of the active members were determined by the volume of their business. The active members of said Association comprised approximately 100 out of approximately 300 dealers in New Jersey, and the sales of the dealer members represented the preponderance of sales of building materials in the New Jersey market. The following concerns are representative members of said Association but do not constitute the entire membership of said Association:

Tidewater Stone & Supply Co.,
Hackensack, N. J.
Campbell, Morrell & Co., Passaic,
N. J.
Hill City Coal & Lumber Co., Sum-
mit, N. J.
Rovegno-Hall Co., Jersey City,
N. J.

Perry & Ruck, Inc., Newark, N. J.
Comfort Coal-Lumber Co., Hacken-
sack, N. J.
Ogden & Cadmus, Bloomfield, N. J.
Osborne & Marsellis Co., Upper
Montclair, N. J.
Phillipsburg Supply Co., Phillips-
burg, N. J.

The Association was active in the elimination of trucking to the dealers' jobs.

The Greenburg Sash, Door, and Supply Company, a New Jersey corporation, organized in 1926, with its principal place of business in Newark, in said State, was engaged in the building material supply business, selling its products both within and outside the said State of New Jersey. The average business of the corporation is about \$200,000 a year, of which about \$75,000 represented its mason material business. The said corporation is in competition with members of said Association. Several manufacturers of cement and building materials who shipped their products from outside the State of New Jersey into the markets of said State, stopped selling the said corporation because of the activity of said Association. The corporation applied for membership in the said Association on three different occasions, but its applications for membership were refused.

The Rockland Concrete Sales Company, Inc., is a New Jersey corporation engaged in the mason material supplies business. Several manufacturers of cement and building materials refused to sell said

company because it was not a member of the New Jersey Mason Material Dealers Association. The company made application for membership in the said Association, and was advised by Secretary Kernahan that it was not qualified to be a member. The said company had a large warehouse and garage, which is sufficiently stocked with mason and building materials, and necessary delivery facilities to supply the ordinary business demands of the community where its business was located. The said company is in competition with members of said Association.

James Ricigliano, another competitor of some of the members of said Association, experienced similar difficulty in obtaining his requirements due to the activity of said Association.

PAR. 30. The New York State Builders Supply Association is a corporation organized in 1917, under the laws of the State of New York, having its headquarters in Utica, N. Y. Its membership consisted of approximately 400 dealers in the building material business whose places of business were located in the State of New York, but outside the city of New York. The following concerns are representative members of said association but do not constitute the entire membership of said association:

Globe Plaster Co.,
Buffalo, N. Y.

Acme Builders Supply Co., Inc.,
Buffalo, N. Y.

Bison Builders Supply Co., Inc.,
Buffalo, N. Y.

Kenmore Builders Supply Co., Inc.,
Buffalo, N. Y.

Paragon Plaster Co.,
Syracuse, N. Y.

I. W. Miller & Son,
Olean, N. Y.

The said Association is an affiliated unit of the respondent National Federation. H. S. Chaffee was president of the said New York Association during 1933, 1934 and 1935, and represented the said Association as a director of the said National Federation during the years 1933 to 1936. He also served as chairman of the National Cement Committee, and as Special Liaison Officer, as hereinabove noted. The said New York Association, and its officers, actively cooperated with the National Federation and its officers, directors, and members, in the enforcement and maintenance of the Federation program and policies, as above set forth.

The said New York Association endorsed and adopted the recommendations of the National Cement Committee as adopted by the National Federation which recommendations are set forth in paragraph 22 above. Members of said New York Association, acting on the instruction of their authorized officers, forwarded notices and copies of all public bids for cement in their particular localities to the office of the secretary of said Association, where the bids were

tabulated and published, with the name of the bidder, amount bid, and the date, in news letters and other official documents which were distributed throughout the State to dealers. Said publications contained the "violations" of the dealers who failed to adhere to the 15¢ differential on Portland cement. President Chaffee communicated with, and criticized, a number of these bidders who did not adhere to the fifteen cents per barrel mark-up. Complaints were made to cement companies for selling dealers who were not adhering to the fifteen cents per barrel mark-up. The Alpha Portland Cement Company sells and distributes about 60,000 barrels a year in Buffalo, N. Y., and the surrounding counties; about one-half of this amount is shipped into the said Buffalo area from the plant of the company located in Pennsylvania; the other half is shipped from its plant located within the State of New York. Said company sold substantial amounts of cement to the Ark Builders Supply Company, Inc., of Buffalo, N. Y. Respondent Chaffee complained to a representative of said cement company for selling to the said Ark Builders Supply Company, Inc., because he was a price-cutter, and said Chaffee threatened the cement company with a loss of tonnage from other dealers if sales to the said Ark Builders Supply Company, Inc., were not discontinued. According to the program of said Association, only those dealers who were members, or who qualified under the definition of a dealer, as contained in the constitution and by-laws, of said Association should be able to buy direct from manufacturers and producers. Complaints were made by Mr. Chaffee to certain manufacturers for selling to dealers whom he did not consider qualified to be dealers. The Globe Plaster Company of Buffalo, New York, of which H. S. Chaffee was the vice-president, and the Acme Builders Supply & Fuel Co., of Buffalo, N. Y., are two of the largest dealers in building materials in the Buffalo area, and both are members of the said New York Association. The Globe Plaster Company and the Acme Builders Supply & Fuel Co., at separate intervals, issued price-lists which the dealer members of the said New York Association in the Buffalo area were supposed to adhere to. The Buffalo dealers, members of the New York Association, met at frequent intervals and discussed said prices. August Neuman, president of the Ark Builders Supply Company, Inc., which was having difficulty in obtaining its requirements, was "called down" by president Chaffee for selling below the prices as listed by the Globe Plaster Company.

PAR. 31. The Building Material Merchants of Chicago District is a voluntary trade association with its headquarters in Chicago, Ill.;

Findings

28 F. T. C.

its membership consisted of retail dealers in building supplies having places of business in Cook County, Ill., which composed the territorial jurisdiction of said Association. The said Cook County is one of the largest building supplies markets in the United States. The business of the members of said Association, in September 1935, represented about 92.2% of the building supplies sold in that area. The members of said Association purchase large quantities of their requirements from outside the State of Illinois, and some of said members sell and distribute their products outside the State of Illinois. The said Association was a unit of the National Federation and cooperated with the officials of said Federation in the Federation program as above set forth; said Association was active in securing dealer distribution of cement, plaster, and other building materials exclusively through the medium of its members; in accordance with a written request from the secretary of the said National Federation, the directors of the said Association, at its meeting on April 23, 1935, ordered the secretary of the said Association to prepare a list of "equipped cement dealers" for submission to cement manufacturers; that within certain territories within the jurisdiction of said Association, lists of "equipped cement dealers" were prepared; in at least one instance, the secretary of the said Association complained to a manufacturer for making a direct sale to a concern which was not a member of said Association and which concern said Association did not consider to be a dealer; letters forwarded to said manufacturer from the secretary contained a veiled threat that the members of the Association might not purchase the product of said manufacturer. The officers of said Association attempted to maintain retail prices on building materials by distributing composite price-lists, made up from prices filed by the various members, to which the members were expected to adhere. The following concerns are representative members of said association but do not constitute the entire membership of said association:

Consumers Company, Chicago, Ill.	Consolidated Company, Chicago, Ill.
Chicago Fire Brick Company, Chicago, Ill.	Calumet Coal Co., Chicago, Ill.
Moulding Brownell Corp., Chicago, Ill.	Ideal Building Material Co., Chicago, Ill.

PAR. 32. The Michigan Builders Supply Association is an unincorporated voluntary trade association organized in 1927 and having its headquarters in Ypsilanti in said State of Michigan; its membership consists of approximately 235 retail dealers in building materials and builders' supplies with places of business in said State of Michi-

gan, not including the city of Detroit, and numbering in said membership many of the largest dealers in said area; as a federated unit of the respondent National Federation, the said Association contributed to the support of said Federation, and cooperated with it and its officers and members in the maintenance of the Federation program as above set forth. The basic policy of said Association calls for the "100% distribution" of all building materials and builders' supplies through dealers who qualify under the definition of a "legitimate and qualified retail builders' supply dealer" as set forth in the articles of said Association; the said legitimate and qualified dealers are the members of said Association and such other dealers as are recognized by the officers of said Association; a special bulletin issued by said Association, and distributed to its members, stated:

We work at all times to prevent the manufacturer selling *direct* to the *contractor* or customer, any kind of construction materials used by the *mason* contractor, the *plaster* contractor, or the *sewer* builder.—DISTRIBUTION OF BUILDERS' SUPPLIES THROUGH THE DEALER— * * *

We believe that dealers should stand together against the encroachments of direct selling by the manufacturer—whether these sales are made to private industry or to the UNITED STATES GOVERNMENT.

Manufacturers and producers servicing the markets within the territorial jurisdiction of said Association were notified of said dealer distribution policy; complaints were made to such manufacturers and producers who violated said policy in selling to others who were not recognized by the officers of said Association as legitimate and qualified dealers; the secretary of said Association sent letters to manufacturers "insisting" that they abide by said policy, and these letters contained the implied threats that members would not purchase the products of those manufacturers and producers who did not abide by the said dealer distribution policy; the secretary of said Association complained to the American Vitrified Products Company of Cleveland, Ohio, for violating the said dealer distribution policy and said letter is in part as follows: "before reaching a conclusion unfavorable to your company's policy, it is necessary to have an answer * * *"; another letter forwarded to a manufacturer by the secretary complained of a violation of said dealer policy, and said letter is in part as follows: "For your information, W. H. Knapp Company are contractors and are not, and never have been, recognized as dealers. Your quotations in that city (Monroe) should be made through one of the following: * * *" The names of four members of said Association are then set out in said letter.

In cooperation with the said National Federation, the secretary of said Association prepared a list of "equipped cement dealers" in

Findings

26 F. T. C.

Michigan which included, not only the members of said Association, but other dealers recognized by the officers of said Association as "equipped cement dealers;" said lists were forwarded to cement companies and to the office of the secretary of the National Federation; complaints were made by the secretary of said Association to the Aetna Portland Cement Company for selling to dealers not considered by the officers of said Association as "equipped cement dealers;" in cooperation with the Indiana Lumber and Builders Supply Association, the secretary of said respondent Association complained to the said Aetna Portland Cement Company about sales made in Indiana to the Farm Bureau Cooperative Association, Inc.; the said respondent Association actively cooperated with the National Federation in the policies calling for the elimination of trucking, as heretofore described, and the maintenance of the 15¢ dealers' differential per barrel on sales of Portland cement. The following concerns are representative members of said association but do not constitute the entire membership of said association:

Martin Dawson Company, Ypsilanti, Mich.	Ann Arbor Fuel and Supply, Ann Arbor, Mich.
Van Poppelen Bros., Bay City, Mich.	J. P. Burroughs & Son, Flint, Mich.
S. A. Wilder & Son, Alblon, Mich.	S. A. Morman & Co., Grand Rapids, Mich.

PAR. 33. The said National Federation was a national combination of effort and in the interest primarily of the dealers in builders' supplies who were members of its affiliated units; each member of each of the affiliated units of said National Federation, by virtue of such affiliation, joined and allied himself with all other builders' supplies dealers who were members of the other affiliated units located throughout the United States in concertedly pursuing common objects, purposes, and methods of said National Federation and its affiliated units. The activities of the said National Federation, as above set forth, were conducted primarily for the individual and mutual interests and advantages of the dealer members of all its federated units, and the results of said activities inured to the benefit of said dealer members. Respondents Lawrence I. MacQueen, as secretary of the said Federation, and H. C. Chaffee, as chairman of the National Cement Committee, and Special Liaison Officer, in their official duties and labors in behalf of the dealer members throughout the country of the federated units, were in frequent communication with the officers of said federated units. Said respondents also represented, and were in direct communication with, the dealer members thereof for the purpose, and with the effect, of assisting said dealer

members by effectuating the objects of the respondent organizations, with which said dealer members were respectively affiliated.

The dealer members of the affiliated units of the National Federation were at the time of the issuance and filing of the complaint herein so numerous and so widely scattered, to wit: several thousand dealer members of forty-one affiliated units located in thirty-two States of the United States, that all of the said dealer members of said affiliated units of said Federation could not, without manifest inconvenience and oppressive delay, be made parties respondent specifically by name, but were made parties respondent by representation herein. There is direct evidence in the record relative to the activities of the following respondent affiliated units of said National Federation and their officers and members: Building Material Institute, Western Pennsylvania Builders Supply Alliance, Lime & Cement Exchange of Baltimore City, Maryland Builders Supply Association, New Jersey Mason Material Dealers Association, New York Builders Supply Association, The Building Material Merchants of Chicago-District, The Michigan Builders Supply Association, and the Ohio Builders Supply Association. The above named respondent affiliated units were and have continued to be each and all of them fairly representative of the entire affiliated membership of the said National Federation, and the dealer membership of said affiliated units was and is representative of the dealer membership of all the other affiliated units of said Federation.

PAR. 34. The respondent dealer members of said associations and organizations of dealer members named herein do not constitute all of said dealer members, but are representative of the dealer members of said associations and organizations which have a common and general interest in the methods and purposes of said associations and organizations. Said dealer members constitute a class having a common or general interest so numerous as to make it impracticable to name them all as parties respondent.

PAR. 35. The aforesaid methods and purposes of the respondent organizations and associations, and the officers, councillors, and members, have tended to produce, and have produced, the following results:

(a) Interstate commerce in the sale and distribution of building materials and builders' supplies has been restrained by eliminating therefrom, or attempting to eliminate therefrom, the so-called irregular dealers, and manufacturers and producers who sell to such dealers, and by restricting, or attempting to restrict, said commerce to such manufacturers and producers, and to such dealers, as will, and do, abide by, adhere to, and support the program and plan of re-

spondents in the limitation of trade hereinabove described; and to otherwise restrain and obstruct the natural flow of commerce in the channels of interstate trade.

(b) Competition in the sale and distribution of building materials and builders' supplies has been substantially lessened, hindered, and suppressed in the territories served by the members of respondent organizations and associations.

(c) Manufacturers and producers of building material and builders' supplies in the various States who sell and distribute their products in the markets where respondent dealers have their places of business have quite generally confined such sale and distribution to the recognized dealers. Said manufacturers and producers received from respondents membership lists, together with official letters containing implied boycotts and threats of boycotts against the products of said manufacturers and producers unless their distribution was confined to the dealers recognized by respondents.

(d) Respondent members of respondent organizations have withdrawn and withheld their patronage from manufacturers and producers who have been reported and published as selling through so-called irregular channels, that is, not through recognized dealers.

(e) In numerous instances manufacturers and producers have refused to sell, or have discontinued selling, to persons or firms who were not on the respondents' membership lists, or who were reported to them by the respondents as not entitled to buy direct. In many instances, competitors of respondent members in the retail sale and distribution of building materials and builders' supplies were unable to obtain interstate shipments of their requirements because they were not recognized by the respondents.

(f) Manufacturers and producers were injured in their business by restriction of demand for their products and of freedom to sell same direct by confining their sales to the lists of dealers published and distributed by the respondents; in order not to incur "pressure" and "combined" or "concerted" action of respondents against them, they would not sell to many to whom they wanted to sell and considered as dealers; neither would they sell direct to consumers, contractors, vendors, Government and its political sub-divisions, but had to limit their sales through "recognized dealer distribution."

(g) Competition was further substantially interfered with and lessened by the respondents' activities in preventing dealer competitors from obtaining from manufacturers and producers small quantities of supplies to be transported by truck.

(h) Costs to the consuming public were increased by respondents' issuance and observance of price-lists in certain communities and by

respondents' policy of exclusive dealer distribution because the consuming public was thereby denied the advantages in price which it otherwise would have obtained from the natural flow of commerce under conditions of free competition.

CONCLUSION

The practices of the respondent organizations and their officers, directors, and members, as set forth in the foregoing findings as to the facts, in the circumstances therein set forth, constituted a combination and conspiracy to engage in and to further unfair methods of competition in, and affecting, 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 complaint of the Commission, the answers of respondents, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, briefs filed herein, and oral arguments by Daniel J. Murphy, counsel for the Commission, and by Lawrence I. MacQueen, Herman J. Hughes and Webster C. Tall, counsel for the respondents, and the Commission having made its findings as to 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:

1. Building Material Dealers Alliance, its officers, councillors, and members, of which members the following respondents are representative: Geo. H. Lanz & Sons, Youngstown Ice Company, Pittsburgh Builders Supply Club, W. E. Wright Company, Alliance Builders Supply Company, M. C. Robinson & Company, Ohio Builders & Milling, Inc., The Tolerton Company, H. C. Boyd Lumber Company, The Kensington Supply Company, Allied Construction Industries of Cleveland, Ohio, Inc., Collingwood Shale Brick & Supply Company, Lakeshore Builders Supply Company, Inter-City Coal & Supply Company, O. C. Thayer & Son, Bye & Bye, Penn Coal & Supply Company, D. W. Challis & Sons, Inc., Hamilton & Meigs, Alcorn-Hahn Supply Company, and Hursh & Schory Coal Company;
2. Pittsburgh Builders Supply Club, its officers and members, of which members the following respondents are representative: Nathan

Bilder Company, Wm. H. Brant Sons, Frank Bryan, H. G. Dettling Company, Duncan & Porter Company, Heppenstall & Marquis, Hillside Stone & Supply Company, Houston-Starr Company, Iron City Sand & Gravel Company, Keller Brothers, D. J. Kennedy Company, Knox Strouss & Bragdon Company, Geo. Lanz & Sons, W. T. Leggett Company, McCrady-Rodgers Company, Morrison Bros., Pittsburgh Plaster & Supply Company, and Ed. Vero Company;

3. Building Material Institute, its officers and members, of which members the following respondents are representative: City Material & Coal, Inc., The Tom George Company, St. Clair Coal & Supply Company, Vanis Builders Supply & Lumber Company, Collingwood Shale B & S Company, Geist Kemper Material Company, Ideal Builders Supply & Fuel Company, Lake Shore Builders Supply Company, Medal Brick & Tile, Ohio Building Material Company, Ohio Clay Company, Bagley Road Lumber Company, Quincy Coal & Supply Company, Geo. D. Barriball Company, Zone Coal & Supply Company, Bennett Concrete Stone Company, The Clinton Company, Pompei Coal & Supply Company, Mayfield Builders Supply Company, Cleveland Builders Supply Company, Builders Supply & Fuel Company, City Material & Coal, Inc., E. E. Elias Company, Herot Builders Supply Company, Neff Coal & Supply Company, Chas. E. Phipps Company, Quincy Cement Block & Coal Company, Scheuer Bros. Builders Supply Company, and Vanis Builders Supply Company;

4. Western Pennsylvania Builders Supply Alliance, its officers, councillors and members, of which members the following respondents are representative: Kittanning Limestone Supply Company, Shufflin & Green, E. M. Fullington's Sons, F. B. Scowden & Sons, Boyd & Schafer, O. C. Thayer & Son, O. C. Cluss Lumber Company, Campbell Company, E. W. Bissett & Son, Builders Supply Company, King Company, Colbert Supply Company, River Sand & Supply Company, D. W. Challis Company, Geo. Lanz & Sons, Russell Bros., C. L. Reed Lumber Company, Greensburg Builders Supply Company, Clinton Coal & Supply Company, Keystone Supply Company, T. R. Bolton, City Coal & Supply Company, Peoples Coal & Builders Supply Company, J. A. Walker, B. Scott McFarland, Hornbake Bros., Patterson Supply Company, Monessen Sand & Gravel Company, Dunbar & Wallace Lumber Company, State Construction Company, Clarion Lumber Company, Inc., Woodwork Supply Company, and Taylor Supply Company, Inc.

5. Allied Construction Industries of Cleveland, Inc., its officers and members, of which members the following respondents are repre-

sentative: Cleveland Builders Supply Company, Goff-Kirby Company and Ohio Building Material Company;

6. Lime & Cement Exchange of Baltimore City, its officers and members, of which members the following respondents are representative: Baltimore Clay Product Company, Alan E. Barton, Belair Road Supply Company, Inc., Central Building Supply, Inc., T. C. Davis Building Supply Company, Fred Elenbrok, Fullerton Supply Company, Robert S. Green, Inc., Hudson Building Supply Company, J. Scott Hunter, King Coal & Supply Company, Maryland Lime & Cement Company, Inc., Monumental Brick & Supply Company, National Building Supply Company, Inc., Northeastern Supply Company, The Patapsco Supply Company, Pen-Mar Company, Inc., Geo. Sack & Sons, Inc., M. B. Segall & Sons, Inc., Stebbins-Anderson Company, James H. Warthen, United Clay & Supply Company, Quincy L. Morrow Company;

7. Middle Atlantic Council of Builders Supply Associations, its officers and members;

8. Maryland Builders Supply Association, its officers and members; representative members of said association are enumerated above as respondent members of the Lime and Cement Exchange of Baltimore City;

9. National Federation of Builders Supply Associations, its officers, directors and respondent federated units and the officers and dealer members of said respondent federated units; representative of said respondent federated units are the following units and representative dealer members of each respectively:

New Jersey Mason Material Dealers Association, its officers and members, of which members the following are representative: Tidewater Stone & Supply Company, Campbell, Morrell & Company, Hill City Coal & Lumber Company, Rovegno-Hall Company, Perry & Ruck, Inc., Comfort Coal-Lumber Company, Ogden & Cadmus, Osborne & Marsellis Company, Phillipsburg Supply Company;

New York State Builders Supply Association, its officers and dealer members of which members the following are representative: Globe Plaster Company, Acme Builders Supply Company, Inc., Bison Builders Supply Company, Inc., Kenmore Builders Supply Company, Inc., Paragon Plaster Company, I. W. Miller & Son;

The Building Material Merchants of Chicago District, its officers and dealer members of which members the following are representative: Consumers Company, Chicago Fire Brick Com-

pany, Moulding Brownell Corporation, Consolidated Company, Calumet Coal Company, Ideal Building Material Company; and

The Michigan Builders Supply Association, its officers and dealer members of which members the following are representative: Martin Dawson Company, Van Poppelen Bros., S. A. Wilder & Son, Ann Arbor Fuel and Supply, J. P. Burroughs & Son, S. A. Morman & Company;

and their officers, directors, councillors, and members, separately and individually, and as representatives of the successors of said officers, directors and councillors, and as representatives of the members of all respondent organizations and associations, and all other respondents named in the complaint and in the findings as to the facts, and their agents, representatives, and employees, forthwith cease and desist from:

1. Preparing, publishing, and circulating among manufacturers and producers of building materials and builders' supplies, lists of directories containing the names of "recognized" dealers, for the purpose or with the effect of indicating that the specified persons or concerns are recognized as entitled to buy direct from said manufacturers and producers, and that other persons, concerns, or classes thereof are not so entitled.

2. Soliciting, accepting, or acting upon reports from respondent officers or members, concerning the arrival, delivery, or origin of shipments made to persons or concerns not recognized by them as entitled to buy direct from manufacturers or producers, for the purpose of preventing further dealings between such buyers and the manufacturers and producers selling them.

3. Using boycott, threats of boycott, either with or without other coercive methods, to persuade, induce, or compel manufacturers and producers to refrain from selling building materials and builders' supplies to the so-called irregular dealers, or to others, or to refrain from so selling, except on unfair, discriminatory, or prohibitive terms and conditions fixed by respondents.

4. Stating or intimating to manufacturers and producers that the so-called regular or "recognized" dealers would withhold or withdraw their patronage if said manufacturers and producers sold to the so-called irregular or non-recognized buyers.

5. Making or circulating among manufacturers and producers reports concerning the status, equipment, and business methods of dealer competitors of the respondent dealer members for the purpose of inducing manufacturers and producers not to sell to such dealer competitors.

6. Cooperating with other dealer organizations and with manufacturers and producers for the purpose of confining sale and distribution of building materials and builders' supplies to so-called regular channels, and preventing their sale and distribution otherwise.

7. Intimidating the representatives or agents of manufacturers and producers from having, or continuing, business relations with buyers or prospective buyers, who are not recognized by respondents as entitled to buy direct from manufacturers and producers.

8. Preparing, publishing, and circulating among the respondent dealer members, lists, bulletins, extracts of minutes of meetings or other communications, or otherwise conveying information to said dealer members concerning sales or prospective sales by manufacturers and producers to irregular or non-recognized dealers, or prospective buyers, for the purpose of having the said dealer members withhold or withdraw their patronage from such manufacturers and producers.

9. Engaging in any concerted or cooperative activity for the purpose of preventing manufacturers and producers of building materials and builders' supplies from selling freely to consumers, contractors, the United States Government, State Governments or their political sub-divisions, or other irregular dealers or retailers of any class or description, and of preventing such consumers, contractors, the United States Government, State governments or their political sub-divisions, or other irregular dealers or retailers of any class or description from purchasing freely from manufacturers and producers.

10. Fixing or establishing uniform prices at which respondent dealer members or others, in particular communities, should sell their materials and supplies.

11. Holding meetings of officers, directors, councillors, or members for the discussion and interchange of information and the adoption of plans and measures for executing or carrying out the above described programs and policies, or similar programs and policies.

12. Taking any other concerted, cooperative or coercive action to carry out or make effective any of the methods of competition alleged in the complaint.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.¹

¹By order dated June 8, 1933, complaint in foregoing proceeding was dismissed without prejudice against the Illinois Lumber and Material Dealers Ass'n, Inc., its officers and members, included in the complaint at pages 156 and 157 in their representative capacity along with numerous others, as included in the membership of respondent National Federation of Builders Supply Associations, and again referred to as thus included in said associations' membership in the findings, *supra*, at pages 173 and 174.

IN THE MATTER OF
OLIVER BROTHERS, INC., ET AL.

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

Docket 3088. Complaint, Mar. 26, 1937—Decision, Dec. 31, 1937

Where manufacturers, processors, and producers engaged in—

(1) Selling commodities, in course of interstate commerce, to distributing buyer concerns purchasing commodities in course of such commerce, through orders placed by such distributing buyer concerns as subscribers to corporation engaged in (a) selling market information and purchasing services to 300 distributing concerns scattered over the United States and, chiefly, wholesalers of automobile, electrical, radio, mill, machine, plumbing, steam, and hardware supplies, and in (b) purchasing, under its subscriber contracts and as called upon so to do, from several hundred similarly scattered individual manufacturers, processors, importers or producers; and in—

(2) Shipping merchandise to buyers in question as a result of orders thus placed by latter with aforesaid corporate service and under contract with it, pursuant to which, and in accordance with practice followed, said corporate service transmitted and paid over to buyers regular brokerage fees paid to it by purchasers on transactions in question, and in which fees it claimed no right, title or interest, and in which various transactions said corporate service acted solely as the agent and representative of the buyer and donated service, if any, to seller, and in connection with which various transactions buyers rendered no service either to said corporate concern or to sellers involved in connection with their purchase of commodities through said corporate concern, with result that buyers, through such service, obtained, by reason of payment over of such brokerage fees to them, a lower price on commodities thus purchased than other buyers and non-members of said corporate service organization obtained, on similar goods in like quantity bought direct from such sellers;

In pursuance of a general plan or scheme whereby fees and commissions paid by sellers might be and were made available to and transmitted to buyers through said corporate service and buyers be enabled to secure discounts in price from sellers under guise of brokerage payments—

(a) Paid fees or commissions in connection with offer, sale and distribution of commodities as brokerage to aforesaid corporate service, with knowledge and intent that such fees or commissions would be and were paid over by said service to purchasers thereof as aforesaid; and

Where aforesaid distributing buyer concerns, engaged as aforesaid and as subscriber purchasers of said corporate service—

(b) Accepted and received from said service fees or commissions paid or granted to it as brokerage or allowance by sellers of commodities on sales made by such sellers to aforesaid buyers; and

Where such corporate service, engaged as aforesaid—

- (c) Received and accepted such fees and commissions as brokerage from aforesaid sellers and for payment over to purchasers of commodities as above set forth, or for their use and benefit; and
- (d) Paid or granted to purchasers of commodities as above described, fees or commissions received or accepted by it as brokerage, or allowance in lieu thereof, from sellers thereof as aforesaid:

Held, That such acts and practices constituted a violation of Subsec. (c) of Sec. 2 of an act of Congress approved Oct. 15, 1914 (as amended).

Before *Mr. John J. Keenan*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Mr. Felix H. Levy, of Levy & Molloy, of New York City, for respondents, excepting Charles F. Baker & Co., Inc., for whom appeared *Mr. Grosvenor Calkins*, of Boston, Mass.

COMPLAINT

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," as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes," the Federal Trade Commission, having reason to believe that the respondents named above in the caption hereof, and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of Subsection (c) of Section 2 of said Act as amended, hereby issues its complaint against the said respondents, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Oliver Brothers, Inc., is 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 at 417-421 Canal Street, in the city and State of New York.

PAR. 2. Respondent, W. D. Allen Mfg. Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 566 West Lake Street in the city of Chicago, State of Illinois. Respondent, Black Hardware Co., is a corporation organized and existing under and by virtue of the laws of the State of Texas, with an office and principal place of business located at 2217 Avenue B in the city of Galveston, State of Texas. Respondent, Jacobi Hardware

Co., is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 12 South Front Street in the city of Wilmington, State of North Carolina. Respondent, Matthews & Boucher, is a copartnership composed of William G. Fisher and William S. Johnson, with an office and principal place of business located at 26 Exchange Street, in the city of Rochester, State of New York. Respondent, Charlotte Supply Co., is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 500 South Mint Street, in the city of Charlotte, State of North Carolina. Respondent, Virginia-Carolina Hardware Company, is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with an office and principal place of business located at 1316 East Main Street, in the city of Richmond, State of Virginia.

PAR. 3. Respondent, Globe Crayon Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 383 Third Avenue, in the city of Brooklyn, State of New York. Respondent, E. V. Crandall Oil & Putty Mfg. Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 1105 Metropolitan Avenue, in the city of Brooklyn, State of New York. Respondent, Chas. F. Baker & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and principal place of business located at 113 State Street, in the city of Boston, State of Massachusetts. Respondent, Keystone Emery Mills, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with an office and principal place of business located at 4329 Paul Street, Frankford, in the city of Philadelphia, State of Pennsylvania. Respondent, Jas. Corner & Sons, is a sole proprietorship, owned by James A. Reilly, sole proprietor, with an office and principal place of business located at 438 North Front Street, in the city of Baltimore, State of Maryland.

PAR. 4. Said respondent, Oliver Brothers, Inc., is engaged in the business of providing market information services and purchasing services for numerous and divers wholesalers, jobbers, merchants, and dealers, located in the several States of the United States, certain of whom are named in paragraph 2 above, and joined as respondents herein, and being hereinafter more particularly described and referred to for convenience as respondent buyers. Said respondent, Oliver Brothers, Inc., in the course and conduct of its business as aforesaid,

pursues a policy and practice of purchasing commodities, particularly hardware, for the wholesalers, jobbers, merchants, and dealers above referred to, from numerous and divers manufacturers, processors and producers located in the several States of the United States, certain of whom are named in paragraph 3 above, and joined as respondents herein, and being hereinafter more particularly described and referred to for convenience as respondent sellers. In the course and conduct of its business as aforesaid, said respondent, Oliver Brothers, Inc., represents and acts for or on behalf of said respondent buyers and other buyers above mentioned generally and as a group or class engaged in common practices, and specifically for each and every named respondent buyer, in the purchase of commodities which are transported between and among the several States, whenever specifically requested so to do, and in the manner and form specified, directed and ordered by said respondent buyers, and such other buyers, acting individually.

PAR. 5. Said respondent buyers named in paragraph 2 above are each engaged in the business of buying commodities usually from sellers located in States other than the state in which such buyers are located and of reselling such commodities to their customers.

Said respondent buyers are fairly typical and representative members of a large group or class of wholesalers, jobbers, merchants, and dealers, all of whom have by contract subscribed to the market information services and purchasing services furnished by said respondent, Oliver Brothers, Inc. Said group or class embraces approximately 300 of such dealers and is so numerous as to make it impracticable to specifically name each and every one of them as respondents herein or to bring them before the Commission in this proceeding. All of said buyers are or have been engaged in similar practices to those hereinafter charged against the respondent buyers.

PAR. 6. Said respondent sellers named in paragraph 3 above are each engaged in the business of selling commodities usually to buyers located in States other than the State in which said sellers are respectively located. Said respondent sellers are fairly typical and representative members of a large group or class of manufacturers, processors and producers, engaged in the common practice of selling to said respondent buyers and to other buyers of the above-mentioned class or group who use the purchasing services of said respondent, Oliver Brothers, Inc., some of their commodities in interstate commerce, in fulfillment of orders placed by said respondent, Oliver Brothers, Inc., at the instance and upon the request of said buyers, acting individually. Said group or class of said sellers comprises a large number of such manufacturers, processors, and producers, and are too numerous to be individually named herein as respondents.

Complaint

26 F. T. C.

PAR. 7. Respondent, Oliver Brothers, Inc., in the course and conduct of its said business, receives orders to purchase commodities, particularly hardware, from members of said group of buyers, including respondent buyers, located in the various States of the United States, and transmits such orders to and executes the same with individual members of said group of sellers, including respondent sellers, who, in most cases, are located in States of the United States other than the State in which such buyer or buyers are located. As a result of the transmission of such orders by said buyers to respondent, Oliver Brothers, Inc., the execution of the same by said respondent, Oliver Brothers, Inc., at the instance and upon the request of said buyer or buyers, and the acceptance of said orders by said sellers or one or more of them, goods, wares, and merchandise, particularly hardware, are, in the case of each order and in a continuous succession of such orders, sold and delivered by one or more of the said sellers to one or more of said buyers, by such means and in the manner stated, all of the respondents cause to be transported from one State to another, goods and commodities to be resold to said buyers' customers or to consumers. In the operations and activities referred to, each and every one of the respondents is engaged in interstate commerce, in practices which contemplate and result in the transportation of commodities in interstate commerce and in making sales and purchases which directly affect and bring about such commerce.

PAR. 8. In the course of the buying and selling transactions hereinabove referred to, resulting in the delivery of commodities from one or more of the said sellers to one or more of said buyers, by means of the purchasing services of said respondent, Oliver Brothers, Inc., as agent for said buyers, said sellers have transmitted and paid, or allowed and credited and do transmit and pay, or allow and credit, to said respondent, Oliver Brothers, Inc., as agent or representative, for or in behalf of, or subject to the direct or indirect control of said buyers, a so-called brokerage fee or commission, the amount of which varies but which is usually between 1% and 10% of the quoted sale price agreed upon by buyer and seller. Said respondent, Oliver Brothers, Inc., while acting as agent or representative, for or in behalf of, or subject to the direct or indirect control of said buyers, has and does accept and receive such so-called brokerage fees or commissions and has transmitted and paid over, or allowed and credited, and does transmit and pay over, or allow and credit, said so-called brokerage fees or commissions to said buyers, in the amount and to the extent to which such so-called brokerage fees or commissions are received by said respondent, Oliver Brothers, Inc., such payments to

the individual buyer being the amount paid by the individual seller in the given transaction to which such buyer is a party.

PAR. 9. In all of said transactions respondent, Oliver Brothers, Inc., is the agent and representative of said buyers, acting for them and in their behalf, and under their direct or indirect control. In fact, such so-called brokerage fees or commissions are not paid and transmitted by said sellers to said respondent, Oliver Brothers, Inc., nor are the same received, held, or retained by said Oliver Brothers, Inc., as payment for any services rendered to said sellers by said Oliver Brothers, Inc., while acting as agent or representative for or in behalf of or subject to the direct or indirect control of said buyers. No services connected with such payments or grants, receipts or acceptances, denominated as commissions or brokerages are or have been rendered to an aforesaid seller by an aforesaid buyer or by said agent in connection with said transactions of sale or purchase of goods, wares or merchandise. The payment of said so-called brokerage fees or commissions by said sellers to said buyers through the intermediary, said respondent, Oliver Brothers, Inc., while acting as agent or representative, for or in behalf of, or subject to the direct or indirect control of an aforesaid buyer, and the receipt and acceptance of such so-called brokerage fees and commissions by an aforesaid buyer from an aforesaid seller, through said intermediary, in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of subsection (c) of Section 2 of the Act described in the preamble hereof. The acceptance and receipt of said so-called brokerage fees and commissions by said respondent, Oliver Brothers, Inc., while acting as agent or representative for or in behalf of or subject to the direct or indirect control of an aforesaid buyer, from an aforesaid seller, and the acceptance and receipt thereof for the use and benefit of an aforesaid buyer, is in violation of the terms of said statute.

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" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes" the Federal Trade Commission on March 26, 1937, issued and served its complaint in this

Findings

26 F. T. C.

proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of subsection C of section 2 of the said act as amended. After the issuance of said complaint and the filing of respondents' answers thereto, the taking of testimony and other evidence herein was waived by a stipulation entered into on November 5, 1937, between W. T. Kelley, Chief Counsel for the Commission and Grosvenor Calkins, attorney for Charles F. Baker & Co., Inc., F. L. Degener, Jr., attorney for Keystone Emery Mills, and Felix H. Levy, attorney for all the other above-named respondents, which stipulation was thereafter duly approved by the Commission and filed in the office of the Commission. Said stipulation was so executed in conformity with and as supplemental to a certain stipulation entered into between the said parties above named on April 27, 1937. By the terms of the stipulations above referred to and in the answers to the complaint filed herein respondents admitted certain facts alleged in said complaint and certain other facts then before the Commission in this and another proceeding (respondents reserved, however, the right to contest this proceeding upon any review before the U. S. Circuit Court of Appeals or the U. S. Supreme Court with respect to any conclusions of fact or conclusions of law drawn herein by the Commission), and by said stipulations respondents agreed that the Commission might proceed to dispose of this proceeding on the record. And a final hearing before the Commission on the said record, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel aforesaid, having been waived by the stipulations aforesaid, and the Commission having considered the record and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS OF THE FACTS

PARAGRAPH 1. Respondent Oliver Brothers, Inc., hereinafter at times referred to as Oliver, is 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 at 417-421 Canal Street, in the city and State of New York.

PAR. 2. Respondent W. D. Allen Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 566 West Lake Street in the city of Chicago, State of Illinois. Respondent Black Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of

Texas, with an office and principal place of business located at 2217 Avenue B in the city of Galveston, State of Texas. Respondent Jacobi Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 12 South Front Street in the city of Wilmington, State of North Carolina. Respondent Matthews & Boucher is a co-partnership composed of William G. Fisher and William S. Johnson, with an office and principal place of business located at 26 Exchange Street, in the city of Rochester, State of New York. Respondent Charlotte Supply Company is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 500 South Mint Street, in the city of Charlotte, State of North Carolina. Respondent Virginia-Carolina Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with an office and principal place of business located at 1316 East Main Street, in the city of Richmond, State of Virginia.

PAR. 3. Respondent Globe Crayon Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 383 Third Avenue, in the city of Brooklyn, State of New York. Respondent E. V. Crandall Oil & Putty Manufacturing Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 1105 Metropolitan Avenue, in the city of Brooklyn, State of New York. Respondent Charles F. Baker & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and principal place of business located at 113 State Street, in the city of Boston, State of Massachusetts. Respondent Keystone Emery Mills is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with an office and principal place of business located at 4329 Paul Street, Frankford, in the city of Philadelphia, State of Pennsylvania. Respondent James Corner & Sons is a sole proprietorship, owned by James A. Reilly, sole proprietor, with an office and principal place of business located at 438 North Front Street, in the city of Baltimore, State of Maryland.

PAR. 4. Respondent Oliver Brothers, Inc., is engaged in the business of selling a market information service and also purchasing services to over 300 distributing concerns scattered over the United States, who are principally wholesalers of automobile, electrical, radio, mill, machine, plumbing, steam, and hardware supplies. These distribut-

ing concerns are located in many cities in forty-two States of the United States, and in the District of Columbia, Canada and Haiti. Respondents named in paragraph 2 hereof are among the distributing concerns purchasing the market information service and the purchasing services of respondent Oliver Brothers, Inc., and they are representative members of the entire group, insofar as the practices charged in the complaint are concerned. This group will hereafter be referred to as buyers. In making available and providing its purchasing services to the said buyers, the respondent Oliver Brothers, Inc., agrees to and does purchase merchandise for said buyers from several hundred individual manufacturers, processors, importers or producers who are scattered over the United States. Respondent manufacturers, processors and producers named in paragraph 3 hereof are representative of this entire group, all of whom in making sales to the buyers above mentioned through respondent Oliver Brothers, Inc., use the same methods as the named respondents. This group will hereafter be referred to as sellers.

PAR. 5. Respondent sellers are engaged in selling commodities in the course of interstate commerce. Respondent buyers are engaged in purchasing commodities in the course of interstate commerce. Respondent Oliver Brothers, Inc., transmits orders for merchandise from respondent buyers to respondent sellers, as a result of which commodities are shipped from sellers to buyers usually from one State to another. All of said respondents are engaged in interstate commerce in participating in the commercial transactions hereafter more specifically described.

PAR. 6. Respondent Oliver Brothers, Inc. was incorporated under the laws of the State of New York on July 19, 1905, and has a branch office in Chicago, Ill. It has a force of several salesmen who habitually travel throughout the United States to solicit distributing concerns to purchase the Oliver market information service and purchasing services. These men at times also contact manufacturers and processors. It also has a number of buyers and assistant buyers who place orders for Oliver subscribers and who contact manufacturers, processors and producers on behalf of Oliver clients. Respondent Oliver Brothers, Inc., often examines and tests the wares of such manufacturers and producers and get descriptions of goods and prices, which information is sent to the Oliver subscribers. Oliver also furnishes to said buyers a loose-leaf price book containing price lists on, and sources of supply from which can be obtained, the majority of the types of commodities purchased and resold by said buyers, which said loose-leaf price book Oliver keeps current by the issuance of revised sheets from time to time as market prices and

sources of supply change. It is in a favorable position to furnish accurate, constant, regular and reliable market information service. It handles, through its buying operations, the goods upon which it reports to its clients. Among its employees are specialists who have devoted many years to their respective lines of merchandise and who are in constant contact with the markets in performing their duties with said respondent.

PAR. 7. The Oliver Brothers, Inc., subscribers severally employ Oliver at a stipulated monthly sum ranging from \$25.00 upward. This employment is evidenced by a contract between Oliver and the subscriber which is in the following form:

OLIVER BROTHERS, INC.

(Established 1892)

200 Hudson Street,
New York, N. Y.

Resident Buyers For
Wholesalers of
Hardware, Iron, Steel, Metals,
Blacksmiths, Railway, Mill
Mining, Machinery, Engineers,
Automobile, Electrical, Radio,
Plumbers and Steamfitters
Supplies

Telephone 16 lines

Cable Address
Oliveleaf, New York
Codes Used
A. B. C. (5th Edition) Bentleys
Rudolf Mosse General Motors
Lieber's Standard-Lieber's
5 letter edition
Western Union Universal and 5
letter edition
United States Steel Corporation

Branch Offices
Chicago, Illinois
59 E. Van Buren Street
Pittsburgh, Pennsylvania
P. O. Box 6462 North Side Station

Please mark your reply
Dept. A. B. C.

SUBJECT: CONTRACT FOR -----

Dear Sirs:—We hereby agree to act as your New York, Chicago and Pittsburgh Resident Representatives in the capacity of Purchasing Agents.

We agree to furnish you our loose-leaf Price Book and send you our General Service covering lines as per the subject hereof; also to send you Oliver Brothers' Comment Letters, letters on Market Conditions, lists of special offerings, and submit to you other information in the way of prices and market information which we may consider to be of interest to you.

We will use our best efforts to secure the lowest possible prices on your inquiries or orders. We will forward to the manufacturers or parties with whom we have favorable arrangement such orders for merchandise as you may send to us.

Findings

26 F. T. C.

Orders which we may receive from you or letters which we may receive are to be regarded as authority to act as your Agents in connection with any transaction which may transpire between us. While we will use our best efforts in acting as your Agent it is understood that we will not be liable for the failure of any manufacturer or supplier to perform his agreements or promises in connection with quotations or shipments.

It is mutually agreed that all communications between us in the way of correspondence, Comment Letters, letters on Market Conditions or Confidential Price Sheets, shall be treated as strictly confidential and used solely in connection with your own business and shall not be divulged to other parties nor procured for the use of other parties.

All business transacted between us is to be subject to satisfactory credit arrangements. In some instances, we secure special prices by reason of having the merchandise charged to our own account.

You agree to pay us for performing the services mentioned above the sum of \$ _____ Dollars per month, to be paid in equal monthly installments. This agreement shall commence _____ and shall continue from year to year thereafter without further notice but with the understanding that either of us may terminate this agreement at the end of any period of one year after date by giving to the other notice in writing of an intention to do so at least sixty days before the end of such yearly period.

It is agreed that upon the termination of this contract you will return our loose-leaf Price Book and Private Code.

ACCEPTED

OLIVER BROTHERS, INC.

Per -----

No subscriber has any exclusive right to the Oliver services, but they are sold to any wholesaler who wants them, subject only to the requirement that he has good credit rating. The Oliver services are quite often bought by several dealers in the same line in the same town. Oliver yearly buys for its subscribers from said sellers several million dollars worth of commodities for resale by the buyers and as a result of said purchases such merchandise is shipped and transported from the State in which the sale is located when the order is placed into and through other States of the United States, where they are delivered to purchasers who are Oliver subscribers. Oliver receives daily from its subscribers approximately one hundred orders. When a subscriber forwards an order to Oliver, usually at a specified price Oliver transmits the order to the seller. The seller ships the product direct to the buyer, in most cases billing the buyer at the price specified in the order. The buyer in most cases makes payment direct to the seller. The seller then sends a commission or brokerage on the transaction and Oliver pays this to the buyer or credits it to his account. If a buyer fails to name the purchase price, he expects to get the last price quoted by Oliver in its bulletin, or a lower price. If Oliver finds that the market has advanced he communicates with

the buyer and confirms the order at the new price before transmitting it to the seller. The buyer in some cases names the seller whose products are wanted, but in some cases he relies upon Oliver to transmit the order to some producer who will supply goods of the quality and standard required.

PAR. 8. All respondent sellers have made sales of commodities in interstate commerce through Oliver Brothers, Inc., to respondent buyers and other Oliver buyers and have paid brokerage fees on such transactions to respondent Oliver Brothers, Inc., which brokerage fees were later paid over or credited by respondent Oliver Brothers, Inc., to the particular respondent buyer or other buyer. Respondent Keystone Emery Mills, after the service of the complaint herein, discontinued the practice of paying Oliver Brothers, Inc., brokerage on sales made to the Oliver buyers through Oliver Brothers, Inc. All of the respondent sellers at the time of payment of brokerage fees to respondent Oliver Brothers, Inc., had knowledge of the fact that Oliver Brothers, Inc., paid such fees over to the buyer placing the order and to whom the goods were shipped.

PAR. 9. The sellers from whom respondent Oliver Brothers, Inc., buys for its clients pay to Oliver brokerage fees at the same rate that they pay other brokers who sell goods for them. This rate ranges from 1% to 10%, but being usually from 2½ to 5%, of the invoice price of the commodities sold. It is a matter of common knowledge in the trade that Oliver Brothers, Inc., receives these fees for the use of its subscribers and pays them over in their entirety to the buyers. Respondent Oliver Brothers, Inc., receives and accepts these brokerage fees for the use and benefit of its subscribers and does not claim any right, title or interest in such fees. The buyers receive and accept these brokerage fees from respondent Oliver Brothers, Inc., and know that they are to receive them at the time they place orders for merchandise for execution by Oliver. The Oliver buyers, by reason of the fact that they receive the brokerage fees paid to Oliver, get a lower price on commodities, purchased through Oliver from the sellers than other buyers who are not members of the Oliver organization get on similar goods in like quantity bought direct from said sellers.

PAR. 10. In all of the purchasing transactions which the respondent Oliver Brothers, Inc., executes for its buyers, Oliver Brothers, Inc., is the agent and representative of the buyer, and acts in fact for such buyer and in his behalf, and is subject to his control, insofar as such purchasing transaction is concerned. Said respondent Oliver Brothers, Inc., in such purchasing transactions is neither the agent nor representative of the seller nor does it act for or in behalf

Findings

26 F. T. C.

or is it under the control of such seller. Such services as respondent Oliver Brothers, Inc., may render to the seller in selling his commodities are incidental to the particular purchase and sale transaction, and if any services are so rendered by Oliver in connection with the sale or purchase of such commodities, such services are donated by Oliver Brothers, Inc., to the seller. There is not, in fact, any payment of brokerage commissions made by any of respondent sellers to respondent Oliver Brothers, Inc., which is not intended for the buyer and which does not reach the buyer. Such brokerage commissions, being intended for the buyers, are not in fact paid in satisfaction of any contractual or other indebtedness due from the seller to respondent Oliver Brothers, Inc., for services rendered, or otherwise. These payments, in effect are actually made from the seller to the buyer and the buyer receives a discount in price equivalent to the brokerage fee paid to him. Respondent buyers render no service to respondent sellers in connection with the purchase of commodities through respondent Oliver Brothers, Inc. Respondent buyers render no service to respondent Oliver Brothers, Inc., in connection with the purchase of goods, wares and merchandise made for them by said respondent Oliver Brothers, Inc.

PAR. 11. The contract between respondent Oliver Brothers, Inc. and its subscribers is construed by the parties thereto as being a contract for the sale and purchase of the Oliver market information service with a privilege extended to the buyers of using the Oliver purchasing services at their option. The buyers pay the monthly fee stipulated in the contract for the market information service. The buyers exercise their option to use the purchasing services of Oliver Brothers, Inc. in order to secure a discount in price from the current market price and the buyers when purchasing commodities through Oliver compute the net price at which the purchase is made as being the quoted price less the fee or commission paid by the seller as brokerage to Oliver and by Oliver transmitted to them. The buyers, in their bookkeeping, do not treat the brokerage fees and commission received from respondent Oliver Brothers, Inc. as being an offset to the monthly fee paid by them to Oliver. The amount of the monthly fee paid by the buyers to Oliver is fixed at the time the contract is made, but the amount of the brokerage fees and commissions which may be received by a given buyer from the utilization of the Oliver purchasing services is unknown and incapable of ascertainment at the time the contract is entered into.

PAR. 12. All payments of brokerage fees made by respondents as hereinabove set forth are made as a part of a general plan or scheme which contemplates and results in payment of brokerage fees from

the seller to the buyer through the respondent Oliver Brothers, Inc., and which enables the buyers to secure discounts in price from the sellers under the guise of brokerage payments.

CONCLUSION

The Commission concludes that the respondents Globe Crayon Company, Inc., E. V. Crandall Oil & Putty Manufacturing Company, Inc., Charles F. Baker & Company, Inc., Keystone Emery Mills and James Corner & Sons, have violated and are violating Subsection C, section 2 of the Clayton Act as amended, by paying fees and commissions as brokerage to respondent Oliver Brothers, Inc., in the sale of commodities to respondent buyers and other buyers, with knowledge of the fact that such fees and commissions were and are intended to be and were and are being paid over by said respondent Oliver Brothers, Inc. to said buyers.

The Commission further concludes that respondents W. D. Allen Manufacturing Company, Black Hardware Company, Jacobi Hardware Company, Matthews & Boucher, Charlotte Supply Company and Virginia-Carolina Hardware Company have violated and are violating the provisions of Subsection C, section 2 of the said statute, by receiving and accepting fees and commissions paid as brokerage by said respondent sellers and other sellers, in connection with the purchase of commodities by said buyers through respondent Oliver Brothers, Inc.

The Commission further concludes that respondent Oliver Brothers, Inc. has violated and is violating the provisions of subsection C, section 2 of said statute, by receiving such fees and commissions as brokerage from respondent sellers and transmitting and paying over the same to respondent buyers; further, that said respondent Oliver Brothers, Inc. is the instrumentality and means by which respondent sellers unlawfully are enabled to make payment of such fees and commissions as brokerage to respondent buyers, and by which respondent buyers are enabled to receive and accept the same.

The Commission further concludes that the violations of said statute referred to are in pursuance of a general plan and scheme whereby fees and commissions paid by the sellers are made available to and transmitted to the buyers.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and the stipulations as to certain facts entered into by

counsel for the Commission and said respondents, in which stipulations and answers respondents admitted certain facts contained in the said complaint and certain other facts before the Commission in this and another proceeding and waived formal hearings herein and agreed that without further evidence or other intervening procedure the Commission might proceed to dispose of this proceeding. And the Commission having made its findings as to the facts and its conclusion that said respondents had violated and were violating the provisions of subsection C, section 2 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" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes."

It is ordered, That respondents Globe Crayon Company, Inc., E. V. Crandall Oil & Putty Manufacturing Company, Inc., Charles F. Baker & Company, Inc., Keystone Emery Mills and James Corner & Sons, and their officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from paying or granting to respondent Oliver Brothers, Inc. any fee or commission on sales of commodities, as brokerage or as an allowance in lieu thereof, which fee or commission is intended to be paid over or which is in fact subsequently to be paid over, in whole or in part, by said respondent Oliver Brothers, Inc. to any purchaser of such commodities.

It is further ordered, That respondents W. D. Allen Manufacturing Company, Black Hardware Company, Jacobi Hardware Company, Matthews & Boucher, Charlotte Supply Company and Virginia-Carolina Hardware Company, and their officers, representatives, agents and employees, in connection with the purchase of commodities in interstate commerce or in the District of Columbia, do forthwith, cease and desist from accepting or receiving from respondent Oliver Brothers, Inc., any fee or commission which has been paid or granted to said Oliver Brothers, Inc., as brokerage or as an allowance in lieu thereof, by a seller of commodities on sales made by such seller to said respondents.

It is further ordered, That respondent Oliver Brothers, Inc., its officers, representatives, agents, and employees, in connection with the purchase or sale of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Order

1. Receiving or accepting any fee or commission, as brokerage or as an allowance in lieu thereof, from any seller of commodities, which fee or commission is intended to be paid over to the purchaser of such commodities, or which is to be applied for the use and benefit of such purchaser;

2. Paying or granting to any purchaser of commodities any fee or commission received or accepted by said Oliver Brothers, Inc., as brokerage or an allowance in lieu thereof, from the seller of such commodities.

It is further ordered, That the respondents and each of them shall within 90 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
WORTHMORE SALES PROMOTION SERVICE,
INCORPORATED

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

Docket 2946. Complaint, Oct. 15, 1936—Decision, Jan. 4, 1938

Where a corporation engaged in manufacture and printing of sales promotion or trade cards, arranged for recording or punching out thereon purchases of customers or consumers to whom distributed, and in sale and distribution thereof to retail merchants in the various States, in competition with concerns making and distributing trading stamps and other trade booster cards which did not involve lot or chance feature, and including 99¢ and other price concession cards and premium coupons—

Sold, distributed, and supplied cards, as aforesaid described, so designed and arranged as to confer upon the customer-holders of such used-up or punched-out cards amounts in trade ranging from 20¢ to \$5.00 or \$10.00, in accordance with concealed legend under card's secret panel and particular style of card employed, and furnished therewith, to retail merchant customers, various display posters and advertisements and card punch, for their use in distributing and making use of such cards, and thereby knowingly supplied to and placed in the hands of others means of operating lotteries, games of chance, and gift enterprises in the use, without alteration or rearrangement, of such cards, sales booster plans or schemes, in competition with those who are opposed to such methods and refrain therefrom;

With effect of inducing many of the consuming public to deal with or purchase merchandise from retailers using its aforesaid cards in preference to those using sales booster plans or schemes or devices which have connected therewith no element of lot or chance, and with result that many retailers were induced to buy its said cards in preference to those of competitors, such refraining competitors as aforesaid were thereby put to competitive disadvantage, sale of competing sales plans or sales promotion schemes or premium cards or coupons by competitors was injuriously affected, to the prejudice and injury of the public and competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., 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 Worthmore Sales Promotion Service, Incorporated, 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. The respondent, Worthmore Sales Promotion Service, Incorporated, is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 6256 Champlain Avenue, Chicago, Ill. The respondent is now and for more than one year last past has been engaged in the manufacture of sales promotion cards and in the sale and distribution thereof to retail merchants, located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States 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 said respondent in such sales promotion cards between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and with individuals engaged in the manufacture of sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps, and in the sale and distribution thereof in commerce 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 sells and has sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public.

The respondent manufactures and distributes several groups of sales promotion cards, but they all involve the same lottery scheme or gift enterprise and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing

PAR. 3. The retail merchants to whom respondent sells assortments of said sales promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchant customers is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of such purchases are made around the margin of said card and when all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said secret panel, free of charge.

PAR. 4. There are in competition with respondent, various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons, and trading stamps, which when used by retail merchants do not involve a lottery scheme or gift enterprise. By reason of the lottery scheme or gift enterprise connected with the distribution and use of the respondent's said cards, many retail merchants are induced to purchase respondent's said cards in preference to the devices manufactured and distributed by respondent's competitors and trade is thus diverted to respondent from its said competitors.

PAR. 5. The consuming public are induced to deal with or purchase merchandise from retail merchants, using respondent's cards in preference to retail merchants using the devices of respondent's competitors, because of the lottery scheme or gift enterprise connected with respondent's said cards. By reason thereof, retail merchants are induced to purchase respondent's said cards in preference to devices of respondent's competitors and trade is thus diverted to respondent from its said competitors.

PAR. 6. The use by the respondent of said method in designing and arranging its said cards is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent of similar element of chance, lottery scheme, or gift enterprise.

Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of retail merchants are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged or otherwise designed and arranged as to involve a game of chance, lottery scheme or gift enterprise and such competitors refrain therefrom.

PAR. 7. The respondent, in shipping the said cards to its customers, assorts and packs them so that such customers know the amount of award stated under the secret panel, thus the retail merchants to whom respondent sells its cards are enabled to perpetrate a fraud on their customers. This practice has the capacity and tendency to induce and does induce retail merchants to purchase respondent's said cards in preference to cards or devices of respondent's competitors.

PAR. 8. The aforesaid method, acts, and practices of the respondent are all to the prejudice of the public and 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.

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 15, 1936, issued and served complaint in this proceeding upon respondent, Worthmore Sales Promotion Service, Incorporated, 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 other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, counsel for the Commission, and in opposition thereto by John A. Nash, counsel for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. Said testimony and other 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel aforesaid; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this

The secret panel referred to on the said card was partially perforated to indicate where it might be opened, but until said panel was opened, the legend thereunder was effectively concealed from the holder of said card. The said legends under the secret panel varied in amount from 20¢ to \$5.00. Thus, the amount which the holder of said card would receive in trade was determined wholly by lot or chance.

On the reverse or back of said sales promotion cards was the following:

NO BLANKS—AWARDS UP TO \$5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the SECRET PANEL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE SECRET PANEL, THIS CARD BECOMES VOID.

BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER

(MERCHANT'S ADVERTISEMENT)

This particular card was discontinued some time prior to the taking of testimony in this case. The respondent, however, has manufactured and distributed, and is manufacturing and distributing, various cards identical in principle but varying somewhat in detail. On some of the cards which the respondent manufactures and distributes the "secret panel" is referred to by the respondent as "mystery star." Other cards are referred to by respondent as "play ball" coupons.

Some of the cards manufactured and distributed by the respondent provide for the recording and sale of \$10.00 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10.00 by the legends under the secret panel. In some groups, the legends begin with 20¢ and go to \$10.00 and in other groups they begin with 40¢ and go to \$10.00.

Respondent furnishes its retail merchant customers with various display posters and advertisements to be used by said retail merchants in distributing and using said cards, and also furnishes such customers with a punch for punching or cancelling the numbers arranged around the border of the said cards.

The retail merchants to whom respondent sells, and has sold, assortments of said sales promotion cards or trade cards, distribute the same to their customers and prospective customers, and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchant customers of respondent is as follows: The cards are distributed free to customers and prospective

customers of said retail merchants and when purchases are made numbers corresponding to the amount of such purchase are punched from the margin of said card and when all the numbers around the margin of said card are punched the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the secret panel, without additional charge.

PAR. 3. Employees or officers of concerns manufacturing and distributing trading stamps and other trade booster cards not involving a lot or chance feature were called as witnesses and testified in this matter. The Commission finds that manufacturers and distributors of trading stamps, 99¢ and other price concession cards, and premium coupons are in competition with the respondent and the business of such concerns is competitive with the business of the respondent. Retail merchants desiring to install some plan by which to boost sales of their merchandise cannot use more than one type of sales promotion or price concession card or coupon at the same time and retail merchants purchasing respondent's merchandise are not then in the market for other trade booster schemes or plans which do not involve a lot or chance feature.

The lot or chance feature connected with respondent's cards has the capacity to and does induce many of the consuming public to deal with or purchase merchandise from retail merchants using respondent's cards in preference to retail merchants using the sales booster schemes or plans or devices of respondent's competitors which have connected with them no element of lot or chance and by reason of this last mentioned fact many retail merchants are induced to purchase respondent's said cards in preference to devices or plans of respondent's competitors, and trade is thus diverted to respondent from its said competitors.

PAR. 4. The use of respondent's cards by retail merchants by the methods described herein constitutes a lottery, game of chance, or gift enterprise. The Commission finds that competitors of respondent are opposed to such methods and refrain therefrom. Such competitors are thereby put to a competitive disadvantage.

PAR. 5. The respondent, in selling and distributing said cards, has knowledge that they are, and will be, used by its customers in the operation of a lottery, game of chance, or gift enterprise. The respondent thus supplies to and places in the hands of others the means of operating lotteries, games of chance and gift enterprises. The sale and distribution of such cards by the respondent injuriously affects the sale of competing sales plans or sales promotion schemes or premium cards or coupons by competitors of respondent, and the

use of such methods by the respondent in the sale and distribution of its merchandise is prejudicial and injurious to the public and to respondent's competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 6. The assortments purchased from the respondent by retail dealers are usually of 500 cards, although it is not unusual for a merchant to purchase an assortment consisting of 1,000 cards and while the exact extent of respondent's business was not shown, an officer of the respondent was called and testified as a witness, and the Commission finds that respondent had approximately 125 part-time salesmen and that at the time of the hearing respondent was receiving from 350 to 400 orders per month; that respondent's customers are located in practically all of the States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, Worthmore Sales Promotion Service, Incorporated, 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 Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of the allegations of the complaint and in opposition thereto taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, briefs of counsel filed herein and oral arguments of Henry C. Lank, counsel for the Commission, and John A. 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 Worthmore Sales Promotion Service, Incorporated, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of sales promotion cards or trade cards in interstate commerce, do cease and desist from:

Order

1. Selling and distributing sales promotion cards so designed that their use by retail merchants constitutes or may constitute the operation of a lottery, game of chance, or gift enterprise;

2. Supplying to or placing in the hands of retail merchants or others sales promotion cards or sales booster plans or schemes which are used or which may be used without alteration or rearrangement to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

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.

IN THE MATTER OF

T. G. COOKE, TRADING AS INSTITUTE OF APPLIED
SCIENCECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2731. Complaint, Feb. 27, 1936—Decision, Jan. 5, 1938*

Where an individual engaged in sale of certain correspondence courses pertaining to the subject of Forensic Ballistics, as commonly known, and consisting of three lessons which purported to tell the police officer proper things to do and not to do at scene of crime, correct scientific procedure for examination of firearms and bullets in police laboratories, together with list of necessary equipment for laboratory work, and, finally and third, to tell expert in firearms identification how to conduct himself in court, with statement of questions which would be asked by the lawyers and certain citations from available authorities, Federal and State; in advertising his aforesaid courses in numerous newspapers, magazines, and other periodicals of general circulation throughout the United States—
Represented to purchasing public that the same were full and complete courses of instruction in "Finger Print Work, Bertillon Identification, Photography, Ballistics and Secret Service Intelligence," facts being they were neither full and complete courses of instruction in Ballistics nor in Forensic Ballistics, but constituted, at most, incomplete outlines of latter subject as commonly known, and contained very little, if any, information of value to one desiring to become acquainted with former;

With effect of misleading purchasing public into erroneous belief that said representations were true, and into purchasing its said courses of instruction in reliance thereon, and with capacity and tendency to mislead and deceive substantial number of purchasing public into erroneous belief that all of its said representations were true and into purchase of a substantial amount of its said product on account of such beliefs, induced as aforesaid, and with result that trade was diverted to it from those engaged in sale and distribution of courses of instruction prepared, intended and sold for substantially same purpose and use and who truthfully advertise their products; to the injury of competitors in commerce:

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

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

Mr. T. H. Kennedy and *Mr. Floyd O. Collins* for the Commission.

Mr. Gustav E. Beerly, 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 T. G. Cooke, 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 acting individually and doing business under the trade name of "Institute of Applied Science," maintains his office and principal place of business at 1920 Sunnyside Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in conducting a business commonly known as a correspondence school, which consists of the sale and delivery by mail, and by other means of transportation, of certain courses of instruction to subscribers or purchasers thereof located in States other than the State of Illinois. After the said courses of instruction have been subscribed for or purchased, the respondent ships or causes to be transported from his principal place of business in the city of Chicago, State of Illinois, the printed matter, examination questions, charts, information and paraphernalia comprising the said course of instruction to the purchasers thereof located in States other than the State of Illinois. Said subscribers or purchasers are members of the general public and are hereinafter referred to as students. In the course and conduct of his business, as aforesaid, respondent is in substantial competition with other individuals, corporations, partnerships, and firms engaged in the sale and shipment in interstate commerce, by mail and other means of transportation, of courses of instruction to subscribers or purchasers thereof located in the various States of the United States.

PAR. 3. In the course and conduct of his business, as heretofore described and alleged, the respondent caused to be prepared and printed a textbook containing a series of three lessons which he entitled "FORENSIC BALLISTICS The Science of Examining Guns and Ammunition in Crimes" and advertised, used and referred to the same, in connection with soliciting the sale of, and in selling a complete course of instruction in finger printing, as follows: "Low Tuition Rates Still in Effect, Include Secret Service, Bertillon, Photography and Ballistics Courses," and in aid of his said business, and in soliciting such sale, and in selling said course of instruction, and for the purpose of inducing persons to enter into contracts with him to enroll as students with him for this course of instruction,

the respondent further, in his advertising literature, among other things, stated and represented:

I am offering my complete course in Finger Print Work, including the complete Finger Print Outfit, and all the other allied courses complete, for only \$70, payable \$5 down and \$5 per month for thirteen months.

This is indeed a low rate and is a real bargain for anyone interested in getting into this work. Of course, if you enroll under the \$70.00 price that is all you will ever have to pay. *After you are enrolled* the price to you cannot be raised.

and further, in connection therewith, the following:

When I receive your enrollment, I will send you our complete courses in Secret Service, Bertillon Work, Photography and Ballistic Lessons without any additional charge.

when in truth and in fact the said textbook does not deal with the science of "Ballistics" and the instruction so advertised and imparted to students does not relate to that science, and when in fact it contains many absurd and misleading statements as applied to the science of ballistics and to a ballisticians, and when the subject matter of said textbook deals merely with a very sketchy and meagre outline of some of the basic principles of firearms identification and not with the science of "Ballistics," which is the science that deals with the impact, path and velocity of projectiles.

PAR. 4. The use of the word "ballistics," in soliciting the sale of, and in selling and furnishing said textbook and said course of instruction, as heretofore described and alleged, is false and misleading and has the tendency and capacity to confuse, mislead, and deceive prospective students and in fact does deceive prospective students and induce them to enroll and subscribe for respondent's said course, or courses, and has caused students to purchase respondent's said course, or courses, in such erroneous belief, and thereby unfairly diverts trade to respondent from his said competitors, engaged in the sale in interstate commerce of like or similar courses of instruction, and who do not make such misrepresentation or misuse of the word or term "ballistics" in selling such course, or courses, in the manner heretofore described and alleged in paragraph 3 herein; and, thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The acts, methods, and practices of respondent, as hereinabove alleged, described and set forth, are 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 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 27, 1936, issued and served its complaint in this proceeding upon respondent, T. G. Cooke, doing business under the trade name and style of Institute of Applied Science, 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 other evidence in support of the allegations of said complaint were introduced by Thomas G. Kennedy, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Gustav E. Beerly, attorney for the respondent; and said testimony and other 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 other evidence, brief in support of the complaint, respondent's attorney having advised the Commission that no brief would be filed on behalf of the respondent and no oral argument would be requested, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. T. G. Cooke, acting individually, has been and is now conducting a business known as a correspondence school. Respondent conducts said business under the trade name of Institute of Applied Science. For the purpose of conducting said business under said trade name respondent maintains an office and place of business at 1920 Sunnyside Avenue, in the city of Chicago, State of Illinois. Said business consists of the sale and distribution of courses of instruction to subscribers or purchasers thereof, located in the various States of the United States. When respondent makes a sale of said courses of instruction, he causes the same to be shipped and transported from his place of business in the city of Chicago, State of Illinois, to the purchasers thereof located in various States of the United States other than the State of Illinois. Respondent does now, and has for a number of years last past, maintained a constant cur-

rent of trade and commerce in said courses of instruction among and between the various States of the United States and the District of Columbia.

PAR. 2. There are now and have been for a number of years, numerous other individuals and numerous corporations, firms, and partnerships, engaged in the business of selling and transporting in interstate commerce, courses of instruction similar to the courses sold and distributed by respondent, and which courses of instruction are sold and distributed for similar purposes for which respondent's courses of instruction are sold and distributed, and which are sold to the same class of purchasers to whom respondent sells his courses of instruction.

PAR. 3. Respondent, in selling and offering for sale his courses of instruction, advertises in numerous newspapers, magazines, and other periodicals, of general circulation throughout the United States, and in said advertising, among other things, represents:

I am offering my complete course in Finger Print Work, including the Complete Finger Print Outfit, and all the other allied courses complete, for only \$70, payable \$5 down and \$5 per month for thirteen months.

This is indeed a low rate and is a real bargain for anyone interested in getting into this work. Of course, if you enroll under the \$70 price that is all you will ever have to pay. After you are enrolled the price to you cannot be raised.

When I receive your enrollment, I will send you our complete courses in Secret Service, Bertillon Work, Photography and Ballistic Lessons without any additional charge.

Furnish you with a full and complete course of instructions in *FINGER PRINT WORK, BERTILLON IDENTIFICATION, PHOTOGRAPHY, BALLISTICS AND SECRET SERVICE INTELLIGENCE*.

By said statements in said advertising respondent represents to the purchasing public that the courses of instruction sold by respondent are full and complete courses of instruction in Finger Print Work, Bertillon Identification, Photography, Ballistics and Secret Service Intelligence.

PAR. 4. The terms "Ballistics," "Forensic Ballistics," and "Firearms Identification" have distinct different technical meanings but they are generally used interchangeably by the general public, and very often by technicians and experts. To the layman and general public the terms are practically synonymous.

Said courses of instruction sold by respondent consist of three lessons. Lesson No. 1 purports to tell the police officer the proper things to do and the things not to do at the scene of a crime. Lesson No. 2 purports to tell police officers the correct scientific procedure for the examination of firearms and bullets in their laboratories, and this lesson lists the necessary equipment for laboratory work. Lesson

No. 3 purports to tell the expert in firearms identification how to conduct himself in court and what questions will be asked by the lawyers on both sides and gives certain citations from available authorities, both Federal and State.

PAR. 5. The representations made and being made by respondent in selling and offering for sale said courses of instruction, wherein respondent represents the courses to be full and complete courses in ballistics, or forensic ballistics, are false and misleading. Said representations had, and now have, the tendency and effect to, and did, and do, mislead the purchasing public into the erroneous belief that said representations are true and lead them into purchasing respondent's courses of instruction relying upon said representations. In truth and in fact the courses sold by respondent are not full and complete courses of instruction in ballistics, neither are they full and complete courses of instruction in forensic ballistics. Insofar as the subjects of ballistics and forensic ballistics are concerned, respondent's courses are far from complete. The most that can be said of them is that they are incomplete outlines of what is commonly known as forensic ballistics and contain very little, if any, information which would be of value to one desiring to become acquainted with the science of ballistics.

PAR. 6. The statement and representations made by respondent in describing the courses of instruction and the contents of same had, and now have, a capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous belief that all of the said representations are true, and into the purchase of a substantial amount of respondent's product on account of such beliefs induced by the respondent's representations as above set out. As a result thereof, trade has been diverted to respondent from individuals and from firms, corporations, and partnerships likewise engaged in the business of selling and distributing courses of instruction, prepared, intended, and sold for substantially the same purpose and use for which respondent's courses of instruction are sold, and who truthfully advertise their products. As a consequence thereof, injury has been, and is now being, done by respondent to competitors in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, T. G. Cooke, trading under the style and firm name of Institute of Applied Science, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within

Order

26 F. T. C.

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 respondent, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto by Thomas H. Kennedy, counsel for the Commission, and by Gustav E. Beerly, counsel for respondent, and brief filed herein by Floyd O. Collins, counsel for the Commission, counsel for the respondent having advised the Commission that no brief would be filed in behalf of respondent and that no oral argument was desired, 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, T. G. Cooke, an individual, trading as Institute of Applied Science, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of his courses of instruction in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or indirectly:

1. That said courses of instruction are full and complete courses in the science of ballistics, or

2. That said courses of instruction are full and complete courses in the science of forensic ballistics.

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

Syllabus

IN THE MATTER OF

HARRY WEINBERG, TRADING AS NU-ART TAILORING
COMPANY

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

Docket 3256. Complaint, Oct. 30, 1937—Decision, Jan. 5, 1938

Where an individual engaged in offer and sale of men's clothing through traveling salesmen or agents, whom he equipped with order blanks for taking measurements of each purchaser and with samples of materials for purchasers' selection as to color, weave, and quality, and who recorded such selections, along with purchasers' measurements on aforesaid blanks and forwarded orders, and were compensated by deposit required of purchaser at such time, and, as thus engaged, in substantial competition with others likewise engaged in selling and distributing men's clothing in interstate commerce, and with many who likewise sell their clothing through salesmen or agents and have not adopted the below described acts, practices, and methods—

- (a) Represented and implied to prospective purchasers that he would make for and deliver to them made-to-measure or tailor-made garments and garments made from material of the color, weave and quality selected by them from the samples exhibited by his said salesmen or agents, facts being garments delivered, in many cases, were not tailor-made, as understood by purchasing public, but "ready-made" or "hand-me-down" clothes previously made without regard to individual measurements of purchaser to whom they were eventually sold, garments, in some instances in which in fact made to individual measurements of purchaser, did not fit in same manner as made-to-measure or tailor-made garments, or at all, or with any reasonable relation to individual to whom they were delivered, due to lack of experience and skill on part of salesman or agent in making and taking measurements, etc., or lack of skill on part of workman making the clothing, and, in many instances, were so cut and constructed that it was not possible for expert tailors to alter them so as to fit the purchaser, and, in many instances, garments were made from material which was different in color and weave from, and substantially inferior in quality to, material selected by customer;
- (b) Represented, from time to time, to prospective purchasers, that delivery of the garment ordered would be made to purchaser by one of his salesmen or agents in person, so as to afford former opportunity to inspect the same as to material from which made and as to its fit prior to paying balance of purchase money due, and, in many instances, that well-known men in purchaser's community had bought clothing from him and that they were satisfied therewith and had indorsed the same, facts being that, in practically every instance, garment was shipped to purchaser by express, cash on delivery for balance of purchase money, with no inspection permitted and with no opportunity to inspect clothing prior to payment of such balance, and representation as to purchases by well-known men in particular customer's community were false;

Complaint

26 F. T. C.

- (c) Represented, in many instances, that he contemplated opening a local store and that only a limited number of suits were being sold in the vicinity at greatly reduced prices for introductory and advertising purposes, and that no additional charge would be made for shipping, and that price paid included extra pair of trousers, and customer would be extended privilege of making payment for garment ordered on installment plan, facts being such various representations as above set forth, as variously made from time to time, were each and all false; and
- (d) Failed and refused to deliver to purchasers making complaint to him by reason of garments' failure to fit or his failure to make same from material selected by purchaser, or for any other reason, garment that would fit, made from material selected, and refused to return to purchaser entire amount of purchase price paid;

With effect of misleading and deceiving many purchasers and causing them erroneously to believe that garments sold by him were made-to-measure or tailor-made clothing, as understood by purchasing public, and that they would be made from materials selected by purchaser from samples submitted by salesmen or agents, and be delivered by person taking order, with inspection permitted prior to payment of balance, and that other representations above set out were true, and that promises made by him would be fulfilled, and of thereby giving him an unfair advantage over his competitors through causing many prospective purchasers to buy clothing from him in interstate commerce, in preference to purchasing same from competitors who have not resorted to such acts and practices; to their substantial injury and that of public:

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.

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 Weinberg, trading and doing business under the name Nu-Art Tailoring 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 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 Harry Weinberg is an individual engaged in the business of offering for sale and selling men's clothing through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing. Respondent has his office and principal place of business at 818 Broadway, New York, N. Y.

Respondent causes his said clothing, when sold, to be transported from his said place of business in the city of New York, N. Y., into and across the several States of the United States to the purchasers thereof located at various points in the said several States of the United States, other than the State of New York, and in the District of Columbia.

Respondent, in the course and conduct of his business in said commerce, as aforesaid, is in substantial competition with other individuals and with corporations, associations, and partnerships engaged in commerce between and among the several States of the United States in the business of selling and distributing men's clothing. Among the competitors of respondent are many who sell their clothing in said commerce through salesmen or agents and who do not use the acts, practices, and methods in the sale thereof used by the respondent in the sale of his clothing as hereinafter alleged.

PAR. 2. Respondent, in the course and conduct of his business, as aforesaid, employs approximately twenty salesmen or agents located at various points in the United States to solicit and accept orders for his said clothing. These salesmen or agents are equipped by the respondent with order blanks, containing spaces for the taking of the individual measurements of each purchaser, and with samples of materials from which the purchasers make selections as to color, weave, and quality of the material from which the garment ordered is to be made. The prices at which said clothing is sold vary according to the quality of the material selected, and the said salesmen or agents collect from the purchasers of said clothing a substantial part of the agreed purchase price at the time that the order is accepted and the balance of the purchase price is to be paid when the purchase is delivered. When a salesman or agent sells a garment, such salesman or agent takes the measurements of the purchaser and places this and other information regarding the weight, height, general build, and appearance, etc., of the purchaser, together with a number identifying the material selected by the purchaser, on one of said order blanks and forwards the same to the respondent at his said place of business in New York, N. Y., where the garment ordered is purportedly made from the material selected to the individual measurements of the purchaser of the garment.

PAR. 3. Made-to-measure or tailor-made clothing is understood by the trade and purchasing public generally to be and mean garments which are cut and made to the individual measurements of the person for whom intended. In order to make a made-to-measure or tailor-made garment, as understood by the trade and purchasing public, it is necessary and essential that a person, experienced and skilled in

Complaint

26 F. T. C.

taking and making measurements for such garments, measure the person for whom the garment is to be made, so as to convey to the tailor actually making the garment accurate and exact measurements regarding the weight, height, general build, and appearance, etc., of the person measured. There exists among the purchasing public the belief that made-to-measure or tailor-made garments fit with more accuracy than do garments which are not so made and there exists a preference on the part of a substantial portion of the purchasing public for made-to-measure or tailor-made garments.

PAR. 4. Respondent, in the course and conduct of his business, and by the means and in the manner aforesaid, represents and implies to prospective purchasers of his said clothing that he will make for, and deliver to, purchasers of his clothing made-to-measure or tailor-made garments made from material of the color, weave, and quality selected by purchasers from the samples exhibited by his salesmen or agents. In truth and in fact, in many instances, the garments delivered by the respondent to purchasers are not made-to-measure or tailor-made garments, as that term is understood by the purchasing public, as hereinabove set out, but are "ready-made" or "hand-me-down" garments having been previously manufactured without regard to the individual measurements of the purchaser to whom the garment is eventually sold. In some instances the garments are made to the individual measurements of the purchaser but, because of the lack of experience and skill on the part of the salesmen or agents of respondent in making and taking measurements and securing accurate information regarding the weight, height, general build, and appearance, etc., of the purchasers or because of the lack of skill on the part of the workmen making the garments, the garments delivered do not fit in the same manner as made-to-measure or tailor-made garments and, in some instances, do not fit at all or with any reasonable relation to the individual to whom they are delivered. In many instances, the garments delivered to purchasers are so cut and constructed that it is not possible for expert tailors by alteration to make them fit.

PAR. 5. Respondent, in the course and conduct of his business, as aforesaid, represents to purchasers of his said clothing that he will make for, and deliver to, them garments made from materials of the color, weave, and quality selected by such purchasers from the samples furnished to said salesmen or agents by the respondent and by said salesmen or agents exhibited to said purchasers.

In truth and fact, in many instances, respondent does not deliver to a purchaser a garment made from the material selected by such purchaser, but delivers a garment made from a material which he

has substituted for the material selected by the purchaser and which is different in color and weave from, and substantially inferior in quality to, the material selected by the customer.

PAR. 6. Respondent, in the course and conduct of his business, as aforesaid, in many instances, represents to prospective purchasers that delivery of the garment ordered will be made to the purchaser by the salesman or agent in person so as to afford such purchaser an opportunity to inspect the garment ordered as to the material from which made and as to its fit prior to the time that payment is made of the balance of the purchase money due the respondent. In truth and in fact, the garment, in practically every instance, is shipped to the purchaser by express, cash on delivery for the balance of the purchase money, with no inspection permitted, and the purchaser does not have an opportunity to inspect the garment prior to the payment of the balance of the purchase price due.

PAR. 7. In many instances, the representation is made to prospective purchasers that well-known men in the purchaser's community have purchased garments from the respondent and they are satisfied and have endorsed said clothing, when such is not a fact. In many instances, the representation is made that the respondent contemplates the opening of a local store and that only a limited number of suits are being sold in the vicinity at greatly reduced prices for introductory and advertising purposes, when such is not a fact. In many instances, the representation is made that no additional charge will be made for shipping, when such is not a fact. In many instances, it is represented that the price paid for the suit includes an extra pair of trousers, when such is not a fact. In many instances, respondent represents that the customer will be extended the privilege of making payment for the garment ordered on the instalment plan, when such is not a fact.

PAR. 8. When complaint is made to the respondent by a purchaser because of the failure of the garment to fit, or because respondent failed to make the garment from the material selected by the purchaser, or for any other reason, the respondent fails and refuses to deliver to such purchaser a garment that will fit made from the material selected and refuses to return to the purchaser the entire amount of the purchase price paid.

PAR. 9. The aforesaid acts, practices, and methods of the respondent have the capacity and tendency to and do mislead and deceive many purchasers and cause them erroneously to believe that the garments sold by the respondent are made-to-measure or tailor-made garments, as those terms are understood by the purchasing public; that the garments ordered will be made from the material selected

by the purchaser from samples submitted by the salesmen or agents, and will be delivered by the person taking the order, and that inspection will be permitted prior to the payment of the balance of the purchase money to the respondent, and that the other representations hereinabove set out are true, and that the promises made by the respondent will be fulfilled. Said acts, practices, and methods have the capacity and tendency to and do cause many prospective purchasers, because of said erroneous beliefs, to purchase clothing from the respondent, thereby unfairly diverting trade in said commerce to the respondent from his competitors who do not use the acts, practices, and methods used by the respondent, hereinabove alleged, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 10. The above alleged acts, practices, and methods 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 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 October 30, 1937, issued, and on November 1, 1937, served, its complaint in this proceeding upon respondent Harry Weinberg, trading and doing business under the name Nu-Art Tailoring 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, and after the expiration of the time within which respondent's answer thereto was due to be filed, the Commission, by order entered herein, ordered that respondent's time for filing answer be extended to December 31, 1937, and that respondent's answer, dated December 4, 1937, be filed herein, admitting all the material allegations of the complaint to be true, waiving the taking of further evidence, and all other intervening procedure, which said answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding

is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Harry Weinberg is an individual engaged in the business of offering for sale, and selling, men's clothing, through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing. His office and principal place of business is located at 818 Broadway, New York, N. Y. Respondent has been trading and doing business under the name Nu-Art Tailoring Company.

Respondent in the usual course of such business has constantly engaged in interstate commerce, selling and shipping such clothing from his place of business in New York, N. Y., to purchasers located in various other States of the United States.

In the operation of his business as aforesaid, respondent comes into substantial competition with others engaged in selling and distributing men's clothing in interstate commerce. Among such competitors are many who likewise sell their clothing through salesmen or agents, and who have not adopted the acts, practices, and methods in the sale thereof used by the respondent in the sale of his clothing as hereinafter described.

PAR. 2. Respondent employs approximately twenty salesmen or agents located at various points in the United States to solicit and accept orders for his clothing. By means of advertisements published in various newspapers, particularly in the Western sections of the United States, respondent contacts men who have had experience in selling men's clothing by way of door-to-door canvassing. For their services, respondent's salesmen receive a commission for each sale, the amount of which is determined by the quality of the merchandise which they sell. When a salesman makes a sale, he receives a deposit from the customer giving the order, and this deposit is retained by him. Respondent equips each salesman or agent with order blanks, and with samples of materials from which the purchasers make selections as to color, weave, and quality of the material from which the garment ordered is to be made. The order blanks contain spaces for the taking of individual measurements of each purchaser.

The prices at which respondent sells his clothing vary according to the quality of the material selected, and each salesman, or agent, collects from the purchaser of said clothing a substantial part of the agreed purchase price at the time that the order is accepted, with the understanding that the balance of the purchase price is to be paid

when the purchase is delivered. When a salesman or agent sells a garment, such salesman, or agent, takes the measurements of the purchaser and places the information regarding the weight, height, general build and appearance, etc., of the purchaser, together with a number identifying the material selected by the purchaser, on one of the aforesaid order blanks and forwards the same to the respondent at his place of business in New York City, N. Y. The purchaser assumes, and has a right to assume, that the garment ordered by him will be made from the material and according to the measurements determined upon between himself and the salesman who took his order.

PAR. 3. Made-to-measure or tailor-made clothing is understood by the trade and purchasing public generally to mean, and to be, garments which are cut and made to the individual measurements of the person for whom intended. In order to make a made-to-measure or tailor-made garment, as understood by the trade and purchasing public, it is necessary and essential that a person, experienced and skilled in taking and making measurements for such garments, measure the person for whom the garment is to be made, so as to convey to the tailor actually making the garment accurate and exact measurements regarding the weight, height, general build, and appearance, etc., of the person measured. There exists among the purchasing public the belief that made-to-measure or tailor-made garments fit with more accuracy than do garments which are not so made, and there is a preference on the part of a substantial portion of the purchasing public for made-to-measure or tailor-made garments.

PAR. 4. Respondent represents and implies to prospective purchasers of his clothing that he will make for, and deliver to, purchasers of his clothing made-to-measure or tailor-made garments made from material of the color, weave, and quality selected by purchasers from the samples exhibited by his salesmen or agents. In many instances, the garments delivered by the respondent to purchasers are not made-to-measure or tailor-made garments, as that term is understood by the purchasing public, but are "ready-made" or "hand-me-down" garments, having been previously manufactured without regard to the individual measurements of the purchaser to whom the garment is eventually sold. In some instances the garments are made to the individual measurements of the purchaser, but, because of the lack of experience and skill on the part of the salesmen or agents of respondent in making and taking measurements and securing accurate information regarding the weight, height, general build and appearance, etc., of the purchasers, or because of the lack of skill on the part of the workmen making the

clothing, the garments delivered do not fit in the same manner as made-to-measure or tailor-made garments, and, in some instances, do not fit at all, or with any reasonable relation to the individual to whom they are delivered. In many instances, the garments delivered to purchasers are so cut and constructed that it is not possible for expert tailors to alter them to make them fit the purchaser.

PAR. 5. Respondent represents to purchasers of his clothing that he will make for, and deliver to, them garments made from materials of the color, weave, and quality selected by such purchasers from the samples that respondent furnishes to said salesmen or agents, and as exhibited to purchasers by respondent's salesmen or agents.

In many instances respondent does not deliver to a purchaser a garment made from the material selected by such purchaser, but delivers a garment made from a material which he has substituted for the material selected by the purchaser, and which is different in color and weave from, and substantially inferior in quality to, the material selected by the customer.

PAR. 6. Respondent has from time to time represented to prospective purchasers that delivery of the garment ordered will be made to the purchaser by one of his salesmen, or agents, in person so as to afford such purchaser an opportunity to inspect the garment ordered as to the material from which made, and as to its fit, prior to the time that payment is made of the balance of the purchase money due the respondent. In practically every instance the garment is shipped to the purchaser by express, cash on delivery for the balance of the purchase money, with no inspection permitted, and the purchaser does not have an opportunity to inspect the garment prior to the payment of the balance of the purchase price due.

PAR. 7. Respondent, in many instances, represents to prospective purchasers that well-known men in the purchaser's community have purchased garments from the respondent, and that they are satisfied and have endorsed said clothing, when such is not a fact. In many instances the representation is made that the respondent contemplates the opening of a local store, and that only a limited number of suits are being sold in the vicinity at greatly reduced prices for introductory and advertising purposes, when such is not a fact. In many instances the representation is made that no additional charge will be made for shipping, when such is not a fact. In many instances it is represented that the price paid for the suit includes an extra pair of trousers, when such is not a fact. In many instances, respondent represents that the customer will be extended the privilege of making payment for the garment ordered on the installment plan, when such is not a fact.

PAR. 8. When complaint is made to the respondent by a purchaser because of the failure of the garment to fit, or because respondent failed to make the garment from the material selected by the purchaser, or for any other reason, the respondent fails and refuses to deliver to such purchaser a garment that will fit made from the material selected, and refuses to return to the purchaser the entire amount of the purchase price paid.

PAR. 9. The aforesaid acts, practices, and methods of the respondent have the capacity and tendency to, and do, mislead and deceive many purchasers and cause them erroneously to believe that the garments sold by the respondent are made-to-measure or tailor-made garments, as those terms are understood by the purchasing public; that the garments ordered will be made from the material selected by the purchaser from samples submitted by the salesmen or agents, and will be delivered by the person taking the order, and that inspection will be permitted prior to the payment of the balance of the purchase money to the respondent, and that the other representations hereinabove set out are true, and that the promises made by the respondent will be fulfilled. Said acts, practices, and methods have the capacity and tendency to, and do, give the respondent an unfair advantage over his competitors, in that they cause many prospective purchasers to purchase clothing from the respondent in interstate commerce, in preference to purchasing such clothing from his competitors, who have not resorted to such acts and practices, to the substantial injury of said competitors in said commerce and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent Harry Weinberg, trading and doing business under the name Nu-Art Tailoring Company, 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 and the answer filed herein on December 31, 1937, by respondent, admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its con-

clusion 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 Harry Weinberg, an individual trading and doing business under the name Nu-Art Tailoring Company, or under any other name or style, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of men's clothing in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

Representing in newspapers and magazines, and through circulars, catalogs, labels, or in any other form of printed matter, or in any other way:

1. That the men's clothing sold by him is made-to-measure or tailor-made, unless and until his garments are actually cut and made to the individual measurements of the person for whom intended;

2. That the garments sold by him will be made from the material selected by the purchaser from samples submitted by his salesmen or agents, and will be delivered by the person taking the order, unless and until the garments sold by him are actually so made and delivered;

3. That purchasers of his men's clothing will be permitted to inspect the articles of clothing purchased by them prior to the payment by them of the balance due, when in fact orders are shipped c. o. d. with no inspection permitted;

4. That well-known men in the various communities where he sells his clothing have purchased garments from him, and that they are satisfied and have endorsed them, when such is not the fact;

5. That he contemplates opening a local store in the various communities where his garments are sold and purchased, when in fact he has no such intention;

6. That no additional charge will be made for shipping when such extra charge therefor is made;

7. That the price paid for one of his suits includes an extra pair of trousers, when no such extra pair of trousers is included in the price of one suit;

8. That the purchaser of his clothing will be extended the privilege of paying for it on the installment plan, when such privilege is not actually given.

And it is hereby, further ordered, That the said respondent shall within 60 days from the date of service upon him 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
BELMONT LABORATORIES, INC.

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

Docket 2869. Complaint, June 30, 1936—Decision, Jan. 6, 1938

Where a corporation engaged in the manufacture of its "Mazon" proprietary preparation or unction for various skin ailments and disorders, and in sale and distribution thereof, and of its "Mazon Soap" as auxiliary product and adjunct thereto, to and through wholesale druggists in the various other States, for resale through drug stores, indiscriminately, to purchasers who attempt self-medication without proper and necessary advice as to their condition and proper treatment therefor, and with no clinic maintained by it wherein purchasers of its products were afforded opportunity for medical examination and with no physician connected with its said business, and, as thus engaged, in substantial competition with others engaged in sale and distribution, or in manufacture, sale, and distribution, in commerce among the several States and in the District of Columbia, of preparations designed and sold as cures and remedies, or as treatments for various similar ailments and disorders of the skin—

- (a) Represented, in advertisements of its said products in medical and nursing journals, through circulars mailed to physicians throughout the country, and through leaflets included in each package of aforesaid product and depicting photographs purportedly showing cures of aggravated cases of eczema and psoriasis, and through copies of purported medical indorsements, and other advertising matter relating to efficacy of product in question, that such product was a competent remedy or cure for eczema, acne, dandruff, alopecia, and other disorders and ailments manifested by diseased conditions of the skin, and had been clinically proved to eliminate permanently such various disorders and ailments;
- (b) Represented, as aforesaid, that said "Mazon" was a competent remedy or cure for all forms of athlete's foot and other skin disorders of similar nature, irrespective of type of disorder or cause or condition thereof, and had been clinically proved to eliminate permanently all types of such aforesaid disorders; and
- (c) Represented that aforesaid product was used exclusively by well-known specialists in the treatment of various skin disorders, and that physicians throughout the country had successfully prescribed said product permanently to eliminate or cure ailments, disorders and diseased conditions of the skin, irrespective of type of particular disorder or cause or condition thereof;

Facts being that some diseased conditions of skin, especially those caused by systemic or metabolic disorder, are often of serious nature and, in such disease as syphilis, usually manifested by skin disorder, sometimes prove fatal if neglected or improperly treated, such skin diseases as eczema,

alopecia, and acne are usually associated with or caused by metabolic or systemic disorders, while psoriasis, dandruff, and ringworm are, according to respectable medical opinion, sometimes caused by internal disorders, no one medicine or type of treatment is employed by physicians in treatment of all diseased conditions of skin, and particular treatment, following medical diagnosis, including detailed history of particular condition for determining cause and condition thereof if possible, may include correction of diet, administration of internal and external medicines, X-ray treatments, and treatments of nerves, depending on particular circumstances; and

Product in question, while effective in treatment of some types of athlete's foot and other skin disorders of other nature, was not effective and competent remedy and cure for eczema, alopecia, acne, dandruff, and other disorders and ailments manifested by diseased conditions of skin due to or associated with systemic or metabolic disorder, or due to syphilis, nor for all forms of athlete's foot and other skin disorders of similar nature, irrespective of form of disorder or cause or condition thereof, said product had not been clinically proved by thousands of physicians to be effective as above represented, had not been successfully prescribed by physicians throughout the country for permanent elimination of such conditions, etc., and was not used exclusively by well-known specialists in treatment of various skin disorders; and

(d) Represented that aforesaid "Mazon" was the original or only treatment of its character for skin disorders, and that it contained "Dichloramine-T," facts being it was not the original or only treatment of its character for ailments and disorders of the skin, but ingredients thereof had been known to and used by the medical profession for many years, there were a number of proprietary preparations for skin diseases on the market which were similar to it, and said product did not contain aforesaid substance or ingredient;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations were true, and that said preparation was an effective remedy or cure for eczema, acne, alopecia, dandruff, athlete's foot, and other diseased conditions of skin, irrespective of form of disorder or cause or condition thereof, and with result that public, acting under mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its said products, and trade was unfairly diverted to it from its competitors likewise engaged, in manufacture, sale, and distribution, or in sale and distribution, of cures and remedies or treatments for ailments and disorders of the skin, and who truthfully represent the efficacy and therapeutic value of their respective products:

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

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Lawrence H. Eldredge and *Mr. Charles A. Wolfe* of Montgomery & McCracken, of Philadelphia, Pa., for respondent.

Complaint

26 F. T. C.

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 Belmont Laboratories, Inc., a corporation, hereinafter designated 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, Belmont Laboratories, Inc., 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 4430 Chestnut Street, Philadelphia, Pa. It is now, and for several years last past has been, engaged in selling Mazon and Mazon soap, proprietary preparations advertised and sold as a treatment for skin disorders, between and among the various States of the United States and in the District of Columbia, and now causes and for several years last past has caused such products when sold by it to be shipped from its place of business in Philadelphia, Pa., to the purchasers thereof located in the various States of the United States and in the District of Columbia, and there is now, and has been for several years last past, a constant current of trade and commerce by the respondent in Mazon and Mazon soap between and among the various States of the United States and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale of remedies for diseases of the skin 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, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling its products to purchasers and prospective purchasers thereof, located in various States of the United States, represents, and for several years last past has represented through circulars, magazines, medical journals, pictorial representations showing alleged cures effected by the use of Mazon and Mazon soap, and other forms of advertising media circulated in many States of the United States and in the Dominion of Canada as follows:

COMPLETE RAPID ABSORPTION * * *

Thousands of physicians have clinically proved the effectiveness of Mazon treatment, and are prescribing it daily to permanently eliminate:

ECZEMA	TINEA SYCOSIS
PSORIASIS	ACNE
ALOPECIA	DANDRUFF
RINGWORM	ATHLETE'S FOOT
AND OTHER SKIN DISORDERS.	

The Colloidal nature of the base of Mazon and its strong penetrating characteristics, together with its healing and soothing ingredients, afford quick and permanent elimination of eczema and other skin disorders.

MAZON * * * is the original treatment of its character for

Eczema	Ring Worm
Psoriasis	Athletic Foot
Head Colds	Barber's Itch
Ivy Polson and Other Skin Disorders	

MAZON and MAZON SOAP have been successfully prescribed for nine years by prominent physicians throughout the country for the permanent elimination of these conditions;

It contains a medicinal ingredient known as Dichloramine-T;

No other treatment for permanent cure has ever been discovered;

Some of the best-known skin specialists in the City (of Philadelphia), are using it exclusively and praising it highly;

Well known skin specialists are using Mazon exclusively for the treatment of skin diseases; there is no substitute for Mazon.

PAR. 3. In truth and in fact Mazon is not completely and rapidly absorbed; thousands of physicians have not clinically proved the effectiveness of Mazon and are not prescribing it daily to permanently eliminate eczema, psoriasis, alopecia, ringworm, tinea sycosis, acne, dandruff, athlete's foot, and other skin disorders; Mazon and Mazon soap will not afford quick and permanent elimination of eczema and other skin disorders; Mazon is not the original treatment of its character for the various skin diseases mentioned but its ingredients have been known and used by the medical profession for many years; Mazon and Mazon soap have not been successfully prescribed for nine years, or for any other period of time, by prominent physicians throughout the country for the permanent elimination of skin disorders; it is not used exclusively in the treatment of skin disorders by the best known skin specialists in the city of Philadelphia; there are a number of proprietary preparations for skin diseases on the market similar to Mazon and the statement that there is no substitute for Mazon is untrue; and analysis fails to disclose the presence of Dichloramine-T.

PAR. 4. The use by respondent of the representations set forth herein, has had and now has the capacity and tendency to lead pur-

chasers and prospective purchasers into the belief that they themselves can diagnose the ailments or diseases of the skin from which they are suffering and thereby determine the cause or causes of said ailments or diseases and to purchase respondent's products in such erroneous belief. Only by a thorough diagnosis, made by a competent physician, can the causes of the various ailments and diseases of the skin be ascertained and successfully treated. Respondent is not a physician and there is no medical doctor connected with respondent's business in any capacity. Purchasers or prospective purchasers of Mazon or Mazon soap are not given a medical examination for the purpose of determining the particular disease or diseases from which they are suffering and the cure, if any, for same.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and does mislead and deceive a substantial portion of the purchasing public into the belief that such representations are true and to purchase substantial quantities of said Mazon and Mazon soap from respondent in such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of remedies for diseases of the skin who do not misrepresent in any way the therapeutic values of their products, who likewise advertise, sell, and distribute remedies for diseases of the skin among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is diverted to respondent from such competitors, thereby substantial injury is being, and has been, done by respondent to substantial competition in commerce as herein set out.

PAR. 6. The above alleged acts and practices of respondent are all to the injury and 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 June 30, 1936, issued, and on July 3, 1936, served, its complaint in this proceeding upon respondent, Belmont Laboratories, 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 other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Laurence H. Eldredge and Charles A. Wolfe, attorneys for the respondent; and said testimony and other 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Belmont Laboratories, Inc., is a Delaware corporation organized in 1926. Its principal office and place of business are at 4430 Chestnut Street, Philadelphia, Pa. It is engaged in the manufacture, sale and distribution of a product called Mazon, a proprietary preparation or unction advertised and sold as a treatment or remedy for various ailments, disorders and diseased conditions of the skin. Respondent also sells and distributes Mazon Soap, an auxiliary product, as an adjunct to Mazon.

Respondent's said products are packaged at its place of business in Philadelphia, Pa., and distributed through wholesale druggists. When orders are received for respondent's said products, it causes them to be shipped from its place of business at Philadelphia, Pa., to the purchasers thereof located at various points in the various States of the United States other than the State of Pennsylvania. Since the date of incorporation, the respondent has maintained a course of trade in said products, in commerce among and between the various States of the United States and in the District of Columbia.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution, or in the manufacture, sale, and distribution, of preparations designed and sold as cures and remedies or as treatments for various similar ailments and disorders of the skin, in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. The respondent advertised its said products in medical journals and in the American Journal of Nursing until June, 1935.

Respondent has advertised and now advertises its said products by means of circulars mailed to physicians throughout the country. It also advertises its products by means of a leaflet inserted in each package of Mazon. Under the legend "ONE PICTURE IS WORTH A THOUSAND WORDS", said leaflet bears several photographs purporting to show cures of aggravated cases of eczema and psoriasis. Said leaflet also carries copies of purported medical indorsements of Mazon and other advertising matter as to the efficacy of the product.

Respondent caused the following advertisement to appear in the American Journal of Nursing in June of 1935:

COMPLETE RAPID ABSORPTION * * *

Thousands of physicians have clinically proved the effectiveness of Mazon treatment, and are prescribing it daily to permanently eliminate:

ECZEMA	TINEA SYCOSIS
PSORIASIS	ACNE
ALOPECIA	DANDRUFF
RINGWORM	ATHLETE'S FOOT
AND OTHER SKIN DISORDERS	

Speaking of Mazon, respondent caused the following to appear in a Canadian medical journal:

It contains a medicinal ingredient known as Dichloramine-T.

The following representations appeared in a current circular or broadside which respondent mailed to doctors and physicians throughout the country:

The colloidal nature of the base of Mazon and its strong penetrating characteristics, together with its healing and soothing ingredients, afford quick and permanent elimination of eczema and other skin disorders.

MAZON * * * is the original treatment of its character for

Eczema	Ring Worm
Psoriasis	Athletic Foot
Head Colds	Barber's Itch
Ivy Poison and Other Skin Disorders	

MAZON and MAZON SOAP have been successfully prescribed for nine years by prominent physicians throughout the country for the permanent elimination of these conditions.

No other treatment or permanent cure has ever been discovered.

Some of the best-known skin specialists in the city (of Philadelphia) are using it exclusively and praising it highly.

By means of the foregoing statements, the respondent represents to purchasers, prospective purchasers and the public generally that Mazon is an effective remedy or cure for all cases of eczema, alopecia, acne, psoriasis, dandruff, athlete's foot and other disorders of the

skin irrespective of the form of the particular disorder or the cause or condition thereof.

PAR. 3. Quantitative and qualitative analyses of Mazon were made by a government agency. The quantitative analysis showed it to contain:

Net weight.....	20.75 gms. or 0.73 oz. av.
Total solids (at 100° C.).....	18.41%
Ash.....	0.54% (Mainly sodium oxide)
Water (Xylene Distillation).....	About 80%
Salicylates as sodium salicylate....	1.12%

The qualitative tests showed the following:

Resorcinol.....	Indicated
Salicylates.....	Present
Water.....	Present
Fatty acids.....	Present (stearic acid indicated)
Tar oils.....	Identified by odor
Phenol.....	Trace indicated
Glycerin.....	Present
Sulphur.....	Absent
Heavy metals.....	Absent
Borax.....	Absent
Tannic acid.....	Absent

Ailments and disorders of the skin, commonly referred to as "skin diseases," are, in many instances, merely surface indications of an internal disorder. Some diseased conditions of the skin, especially those caused by a systemic or metabolic disorder, are often of a serious nature and, in such a disease as syphilis, which is usually manifested by a skin disorder, sometimes prove fatal if neglected or improperly treated.

Among the so-called "skin diseases" which are usually associated with or caused by metabolic or systemic disorders are eczema, alopecia, and acne. Psoriasis, dandruff, and ringworm are, according to respectable medical opinion, sometimes caused by internal disorders.

The evidence establishes that the method of treating ailments and disorders of the skin, which method is followed by the medical profession generally, is, in all cases, to conduct an exhaustive diagnosis including a detailed history of the diseased condition for the purpose of determining the cause and condition thereof, if possible. The diseased condition is then treated in accordance with generally accepted methods of treatment employed by the medical profession for the particular disorder or ailment. Such treatment may include correction of the diet, administration of internal and external medicines, X-ray treatments and treatments of the nerves if the disorder is caused by a nervous condition of the patient. No one medicine or

type of treatment alone, however, is employed by physicians in the treatment of all diseased conditions of the skin. Mazon is not an effective and competent remedy or cure for eczema, alopecia, acne, dandruff, and other disorders and ailments manifested by diseased conditions of the skin if caused by or associated with a systemic or metabolic disorder, or if caused by syphilis. Mazon is not an effective and competent remedy or cure for all forms of athlete's foot and other skin disorders of a similar nature irrespective of the form of the disorder or the cause or condition thereof. Mazon has proved effective, however, in the treatment of some types of athlete's foot and other skin disorders of a similar nature.

PAR. 4. Based upon the testimony and other evidence in this record, it is found that the representation that the effectiveness of Mazon has been clinically proved by thousands of physicians is untrue; that physicians throughout the country have not successfully prescribed Mazon to permanently eliminate eczema, acne, athlete's foot, alopecia, dandruff, and other skin disorders and ailments, irrespective of the form of the particular disorder or the cause or condition thereof; that Mazon is not the original or only treatment of its character for ailments and disorders of the skin, but its ingredients have been known to and used by the medical profession for many years; that Mazon does not contain an ingredient known as Dichloramine-T; that specialists do not use Mazon exclusively in the treatment of ailments and disorders of the skin; and that the statement "There is no substitute for Mazon" is untrue in that there are a number of proprietary preparations for skin disorders on the market similar to Mazon.

PAR. 5. Respondent maintains no clinic or consultation room wherein purchasers of its products are afforded an opportunity for a medical examination and there is no medical doctor connected with respondent's business. Respondent's products are sold through drug stores indiscriminately to purchasers who can and do attempt self-medication without the proper and necessary advice as to their condition and the proper treatment therefor.

PAR. 6. The use by respondent of the representations set forth above in its advertising literature has had, and now has, the capacity and tendency to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that said representations are true and that said preparation is an effective remedy or cure for eczema, acne, alopecia, dandruff, athlete's foot, and other diseased conditions of the skin, irrespective of the form of the disorder or the cause or condition thereof. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the public has purchased a

substantial volume of the respondent's said products with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the manufacture, sale, and distribution, or in the sale and distribution, of cures and remedies or treatments for ailments and disorders of the skin, who truthfully represent the efficacy and therapeutic value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Belmont Laboratories, 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 respondent, testimony and other evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by DeWitt T. Puckett, counsel for the Commission, and by Laurence H. Eldredge, 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, Belmont Laboratories, Inc., a corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of a medicinal product now designated as Mazon, or of any other medicinal product containing substantially the same ingredients, or possessing the same properties, sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. Directly or through the use of testimonials or indorsements, or in any other manner:

(a) That Mazon is a competent remedy or cure for eczema, acne, dandruff, alopecia and other disorders and ailments manifested by diseased conditions of the skin unless such representations are lim-

ited to those types of said diseases and disorders which are not caused by, or associated with, a systemic or metabolic disorder, or are not caused by syphilis;

(b) That Mazon is a competent remedy or cure for all forms of athlete's foot and other skin disorders of a similar nature irrespective of the type of the disorder or cause or condition thereof;

(c) That Mazon has been clinically proved to permanently eliminate eczema, acne, dandruff, alopecia, and other disorders and ailments manifested by diseased conditions of the skin unless such representations are limited to those types of said diseases and disorders which are not caused by, or associated with, a systemic or metabolic disorder, or are not caused by syphilis;

(d) That Mazon has been clinically proved to permanently eliminate all types of athlete's foot and other skin disorders of similar nature irrespective of the type of the disorder or cause or condition thereof;

(e) That the product is used exclusively by well-known specialists in the treatment of various skin disorders;

(f) That physicians, throughout the country, have successfully prescribed Mazon to permanently eliminate or cure ailments, disorders and diseased conditions of the skin, irrespective of the type of the particular disorder or the cause or condition thereof;

2. That the product is the original or only treatment of its character for skin disorders;

3. That the product contains Dichloramine-T unless such is a fact.

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.

Syllabus

IN THE MATTER OF

M. H. SOBEL, INC.

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

Docket 2686. Complaint, Jan. 15, 1936—Decision, Jan. 12, 1938

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and which were composed of a number of penny caramels of uniform size, shape, and quality, together with a number of larger pieces of candy and a number of still larger pieces of candy and another article of merchandise, to be given as prizes, respectively, to those purchasers respectively selecting, by chance, one of a relatively small number of said caramels, centers of which were pink, and to those securing, by chance, one of a still smaller number of such caramels, centers of which were white—
Sold, to wholesalers and to retailers, for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, together with explanatory display cards for retailers' use, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products, in accordance with aforesaid sales plan, contrary to public policy long recognized by the common law and criminal statutes and contrary to an established public policy of the United States Government, and in competition with many who, unwilling to offer and sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as aforesaid, and thereby induced to purchase said candy thus packed and sold by it, in preference to that offered and sold by said competitors, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use same or equivalent method as unlawful, lessen competition therein and tend to create a monopoly thereof in it and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

Complaint

26 F. T. C.

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 M. H. Sobel, 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 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. Respondent is now and for several months last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products when so sold to be transported from its place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States at their respective places of business, and there is now and has been for several months last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said assortment is composed of a number of pieces of caramel candy of uniform size, shape, and quality, a number of larger pieces of candy and a number of still larger pieces of candy, together with another article of merchandise, which larger pieces of candy and the other article of merchandise are to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality in the following manner:

The majority of said pieces of caramel candy of uniform size, shape, and quality, are plain caramels, that is, have the same color throughout, but a small number of the said pieces of caramel candy

have pink centers and a smaller number of said caramels have white centers. The fact as to whether the caramels are of the same color throughout or have a pink or a white center is effectively concealed from the prospective purchaser until a selection has been made and the caramel broken open. The said pieces of caramel candy of uniform size, shape, and quality, retail at the price of one cent each, but the purchaser who procures one of the said caramel candies having a pink center is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to, and the purchaser who procures one of the caramel candies having a white center is entitled to receive and is to be given free of charge one of the still larger pieces of candy heretofore referred to. The aforesaid purchasers procuring a caramel candy having a white or pink center, and the purchaser of the last piece of caramel candy in said assortment thus procure a larger piece of candy or other article of merchandise wholly by lot or chance. The respondent furnishes with said assortment a circular or display card stating that the assortment is to be sold and distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, 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 products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy or another article of merchandise.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or

an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

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.

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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on January 15, 1936 issued, and on January 16, 1936 served, its complaint in this proceeding upon the respondent, M. H. Sobel, 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, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which amended answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and amended answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business located at 2309 South Keeler Avenue in the city of Chicago, Ill. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products when so sold to be transported from its place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States at their respective places of business. There is now and has been for several months last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said assortments are composed of a number of pieces of caramel candy of uniform size, shape and quality, a number of larger pieces of candy and a number of still larger pieces of candy, together with another article of merchandise, which larger pieces of candy and the other article of merchandise are to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality in the following manner:

The majority of said pieces of caramel candy of uniform size, shape, and quality, are plain caramels, that is, have the same color throughout, but a small number of the said pieces of caramel candy have pink centers and a smaller number of said caramels have white centers. The fact as to whether the caramels are of the same color throughout or have a pink or a white center is effectively concealed from the prospective purchaser until a selection has been made and the caramel broken open. The said pieces of caramel candy of uniform size, shape, and quality, retail at the price of one cent each, but the purchaser who procures one of the said caramel candies having a pink center is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to, and the purchaser who procures one of the caramel candies having a white center is entitled to receive and is to be given free of charge one of the still larger pieces of candy heretofore referred to. The aforesaid purchasers procuring a caramel candy having a white or pink center, thus procure a larger piece of candy or other article of merchandise wholly by lot or chance. The respondent furnishes with said assortments a circular or display card stating that the assortment is to be sold and distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, 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.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure larger pieces of candy.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and

is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, M. H. Sobel, 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 and the amended answer of respondent, M. H. Sobel, Inc., admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, M. H. Sobel, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments 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 and shape having centers of different colors together with larger pieces of candy or other articles of merchandise which said larger pieces of candy or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

It is further ordered, That the respondent, M. H. Sobel, Inc., a corporation, shall within 30 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
HARTZ MOUNTAIN PRODUCTS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2867. Complaint, June 30, 1936—Decision, Jan. 12, 1938*

Where a corporation engaged in the sale of pet shop products, including foods and remedies for birds, fish, and turtles, bird perches, and various other products and accessories pertaining to pets, and in distribution thereof through chain stores, department stores, drug stores, and other media of distribution, in substantial competition with others similarly engaged in sale and distribution, in commerce among the States, of other products and preparations recommended or used for pet foods and remedies, including foods and remedies for canaries; in extensively advertising its said pet foods, remedies, and accessories in various newspapers and other mediums of interstate circulation, and through broadcasts having interstate transmission and reception—

- (a) Designated certain of its pet shop products, including canary foods and remedies, as "Dr. Brehm's Bird Tonic," "Dr. Brehm's Bird Wash," "Dr. Brehm's Bird Bitters," and "Dr. Brehm's Revelenta," notwithstanding fact it did not appear that the famous German naturalist ever prescribed formulas for bird foods and remedies, or was connected with the formulas used by it on products and preparations distributed and sold by it, and none of its said products either were or had ever been made or prepared under direction of a doctor, or a Dr. Brehm, and representation thus made was false; and
- (b) Represented that its "Perfect-Grip" sand perch contained a vibrating spring or embodied a spring action and soothing sensation comparable, in use, to swaying of a tree branch as the canary alighted or jumped from its surface, facts being said product contained no vibrating spring and had no spring action comparable to swaying of a tree branch when used by a bird;

With capacity and tendency to mislead and deceive public into erroneous and mistaken belief that its said products had, in truth and in fact, been prepared by, or under the direction, or according to the formula of, a doctor or a Dr. Brehm, and that its said "Perfect-Grip" sand perch contained a vibrating spring which enabled such perch to simulate the swaying of a tree branch as the canary alighted or left its surface, and to induce such purchasing public to buy its said products in preference to other pet shop products and accessories, including canary foods and remedies, and with result of unfairly diverting trade to it from its aforesaid competitors who do not misrepresent the character and quality of their respective products nor the results to be obtained from the use thereof:

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

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

Mr. T. H. Kennedy and *Mr. John F. Richter* for the Commission.

Complaint

26 F. T. C.

Nims & Verdi, of New York City, *Mr. P. E. Williamson, Jr.*, and *Mr. Meyer Halperin*, of Brooklyn, N. Y. and *Mr. Daniel R. Forbes*, 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 Hartz Mountain Products, 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, Hartz Mountain Products, 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 32 Cooper Square, New York, N. Y. Respondent is, and for more than three years last past has been, engaged in the manufacture of fish and bird foods, bird medicines and remedies, bird perches, appurtenances thereto, bird cages, and other equipment for pets, and has been engaged in the sale of said products between and among the various States of the United States and in the District of Columbia. Respondent's bird medicines and remedies have been sold under the trade names of "Dr. Brehm's Bird Tonic," "Dr. Brehm's Bird Wash," "Dr. Brehm's Bird Bitters," and "Dr. Brehm's Revalenta." Respondent has also sold its products under the trade name "Hartz Mountain." During all of said time it has caused, and still causes, said products, when sold by it, to be transported from its place of business in New York, or other places within the United States to purchasers thereof some located in the State of New York and others located in various States of the United States other than the State of origin of the shipment, and in the District of Columbia.

In the course and conduct of its said business respondent is now, and for more than three years last past has been, in constant competition with other corporations, persons, firms, and partnerships engaged in the sale of similar products in commerce 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, as described herein, respondent included within its corporate name under which

to carry on its business the words "Hartz Mountain." Respondent has sold its products under the trade name of "Hartz Mountain" and has prefixed said trade name with the word "Genuine." It has used continuously for three years last past, and is now using, said corporate name containing the said words "Hartz Mountain" and the said trade name "Hartz Mountain" alone or in conjunction with the word "Genuine" in soliciting the sale of and selling its products in interstate commerce. Respondent has caused its corporate name "Hartz Mountain Products, Inc." and its said trade name "Hartz Mountain" alone or in conjunction with the word "Genuine" to appear on its letterheads, billheads, business cards, circulars, advertising matter, labels on containers containing its said products, and in booklets and otherwise, and has distributed said printed matter in interstate commerce to customers and prospective customers of respondent. Respondent has also caused its said corporate name and said trade name to be used in radio broadcasts in the advertisement of its said products. Respondent has caused its said corporate name "Hartz Mountain Products, Inc." and its said trade name "Hartz Mountain," used alone or in conjunction with the word "Genuine" to be presented to its customers and prospective customers in such a way that the representation is made to its customers or prospective customers that respondent's products are made or originate in the Hartz or Harz Mountain District of Germany. It is well known among owners of birds, and especially canary fanciers, that the Hartz or Harz Mountain District of Germany is a locality wherein a high-grade species of canary has been bred for many years.

In truth and in fact respondent's products are not, nor have they ever been, made or manufactured in, nor have their ingredients or component parts ever, nor do they now, originate in the Hartz or Harz Mountain District of Germany, but on the contrary, respondent has filled and now fills orders with products made or manufactured in the United States from ingredients or component parts procured by the respondent from places other than the Hartz or Harz Mountain District of Germany.

PAR. 3. Respondent at all times herein referred to has sold and now sells preparations under the trade name or brand of "Dr. Brehm's Bird Tonic," "Dr. Brehm's Bird Wash," "Dr. Brehm's Bird Bitters," and "Dr. Brehm's Revalenta," and has used and featured said trade names or brands on labels and in advertisements and in advertising matter, and has caused the following to appear on the

Complaint

26 F. T. C.

labels which it placed on the product designated as "Dr. Brehm's Revalenta":

REVALENTA

Prepared according to Dr. Brehm's original recipe, is acknowledged by all German bird breeders to be the best remedy for colds, asthma, coughs, hoarseness, etc.

The use by the respondent of the words "Dr. Brehm" or "Dr. Brehm's" and the title "Doctor" or the abbreviation therefor, to wit, "Dr." is made in such a way that purchasers and prospective purchasers of respondent are led to believe that the products sold by respondent under said trade names or brands are prepared from a formula or under the direction of a doctor or a Doctor Brehm. In truth and in fact none of respondent's products have ever been, nor are they now, made, manufactured, or prepared under the direction of a doctor or a Doctor Brehm, and said representation of respondent is untrue.

PAR. 4. Respondent at all times herein referred to has sold, and now sells, a product designated as "Hartz Mountain 'Perfect-Grip' Sand Perch," and has made representations regarding said product as set forth in the following statements which it has caused to appear in catalogues and other advertisements which it circulates in interstate commerce:

The vibrating spring by which the perch is attached easily from the outside of the cage produces a gentle spring action, a soothing sensation comparable to the swaying of a tree branch as a canary alights and jumps from its inviting surface.

In truth and in fact said product contains no vibrating spring and no spring action comparable to the swaying of a tree branch is produced in its use.

PAR. 5. 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 the respondent to be resold by retail to the public, made or manufactured in or composed of ingredients or component parts originating in the Hartz or Harz Mountain District of Germany, for products made or prepared according to the formula or under the direction of a doctor or a Doctor Brehm, or for a perch for canaries containing a vibrating spring which when used will produce a spring action comparable to the swaying of a tree. The use by the respondent of the words "Hartz Mountain Products" in respondent's corporate name, and the words "Hartz Mountain," alone or in conjunction with the word "Genuine," in respondent's trade name, as described herein; of the words "Dr. Brehm," "Dr. Brehm's," the title "Doctor" or the ab-

breviation therefor, to wit, "Dr."; or the representation by the respondent that respondent's said "'Perfect-Grip' Sand Perch" is attached to a cage by a vibrating spring which produces, when used, a gentle spring action comparable to the swaying of a tree, has a tendency and capacity to mislead and deceive purchasers who are customers or prospective customers of respondent, into the belief that respondent's products are actually made or manufactured, or the ingredients or component parts thereof originated in the Hartz or Harz Mountain District of Germany, or are prepared under the direction or according to the formula of a doctor or a Doctor Brehm, or that respondent's "'Perfect-Grip' Sand Perch" has the properties, capacities, or effects claimed for it, as hereinabove set forth, and such prospective customers, relying and acting upon such belief, have been and are thereby induced to and do buy respondent's aforesaid products, thereby tending to divert trade to respondent from other corporations, associations, individuals, firms, and partnerships who do not misrepresent the locality of manufacture of their products or the locality from which the ingredients or component parts of their products are obtained, or the persons under whose direction or formula their products are prepared, or the properties, capacities, or effects of their products, but who truthfully advertise and label their products.

PAR. 6. 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 the 30th day of June 1936, issued, and on July 3, 1936, served its complaint in this proceeding upon the respondent, Hartz Mountain Products, Inc., a corporation, 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 and the filing of the respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Thomas H. Kennedy, attorney for the Commission, and in opposition to the allegations of the com-

plaint by Nims and Verdi, by P. E. Williamson, Jr., Meyer Halperin, and Daniel R. Forbes, attorneys for the respondent, before W. W. Sheppard, trial examiner of the Commission theretofore duly designated by it; and said testimony and other evidence were 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, the answer thereto, testimony and other evidence, and briefs and oral arguments in support of the complaint and in opposition thereto, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hartz Mountain Products, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 32 Cooper Square, New York City, within the State of New York. Said respondent is now, and has been since 1933, engaged in the sale of pet shop products, including foods and remedies for birds, fish and turtles, bird perches, dog powder, and various other products and accessories pertaining to pets, and in the distribution thereof in commerce between and among the various States of the United States. It causes said products, when sold by it, to be transported from its aforesaid place of business in New York to purchasers thereof located in various States of the United States other than the State of New York. There is now, and has been for more than three years last past, a course of trade and commerce by respondent in said pet shop products between and among the various States of the United States. In the course and conduct of its said business, respondent is now, and since 1933 has been, in substantial competition with sundry other corporations, and with partnerships, firms, and individuals engaged in the sale and distribution of other products and preparations recommended or used for pet foods and remedies, including foods and remedies for canary birds, in commerce between and among the various States of the United States.

PAR. 2. The pet foods, remedies, and accessories, including foods and remedies for canary birds, sold and distributed by said respondent, are sold and distributed by said respondent through chain stores, department stores, drug stores, and other media of distribution located in the various States of the United States.

PAR. 3. The respondent, in the course and conduct of its said business, has been and now is engaged in extensive advertising as a means

of furthering and aiding in the interstate sale and distribution of its pet foods, remedies, and accessories, including foods and remedies for canary birds, and as media of such advertising it has been and now is using various newspapers and other mediums of interstate circulation, and broadcasts over radio stations having interstate transmission and reception.

PAR. 4. The respondent, in its said advertisements of its pet foods, remedies, and accessories, sold and distributed by it, has made various statements regarding the merits and qualities of said products, preparations and accessories in the feeding and treatment of household pets, including canary birds. Among the statements which said respondent has used in its sales devices, advertisements in newspapers and other mediums of circulation, and over the radio, is the following:

The vibrating spring by which the perch is attached easily from the outside of the cage produces a gentle spring action, a soothing sensation comparable to the swaying of a tree branch as a canary alights and jumps from its inviting surface.

The respondent, in the course and conduct of its business, has, by some of the means aforesaid, represented its "Perfect-Grip" sand perch as containing a vibrating spring by which the perch is easily attached from the outside of the cage and produces a gentle spring action, comparable to the swaying of a tree branch, as a canary alights or jumps from its surface.

PAR. 5. The respondent, in the course and conduct of its business, has, by some of the means aforesaid, represented that its pet shop products, including foods and remedies for canary birds, sold and distributed by it under the names "Dr. Brehm's Bird Tonic," "Dr. Brehm's Bird Wash," "Dr. Brehm's Bird Bitters," and "Dr. Brehm's Revelenta," are the products or brands prepared from a formula prescribed by a doctor, or under the direction of a doctor, or prescribed or prepared according to the formula or under the direction of a Dr. Brehm.

PAR. 6. Use by the respondent of the trade names or brands "Dr. Brehm's Bird Tonic," "Dr. Brehm's Bird Wash," "Dr. Brehm's Bird Bitters," and "Dr. Brehm's Revelenta," is and has been unjustified in that it has not been shown that Dr. Brehm, the famous German naturalist, either ever prescribed formulas for bird foods and remedies, or was connected, either directly or indirectly, with the formulas used by respondent, or the products and preparations distributed and sold by it. None of respondent's products have ever been, nor are they now, made, manufactured, or prepared under the direction of a doc-

tor, or a Dr. Brehm, and said representation of respondent is untrue.

PAR. 7. Respondent's use of representations in describing its "Perfect-Grip" sand perch as containing a vibrating spring by which the perch is attached easily from the outside of the cage and produces a gentle spring action, or a soothing sensation comparable to the swaying of a tree branch as a canary alights and jumps from its surface is unjustified in that its said product contains no vibrating spring and has no spring action comparable to the swaying of a tree branch in its use by a bird.

PAR. 8. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraphs 4 and 5, are misleading. Such representations have had the capacity and tendency to mislead and deceive the public into the erroneous and mistaken belief that respondent's products have, in truth and in fact, been prepared by, or under the direction, or according to the formula of a doctor or a Dr. Brehm, or that its "Perfect-Grip" sand perch contains a vibrating spring which enables the said sand perch to simulate the swaying of a tree branch as a canary bird alights or leaves its surface, and to induce such purchasing public to purchase respondent's products in preference to other pet shop products and accessories, including foods and remedies for canary birds. The result of such deception and misleading representations on the part of the said respondent is to unfairly divert trade to said respondent from such competitors above-named who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the said respondent, Hartz Mountain Products, Inc., a corporation, are 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 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 other evidence taken before W. W. Sheppard, examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by John F. Richter, counsel

for the Commission, and by P. E. Williamson, Jr., 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, Hartz Mountain Products, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of pet shop products and accessories, including foods and remedies for canary birds, or any preparations, under whatever name sold, possessing similar qualities, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through use of the term "Dr." or "Doctor" or any other term or word of similar meaning, or in any manner, that said products or preparations, including the formulas therefor, manufactured and sold by them, are manufactured according to a formula of, or under the supervision of a Dr. Brehm or of any doctor of medicine or any other person skilled in the practice of medicine, until and unless such products are so manufactured.

2. Representing that said "Perfect-Grip" sand perch contains a vibrating spring or embodies a spring action simulating or comparable in use to the swaying of a tree branch.

It is further ordered, That the respondent, Hartz Mountain Products, Inc., 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
DIETZ GUM COMPANY OF CHICAGO, ETC., 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 3189. Complaint, July 27, 1937—Decision, Jan. 12, 1938

Where a corporation and two individuals, officers, stockholders, and controllers thereof, engaged in sale and distribution of chewing gum assortments which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and which included, as typical, assortments composed of (1) one hundred penny pieces of gum of uniform size and shape (within individual wrappers of relatively few of which were concealed, as below set forth, printed legends), together with (a) a number of small felt pennants, of which purchasers securing by chance concealed legend reading "One Base Hit" received one, of which purchasers thus securing legend reading "Two Base Hit" received two, and of which purchasers thus securing legend reading "Three Base Hit" received three; and together with (b) larger felt pennants, to be given to such purchasers procuring by chance legend reading "Home Run"; and together with (c) still larger pennant, to be given to purchaser of last piece in assortment; and (2) similar assortments of chewing gum of uniform size, etc., together with number of small felt pennants, to be given as prizes to purchasers of individually wrapped pieces containing legend "Double Play," and together with further chance toward the securing of baseball uniform or gymnasium outfit through chance securing and accumulating of wrappers containing letters, in sequence, necessary to spell sentence "YOU ARE THE WINNER"—

Sold, to wholesalers and jobbers, for display and resale to purchasing public by retailer-vendee-customers thereof in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their products, in accordance with aforesaid sales plans, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell chewing gum or other confections, so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers of their said assortments to buy their said products in preference to chewing gum or other confections offered and sold by their competitors, and with result that many dealers in and ultimate purchasers of such products were attracted by their said methods and manner of packing said chewing gum and by elements of chance involved in sale thereof as above set forth, and were thereby induced to purchase their said chewing gum thus packed and sold by them, in preference to chewing gum or other confections offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to them trade and custom from their said competitors as aforesaid, exclude from

said chewing gum trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition therein and tend to create monopoly thereof in it and such other distributors as use same or equivalent methods, deprive purchasing public of benefit of free competition in said chewing gum trade, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent methods:

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

Before *Mr. Miles J. Furnas* and *Mr. John L. Hornor*, trial examiners.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.
Beach, Fathchild & Scofield, of Chicago, Ill., 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 the Dietz Gum Company of Chicago, a corporation, in its own name and right and trading as Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company, and Sol. S. Leaf, individually and as president and treasurer of the Dietz Gum Company of Chicago, and Harry Leaf, individually and as secretary of the Dietz Gum Company of Chicago, 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. The respondent, Dietz Gum Company of Chicago, is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1734 West Hubbard Street, Chicago, Ill. In addition to doing business under its own name as Dietz Gum Company of Chicago, the said respondent uses the trade names and styles of Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company. Respondent, Sol S. Leaf, is president, treasurer, a director and a stockholder of respondent, Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Respondent, Harry Leaf, is secretary, a director and a stockholder of the respondent, Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Said respondents, Sol

S. Leaf, and Harry Leaf, as officers, directors, and stockholders of the Dietz Gum Company of Chicago, have a controlling voice in the methods employed by, and direct the policies of, the said respondent corporation.

The respondents, as above described, are now and for some time last past have been engaged in the sale and distribution of chewing gum to wholesale dealers and jobbers located at points in the various States of the United States. Respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now and has been for some time last past a course of trade and commerce by said respondents in such chewing gum between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of chewing gum or other confections in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell and have sold to wholesale dealers and jobbers assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, a lesser number of slightly larger felt pennants, and one still larger felt pennant, which said felt pennants are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and all of the said wrappers appear identical until removed from said chewing gum. The majority of the said wrappers have no printing on the inside thereof, but a small number bear the printed legend "One Base Hit"; a still smaller number bear the printed legend "Two Base Hit"; a still smaller number bear the printed legend "Three Base Hit"; and a few of the wrappers bear the printed legend "Home Run." The printed legends on the inside of the wrappers cannot be seen or ascertained until a selection has been made and the wrapper removed. The individual sticks of chewing gum retail at the price of 1¢ each, and purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "One Base Hit" receives one small pennant, contained in said assortment and heretofore referred to,

free of charge and as a prize. Purchasers obtaining a stick of chewing gum contained within a wrapper bearing the legend "Two Base Hit" receive two of the said small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Three Base Hit" receive three small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Home Run" receive one of the larger pennants contained in said assortment and heretofore referred to, free of charge and as a prize. The purchaser of the last piece of chewing gum in the said assortment receives the still larger pennant contained in said assortment. The said felt pennants contained in said assortment are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

(b) Another assortment sold and distributed by respondents is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, which said felt pennants and certain other specified articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and the said wrappers appear identical until a selection has been made and the wrappers removed. A small number of the said wrappers bear on the inside thereof the printed words "Double Play." Other wrappers bear on the inside thereof a printed letter from the following sentence: "You are the Winner." The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper bearing the printed legend "Double Play" is entitled to receive and is to be given free of charge one of the said small felt pennants contained in said assortment and heretofore referred to. The wrappers bearing one of the printed letters, above referred to, also contain the following or similar legends:

SAVE THIS LETTER—W

This is the 10th letter in **YOU ARE THE WINNER.**

Save all the other letters.

Boys and Girls—Save wrappers with letters.

When you have the proper letters to spell out

Y-O-U-A-R-E-T-H-E-W-I-N-N-E-R

mail the wrappers by registered mail to

NOVELTY GUM CO., 1734 W. Hubbard St., Chicago, Ill.

You will receive free a complete **BASEBALL UNIFORM**
or **GYMNASIUM OUTFIT** to your measurements.

Complaint

26 F. T. C.

When purchasers have procured the necessary wrappers bearing letters spelling "You Are the Winner," they are entitled to forward them to the respondents and receive free of charge and as a prize a baseball uniform or a gymnasium outfit. The printed legends on the inside of the said wrappers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular wrapper removed. The felt pennants, the baseball uniform, and the gymnasium outfit are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of chewing gum involving a lot or chance feature, but such assortments are similar to those described in (a) and (b) above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell said chewing gum to the purchasing public in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plans hereinabove set forth, and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to the chewing gum or other confections offered for sale and sold by their competitors.

PAR. 4. The sale of said chewing gum to the purchasing public by either one of the methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondents of said methods in the sale of chewing gum, and the sale of chewing gum by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondents of said methods has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the chewing gum trade, competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery schemes. Many persons, firms, and corporations who make and sell chewing gum or other confections in competition with respondents, as above alleged, are unwilling to offer for sale or sell chewing gum or other confections 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of chewing gum or other confections are attracted by respondents' said methods and manner of packing said chewing gum and by the elements of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said chewing gum so packed and sold by respondents in preference to chewing gum or other confections offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents has the tendency and capacity, because of said games of chance, to divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods; to exclude from said chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said chewing gum trade, and to tend to create a monopoly of said chewing gum trade in respondents and in such other distributors of chewing gum or other confections as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said methods by respondents has the tendency and capacity to eliminate from said chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors, as hereinabove alleged. Said methods, acts, and practices 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 July 27, 1937, issued and served its complaint in this proceeding upon the above-named respondents, 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 the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor

an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for hearing before the Commission on the said complaint, and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dietz Gum Company of Chicago is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1734 West Hubbard Street, Chicago, Ill. In addition to doing business under its own name as Dietz Gum Company of Chicago, the said respondent uses the trade names and styles of Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company. Respondent Sol S. Leaf is president, treasurer, a director and a stockholder of respondent Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Respondent Harry Leaf is secretary, a director and a stockholder of respondent Dietz Gum Company of Chicago, and has his office and place of business at 1734 West Hubbard Street, Chicago, Ill. Said respondents, Sol S. Leaf, and Harry Leaf, as officers, directors, and stockholders of the Dietz Gum Company of Chicago, have a controlling voice in the methods employed by, and direct the policies of, the said respondent corporation.

The respondents, as above described, are now and for some time last past have been engaged in the sale and distribution of chewing gum to wholesale dealers and jobbers located at points in the various States of the United States. Respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now and has been for some time last past a course of trade and commerce by said respondents in such chewing gum between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of chew-

ing gum or other confections in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents sell and have sold to wholesale dealers and jobbers assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, a lesser number of slightly larger felt pennants, and one still larger felt pennant, which said felt pennants are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and all of the said wrappers appear identical until removed from said chewing gum. The majority of the said wrappers have no printing on the inside thereof, but a small number bear the printed legend "One Base Hit"; a still smaller number bear the printed legend "Two Base Hit"; a still smaller number bear the printed legend "Three Base Hit"; and a few of the wrappers bear the printed legend "Home Run." The printed legends on the inside of the wrappers cannot be seen or ascertained until a selection has been made and the wrapper removed. The individual sticks of chewing gum retail at the price of 1¢ each, and purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "One Base Hit" receive one small pennant, contained in said assortment and heretofore referred to, free of charge and as a prize. Purchasers obtaining a stick of chewing gum contained within a wrapper bearing the legend "Two Base Hit" receive two of the said small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Three Base Hit" receive three small pennants free of charge and as a prize. Purchasers procuring a stick of chewing gum contained within a wrapper bearing the legend "Home Run" receive one of the larger pennants contained in said assortment and heretofore referred to, free of charge and as a prize. The purchaser of the last piece of chewing gum in the said assortment receives the still larger pennant contained in said assortment. The said felt pennants contained in said assortment are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

(b) Another assortment sold and distributed by respondents is composed of 100 sticks of chewing gum of uniform size and shape, together with a number of small felt pennants, which said felt pen-

nants and certain other specified articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortment are wrapped in individual wrappers, and the said wrappers appear identical until a selection has been made and the wrappers removed. A small number of the said wrappers bear on the inside thereof the printed words "Double Play." Other wrappers bear on the inside thereof a printed letter from the following sentence: "You are the Winner." The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper bearing the printed legend "Double Play" is entitled to receive and is to be given free of charge one of the said small felt pennants contained in said assortment and heretofore referred to. The wrappers bearing one of the printed letters, above referred to, also contain the following or similar legends:

SAVE THIS LETTER—W

This is the 10th letter in **YOU ARE THE WINNER.**

Save all the other letters.

Boys and Girls—Save wrappers with letters.

When you have the proper letters to spell out

Y-O-U-A-R-E-T-H-E-W-I-N-N-E-R

mail the wrappers by registered mail to

NOVELTY GUM CO., 1734 W. Hubbard St., Chicago, Ill.

You will receive free a complete **BASEBALL UNIFORM**
or **GYMNASIUM OUTFIT** to your measurements.

When purchasers have procured the necessary wrappers bearing letters spelling "You Are the Winner," they are entitled to forward them to the respondents and receive free of charge and as a prize a baseball uniform or a gymnasium outfit. The printed legends on the inside of the said wrappers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular wrapper removed. The felt pennants, the baseball uniform, and the gymnasium outfit are thus distributed to purchasers of chewing gum from said assortment wholly by lot or chance.

The respondents manufacture, sell and distribute various assortments of chewing gum involving a lot or chance feature, but such assortments are similar to those described in (a) and (b) above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell said chewing gum to the purchasing public in accordance with the afore-

said sales plans. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plans hereinabove set forth, and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to the chewing gum or other confections offered for sale and sold by their competitors.

PAR. 4. The sale of said chewing gum to the purchasing public by either one of the methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondents of said methods in the sale of chewing gum, and the sale of chewing gum by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondents of said methods has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the chewing gum trade, competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery schemes. Many persons, firms, and corporations who make and sell chewing gum or other confections in competition with respondents, as above found, are unwilling to offer for sale or sell chewing gum or other confections so packed and assembled, or otherwise arranged and packed for sale to the purchasing public, as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of chewing gum or other confections are attracted by respondents' said methods and manner of packing said chewing gum and by the elements of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said chewing gum so packed and sold by respondents in preference to chewing gum or other confections offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents has the tendency and capacity, because of said games of chance, to divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods; to exclude from said chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said chewing gum trade, and to tend to create a monopoly of said chewing gum trade in respondents and in such other distributors of chewing gum or other

confections as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said methods by respondents has the tendency and capacity to eliminate from said chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress 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 substitute answer filed herein by respondents admitting all material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, 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 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, Dietz Gum Company of Chicago, a corporation, its officers, representatives, agents, and employees, and the respondents, Sol S. Leaf, individually and as president and treasurer of the Dietz Gum Company of Chicago, and Harry Leaf, individually and as secretary of the Dietz Gum Company of Chicago, in connection with the offering for sale, sale and distribution of chewing gum and other merchandise in interstate commerce do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers or others chewing gum or other merchandise so packed and assembled that sales of such chewing gum or other merchandise 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 or jobbers or others assortments of chewing gum or other merchandise which are used or may be used without alteration or rearrangement of the contents thereof to conduct a lottery, gaming device, or gift

enterprise in the sale or distribution of the chewing gum or other merchandise contained in said assortments to the public;

3. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum, together with felt pennants, which said felt pennants are to be given as prizes to purchasers of individual pieces of chewing gum procuring a piece of chewing gum contained within a wrapper bearing particular or specified legends;

4. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail, pieces of chewing gum contained within wrappers bearing various legends or letters, which wrappers bearing particular legends entitle the purchaser to specified articles of merchandise as a prize and which wrappers bearing letters, when obtained in particular combinations, entitle the holder thereof to certain specified articles of merchandise as a prize.

It is further ordered, That the respondents, Dietz Gum Company of Chicago, a corporation, in its own name and right and trading as Novelty Gum Company, Specialty Gum Company, and Yankee Doodle Gum Company; and Sol S. Leaf, individually and as president and treasurer of the Dietz Gum Company of Chicago; and Harry Leaf, individually and as secretary of the Dietz Gum Company of Chicago, shall, within 30 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 forth.

IN THE MATTER OF

LOUIS H. TABACH, TRADING AS LONGWEAR HOSIERY COMPANY, CERTIFIED HOSIERY COMPANY, AND CANARY HOSIERY COMPANY

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

Docket 3229. Complaint, Sept. 18, 1937—Decision, Jan. 12, 1938

Where an individual engaged in sale of hosiery among the various States through house-to-house canvassers, in substantial competition with those engaged in manufacture, sale, and distribution, or in sale and distribution, of hosiery in commerce among the various States and in the District of Columbia, and including among his said competitors manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products and do not use methods and practices as below described in connection with offer, sale and distribution thereof—

- (a) Falsely represented that he manufactured the hosiery sold and distributed by him, and that such hosiery corresponded as to grade, texture, color, and quality to samples displayed by his said agents and representatives for customers' selection, facts being he was not a hosiery manufacturer and hosiery shipped was of a quality or grade inferior to sample selected and to that represented by his said agents and representatives, and in many instances not of size and color selected by purchaser;
- (b) Represented that his stock in trade was turned over every ten days, and was always new and fresh, and that some of his said hosiery was made by a certain specified well-known manufacturer of ladies' hosiery, facts being none of the products sold by him was made by manufacturer referred to, nor was his stock in trade turned over as above represented;
- (c) Represented that his so-called "Longwear" hosiery was woven with special lockstitch which prevented it from snagging, running or developing holes, and that it was guaranteed as hole-proof and run-proof for a period of from three to six months, facts being said hosiery was not thus woven and would not, with normal wear, last for period of time specified, and he did not replace worn with new hosiery as promised;
- (d) Represented that purchasers ordering not fewer than six pairs of hosiery would be given, without further charge, extra pair, and misrepresented postage which customer would actually be called upon and required to pay when goods were shipped, facts being he failed and refused to include so-called "free" pair in such order when shipment was made, and thereafter to deliver such pair as promised, and postage charge required was greater than that represented at time of sale; and
- (e) Exacted additional payments of ten percent or more to cover postage and insurance fee on extra shipment in case of exchange of goods to correct mistakes in color or size, and unduly and unreasonably delayed correction of mistakes in filling orders; and
- (f) Failed and neglected, in a number of instances, to make adjustments as promised, refusing adjustments unless and until purchaser sent in original

Complaint

receipt given by salesman, and thereby, in some instances, defeating customer's efforts to secure adjustment, and, in number of instances, keeping receipts sent in without making adjustments, and retaining hosiery sent in for exchange or adjustment of mistakes without refunding purchaser's money;

With effect of deceiving and misleading purchasers and prospective purchasers into buying his said hosiery in the false and erroneous belief that he was a manufacturer and that hosiery sold and distributed would correspond in grade, etc., to salesman's samples, and that goods might be exchanged to correct mistakes without additional payment, and that such corrections would not be unreasonably and unduly delayed, deposits would be refunded in the absence of exchange or other satisfactory adjustment, and that hosiery in question was specially woven and guaranteed as above set forth, or was made by, as case might be, well-known manufacturer, and that his stock in trade was turned over, etc., as above represented, and that other undertakings and representations above set forth were true, and of misleading purchasers and prospective purchasers in the aforesaid respects and into purchase of his said hosiery by reason of such beliefs, in preference to that of competitors who do not resort to similar acts, practices, and misrepresentations in connection with the sale and distribution of their respective products, and with result thereby of unfairly diverting trade to him from such competitors; to the substantial injury of 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.

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 Louis H. Tabach, an individual doing business under the trade names Longwear Hosiery Company, Certified Hosiery Company and Canary Hosiery 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 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, Louis H. Tabach, is an individual, trading as Longwear Hosiery Company, Certified Hosiery Company and as Canary Hosiery Company, having his principal office and place of business located at 1060 Broad Street, in the city of Newark, in

Complaint

26 F. T. C.

the State of New Jersey. Respondent is now, and for more than five years last past has been, engaged in the business of selling ladies' hosiery in commerce between the State of New Jersey and the several States of the United States, and in the District of Columbia. When said hosiery is sold, respondent causes the same to be transported from his place of business in the State of New Jersey to purchasers thereof located in States of the United States other than the State of New Jersey and in the District of Columbia. There has been for more than five years last past, and still is, a constant current of trade and commerce in said ladies' hosiery thus sold and distributed by respondent, between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than five years last past has been, in substantial competition with other individuals and with partnerships, firms, and corporations engaged in the manufacture of hosiery and in the sale and distribution thereof in commerce between the States of the United States and in the District of Columbia and with other individuals and with partnerships, firms, and corporations engaged in the sale and distribution of hosiery in said commerce.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent, by and through his sales agents and representatives, sells and has sold ladies' hosiery directly to the persons by whom such hosiery is to be worn. Respondent sells said ladies' hosiery on orders taken by said sales agents and representatives through house-to-house canvass. Orders so solicited and received are forwarded to the respondent at his principal place of business in the city of Newark, in the State of New Jersey. Said sales agents and representatives of respondent represent that said orders, when received by respondent, are filled according to the statements and representations made by them, and with hosiery of a grade, quality, and texture as shown by samples displayed by said sales agents and representatives, and of a color and size selected by the customer.

PAR. 3. Respondent, in the course and conduct of his business, in said commerce, as aforesaid, represents by and through his sales agents and representatives

(a) That he is a manufacturer;

(b) That the "Longwear" hosiery sold by him is woven with a special lockstitch which prevents them from snagging, running, or developing holes; that such hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(c) That each pair of hosiery developing runs or holes within the period guaranteed will be replaced with a new pair without charge;

(d) That purchasers ordering not fewer than six pairs of hosiery will be given without further charge an extra pair;

(e) That the postage charge will be less than the customer is actually called upon and required to pay when goods are shipped C. O. D.;

(f) That some of the hosiery sold by respondent is manufactured by "Vanity Fair", a well-known manufacturer of ladies' hosiery; and

(g) That respondent's stock in trade is turned over every ten days and that said stock is always new and fresh.

PAR. 4. Respondent, in the course and conduct of his business in said commerce, as aforesaid, through his sales agents and representatives makes use and has made use of the following methods and practices:

(a) Exacting an additional payment of ten per cent (10%) or more to cover postage and insurance fee on the extra shipment in case of exchange of goods for the purpose of correcting mistakes in color and/or size;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, and in a number of instances failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failing and neglecting to refund the money paid by the purchaser;

(d) By refusing to make adjustments unless and until the purchaser sends in the original receipt given by the salesman, thereby, in some instances, defeating the efforts of the customer to secure an adjustment; and

(e) In a number of instances, keeping the receipts sent in and failing and neglecting to make any adjustment.

PAR. 5. The representations of respondent set forth in paragraphs 2 and 3 hereof, and others similar thereto, have the capacity and tendency to deceive and mislead and do deceive and mislead, purchasers and prospective purchasers of respondent's said hosiery into the false and erroneous beliefs:

(a) That respondent is a manufacturer;

(b) That the ladies' hosiery sold and distributed by respondent is made of a fabric whose grade, texture, color and quality correspond to the samples displayed by respondent's sales agents and representatives, and as selected by said customers;

(c) That goods purchased from respondent may be exchanged for the purpose of correcting mistakes in color and/or size, without an additional payment of ten per cent or more to cover postage and insurance fee on the extra shipment;

(*d*) That correction of mistakes in filling orders will not be unduly and unreasonably delayed;

(*e*) That deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made;

(*f*) That respondent's hosiery is woven with a special lockstitch preventing it from snagging, running, or developing holes;

(*g*) That respondent's hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(*h*) That a purchaser of respondent's hosiery will get a new pair in exchange, without additional charge, if and when it develops runs or holes within the period guaranteed;

(*i*) That purchasers ordering not fewer than six pairs of hosiery will be given an extra pair without further charge;

(*j*) That the cost of C. O. D. shipments of goods is as represented by respondent and his sales agents and representatives;

(*k*) That certain hosiery sold and distributed by respondent is manufactured by "Vanity Fair," a well-known manufacturer of ladies' hosiery; and

(*l*) That respondent's stock in trade is turned over every ten days and that the same is always new and fresh.

PAR. 6. In truth and in fact, respondent, trading under the various trade names hereinbefore set forth, is not now and has never been a manufacturer of ladies' hosiery. Respondent ships hosiery of a quality or grade inferior to the sample selected and of a quality and grade inferior to that represented by his sales agents and representatives and, in many instances not of the size and color selected by the purchaser. The hosiery sold by respondent is not woven with a special lockstitch which prevents said hosiery from snagging, running, or developing holes. Said hosiery will not and does not, under normal wear, last for the period of time specified and the respondent will not and does not replace worn hosiery with new hosiery at the expiration of such period of time, as promised. Respondent fails and refuses to include the so-called free pair in the order when shipment is made, and he thereafter fails and refuses to deliver said free pair, as promised. The postage charge the customer is actually called upon and required to pay when the goods are delivered C. O. D. is greater than represented at the time of the sale. None of the hosiery sold by respondent is made by "Vanity Fair," nor is respondent's stock in trade turned over every ten days.

PAR. 7. There are among the competitors of the respondent in said commerce, manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products and who do not use the methods and practices used by the respondent as hereinbefore

alleged in connection with the offering for sale, sale and distribution of their products.

PAR. 8. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 5 hereof, and into the purchase of respondent's said hosiery in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from his competitors and as a consequence thereof, substantial injury is done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. Said 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.

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 18, 1937, issued, and later served its complaint in this proceeding upon the respondent, Louis H. Tabach, trading as Longwear Hosiery Company, Certified Hosiery Company, and Canary Hosiery 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 and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs having been waived (oral argument not being requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Louis H. Tabach, is an individual trading as Longwear Hosiery Company. From time to time he has also done business as Certified Hosiery Company, and as Canary Hosiery Company. His principal office and place of business is located at 1060 Broad Street, Newark, N. J.

For more than five years respondent has been, and is now, engaged in the business of selling hosiery in commerce between the State of New Jersey and the various other States of the United States, and in the District of Columbia. When he sells his hosiery, he causes it to be transported from his place of business in Newark, N. J., to purchasers located in various other States of the United States and in the District of Columbia.

There has been, and still is, a course of trade and commerce in said hosiery by respondent between and among the various States of the United States and in the District of Columbia. Respondent has been for more than five years and is now in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the manufacture, sale and distribution, or in the sale and distribution of hosiery, in commerce 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 aforesaid, the respondent employs sales agents and representatives who sell, and have sold, respondent's hosiery directly to the persons by whom such hosiery is to be worn. By and through these said sales agents and representatives, respondent sells hosiery on orders taken through house-to-house canvass. Orders so solicited and received are forwarded to the respondent at his principal place of business in Newark, N. J. By and through his said sales agents, respondent represents to purchasers and prospective purchasers that he is selling, and will ship and deliver to them, hosiery of the specified grade, quality, and texture by them ordered from samples displayed by his agents.

PAR. 3. In soliciting the sale of and selling his hosiery, respondent, by and through his sales agents and representatives, makes, among others, the following representations:

(a) That he is a manufacturer;

(b) That the "Longwear" hosiery sold by him is woven with a special lockstitch which prevents it from snagging, running, or developing holes; that such hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(c) That each pair of hosiery developing runs or holes within the period guaranteed will be replaced with a new pair without charge;

(d) That purchasers ordering not fewer than six pairs of hosiery will be given without further charge an extra pair;

(e) That the postage charge will be less than the customer is actually called upon and required to pay when goods are shipped C. O. D.;

(f) That some of the hosiery sold by respondent is manufactured by "Vanity Fair," a well-known manufacturer of ladies' hosiery; and

(g) That respondent's stock in trade is turned over every ten days, and that said stock is always new and fresh.

PAR. 4. As a matter of fact, respondent is not now, and has never been, a manufacturer of hosiery. In the usual course of his business aforesaid, he ships hosiery of a quality or grade inferior to the sample selected, and of a quality and grade inferior to that represented by his sales agents and representatives, and, in many instances, not of the size and color selected by the purchaser. This hosiery is not woven with a special lockstitch which prevents said hosiery from snagging, running, or developing holes, and will not, with normal wear, last for the period of time specified. Respondent does not replace worn hosiery with new hosiery, as promised. Respondent fails and refuses to include the so-called free pair in the order when shipment is made, and thereafter fails and refuses to deliver said free pair, as promised. The postage charge the customer is actually called upon and required to pay when the goods are delivered C. O. D. is greater than represented at the time of the sale. None of the hosiery sold by respondent is made by "Vanity Fair," nor is respondent's stock in trade turned over every ten days.

Further, this respondent makes a practice of—

(a) Exacting an additional payment of ten per cent (10%) or more to cover postage and insurance fee on the extra shipment in case of exchange of goods for the purpose of correcting mistakes in color and/or size;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, and, in a number of instances, failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failing and neglecting to refund the money paid by the purchaser;

(d) Refusing to make adjustments unless and until the purchaser sends in the original receipt given by the salesman, and, thereby, in some instances, defeating the efforts of the customer to secure an adjustment; and

(e) In a number of instances, keeping the receipts sent in and failing and neglecting to make any adjustment.

PAR. 5. The representations of respondent set forth in paragraphs 2 and 3 hereof, and his methods and practices as set out in paragraph 4 hereof, and other representations and methods and practices similar thereto, have the capacity and tendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers into purchasing respondent's said hosiery under the following false and erroneous beliefs:

(a) That respondent is a manufacturer;

(b) That the hosiery sold and distributed by respondent is made of a fabric whose grade, texture, color, and quality correspond to the samples displayed by respondent's sales agents and representatives, and as selected by said customers;

(c) That goods purchased from respondent may be exchanged for the purpose of correcting mistakes in color and/or size, without an additional payment of ten per cent or more to cover postage and insurance fee on the extra shipment;

(d) That correction of mistakes in filling orders will not be unduly and unreasonably delayed;

(e) That deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made;

(f) That respondent's hosiery is woven with a special lockstitch preventing it from snagging, running, or developing holes.

(g) That respondent's hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(h) That a purchaser of respondent's hosiery will get a new pair in exchange, without additional charge, if and when it develops runs or holes within the period guaranteed;

(i) That purchasers ordering not fewer than six pairs of hosiery will be given an extra pair without further charge;

(j) That the cost of C. O. D. shipments of goods is as represented by respondent and his sales agents and representatives;

(k) That certain hosiery sold and distributed by respondent is manufactured by "Vanity Fair," a well-known manufacturer of ladies' hosiery; and

(l) That respondent's stock in trade is turned over every ten days, and that the same is always new and fresh.

PAR. 6. There are among the competitors of the respondent in interstate commerce, manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products, and who do not use the methods and practices used by the respondent, as

hereinbefore described, in connection with the offering for sale, sale, and distribution of their products.

PAR. 7. The aforesaid acts and practices of the respondent have a tendency and capacity to, and do, mislead purchasers and prospective purchasers into the erroneous beliefs that the various representations described in paragraphs 3 and 4 hereof are true, and into the purchase of respondent's said hosiery in and on account of such beliefs in preference to purchasing hosiery from respondent's competitors who do not resort to similar acts, practices and misrepresentations in connection with the sale and distribution of their respective products. As a result thereof, trade is unfairly diverted to the respondent from such competitors and substantial injury is done to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Louis H. Tabach, trading as Longwear Hosiery Company, Certified Hosiery Company, and Canary Hosiery Company, 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 and the answer filed herein on the 7th day of January 1938, by respondent, admitting all the material allegations of the complaint to be true, waiving hearing on the charges set forth in the said complaint, and stating that without further evidence or other intervening procedure the Commission might issue and serve upon him findings as to the facts and conclusion drawn therefrom and an order to cease and 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 hereby ordered, That the respondent, Louis H. Tabach, an individual, doing business as Longwear Hosiery Company, Certified Hosiery Company, and Canary Hosiery Company, or under any

other name, his agents, representatives, and employees in connection with the sale, or offering for sale of hosiery in interstate commerce and in the District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing that respondent manufactures the hosiery distributed and sold by him until he actually owns and operates, or directly and absolutely controls, the factory or plant wherein such hosiery is made.

2. Representing that the hosiery sold and distributed by respondent corresponds as to grade, texture, color, and quality, to the samples displayed by respondent's sales agents and representatives for selection by customers, unless and until such customers actually receive hosiery of the grade, texture, color, and quality, selected by them from the samples displayed by respondent's sales agents and representatives.

3. Representing that hosiery purchased from the respondent may be exchanged without an additional payment to cover postage and insurance fee on the extra shipment when such exchanges are not made without such additional payments.

4. Representing that correction of mistakes in filling orders will not be unduly and unreasonably delayed, unless and until orders are filled without undue and unreasonable delay.

5. Representing that deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made, unless and until deposits are in fact refunded or exchange or other satisfactory adjustment is made.

6. Representing that respondent's hosiery will not snag, run or develop holes by reason of a special lockstitch in weaving said hosiery or for any other reason.

7. Representing that said hosiery is guaranteed or that a purchaser of respondent's hosiery will get a new pair in exchange, without additional charge, if and when it develops runs or holes within the period guaranteed, unless and until purchasers whose hosiery develops runs or holes within the period guaranteed will in fact receive a new pair of hose in exchange without additional charge.

8. Representing that purchasers ordering not fewer than six pairs of hosiery will be given an extra pair without further charge, unless and until purchasers ordering six or more pairs of hosiery are in fact given an extra pair without additional charge.

9. Misrepresenting the cost of C. O. D. shipments of goods by informing prospective purchasers that such cost is less than it actually is.

284

Order

10. Representing that certain hosiery sold and distributed by respondent is manufactured by "Vanity Fair," well-known manufacturer of ladies' hosiery.

11. Representing that respondent's stock in trade is turned over every ten days, and that the same is always new and fresh, when that is untrue.

And it is hereby 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 shall have complied with this order.

Complaint

26 F. T. C.

IN THE MATTER OF
AGRICULTURAL LABORATORIES, INC.

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

Docket 3263. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a corporation engaged in the development of nitrogen fixing bacteria, costs of growing, selling and delivering which are generally not substantially affected by quantity purchases, and in the sale and distribution thereof, in competition with others engaged as members of the commercial legume inoculant industry, to customers, of whom some were competitively engaged in commerce in resale and distribution of its said product with other customers, and who included (1) wholesale distributors engaged in sale to retailers and directly to farmers, and selected or attempted to be selected by it on a basis of one for each trade area in which it sold, (2) the two largest mail order houses, and (3) some farm bureaus which were in competition with retailers in sale to farmers—

Discriminated in price, through granting to some customers competitively engaged with other customers in the resale of its inoculant, price differentials which did not make only due allowance for differences in cost of manufacture, sale or delivery resulting from differing methods or quantities in which commodity in question was to such purchasers sold or delivered, and were not in response to changing conditions affecting the market for, or the marketability of, the goods concerned, and through sales practice involving delivered price basis to some, and f. o. b. price to others, and return privileges to some, denied to others;

With result that the effect of said discriminations in price might be substantially to lessen competition and tend to create a monopoly in the line of commerce in which it was engaged, and that in which its distributors were engaged, and might be to injure, destroy, or prevent competition with it and with certain favored distributors and customers thereof:

Held, That such acts and practices constituted a violation of the provisions of Subsec. (a) of Sec. 2 of an act of congress approved Oct. 15, 1914, as amended.

Mr. A. W. DeBirny for the Commission.

Mr. Preston B. Kavanagh, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Agricultural Laboratories, Inc., hereinafter called respondent, since June 19, 1936, has been and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (Public No. 212, the Clayton Act),

as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936, (Public No. 692, the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Ohio and has its principal office and place of business at 3415 Milton Avenue in the city of Columbus, Ohio.

PAR. 2. For many years prior hereto and since June 19, 1936, respondent has been and is now engaged in the business of developing, manufacturing, selling, and distributing certain nitrogen-fixing bacteria, which is a commodity commonly known as a commercial inoculant and is useful in promoting the growth of leguminous plants and crops. In the course and conduct of its said business the respondent has been and is now developing and manufacturing said bacteria at its place of business in the State of Ohio and has been and is now, in direct active competition with other persons, partnerships, and corporations similarly engaged, selling, shipping, and distributing said bacteria in commerce from its said place of business in the State of Ohio to various purchasers of said bacteria located in the State of Ohio and the several other States of the United States and in the District of Columbia. For many years prior hereto and since June 19, 1936, there has been and is now between respondent and purchasers of said bacteria a course of trade and commerce in said bacteria in and between the State of Ohio and the several other States of the United States and the District of Columbia.

PAR. 3. Since June 19, 1936, in the course and conduct of its business described in paragraph 2 hereof and while engaged in trade and commerce between the State of Ohio and the other States of the United States and the District of Columbia as therein described, the respondent has been and is now, in the course of such commerce, discriminating in price between different purchasers of bacteria of like grade and quality sold and shipped in commerce, as aforesaid, by respondent to said purchasers and by them purchased from respondent in commerce for use, consumption, or resale within the State of Ohio and the several other States of the United States and the District of Columbia, in that the respondent has been and is now selling bacteria to some of said purchasers at prices lower than the prices at which respondent has been and is now selling bacteria of like grade

and quality to other of said purchasers, and the respondent has been and is now allowing to some of said purchasers a larger discount from the prices at which bacteria was and is sold to them by respondent than the discount, if any, which respondent has been and is now allowing to other purchasers of bacteria of like grade and quality purchased from respondent at the same prices.

PAR. 4. Since June 19, 1936, many purchasers of bacteria and customers of respondent receiving the benefit of the aforesaid discriminations in price, hereinafter referred to as favored customers, have been and are now in substantial competition in the use, consumption, sale, resale, and distribution of said bacteria with many other purchasers of bacteria and customers of respondent not receiving the benefit of said discriminations in price, hereinafter referred to as disfavored customers, and many customers of said favored customers have been and are now in like competition with many customers of said disfavored customers, and the effect of the aforesaid discriminations in price may be substantially to lessen competition in the sale or distribution of said bacteria or to injure, destroy, or prevent competition in the use, consumption, sale, resale, or distribution of said bacteria between and among said favored customers and said disfavored customers and between and among the customers of said favored customers and the customers of said disfavored customers and between and among the respondent and other persons, partnerships, and corporations similarly engaged in the sale and distribution of commercial inoculants.

PAR. 5. The aforesaid acts of respondent constitute a violation of the provisions of Section 2 (a) of the above-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (Public No. 692, the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), the Federal Trade Commission on Novem-

ber 10, 1937, issued and served its complaint in this proceeding upon the respondent, Agricultural Laboratories, Inc., a corporation, charging it with discriminating in price between different purchasers of inoculants in violation of subsection (a) of section 2 of the aforesaid act.

After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now 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. Said corporate respondent, Agricultural Laboratories, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of Ohio, with its principal office and plant located at 3415 Milton Avenue, Columbus, Ohio. At all times herein mentioned said respondent has been engaged in the business of developing, selling and distributing certain nitrogen fixing bacteria, useful for inoculating the seeds of leguminous plants, from its said place of business in the State of Ohio to various purchasers of said bacteria located in the State of Ohio and the several States of the United States and there has been and is now between respondent and purchasers of said bacteria a course of trade and commerce in said bacteria in and between the State of Ohio and the several States of the United States.

PAR. 2. The respondent is a member of the commercial legume inoculant industry of the United States which industry grows, sells and distributes commercial inoculants to the value of approximately \$1,000,000 in gross annual sales. There are approximately fourteen members of this industry, all competitively engaged one with the other in the sale and distribution in commerce of commercial inoculants. The bacteria are grown for the inoculation of seeds of leguminous plants. The bacteria are encouraged to multiply from various strains and are then placed in a carrier, which is either a

jelly or a humus medium such as peat or charcoal, for commercial distribution. Seeds of leguminous plants are saturated with the bacteria before planting. These bacteria have the function of associating with legume plants, with the result that an adequate number of bacterial nodules are formed on the roots of the plants to extract nitrogen from the air for the purpose of aiding luxuriant growth of the plant. Principally these inoculants are placed upon alfalfa and sweet clover seeds, soy beans, peas and other legumes.

PAR. 3. Said respondent confines its sales generally to wholesale distributors and attempts to select one for each trade area in which it sells. Such wholesalers sell to retail dealers as well as directly to farmers. Additionally respondent sells its product to the two largest mail order houses who sell to consumers throughout the United States. The respondent also sells to some farm bureaus which, however, generally do not compete with respondent's wholesale distributors. Respondent sells to a few retailers. Some of respondent's customers are competitively engaged in commerce in the resale and distribution of the inoculant product with other of respondent's customers. The farm bureaus compete with retail dealers in selling to the farmers.

PAR. 4. Respondent sells its product to its wholesalers at various prices of from 14¢ to 16¢ for the one bushel size. Retail distributors pay 30¢ for the one bushel size. Some of the product is sold on a delivered basis and some customers, paying the highest price are sold F. O. B. Columbus, Ohio. The farm bureaus all purchase at a price of 14¢ delivered. The mail order houses purchase at 20¢ delivered for the one bushel size with the privilege of returning unsold goods. The farm bureaus are not allowed to return unsold goods but may return empty cans and obtain a credit of 2¢ a can. Wholesalers may return not to exceed 10% of their annual purchases. The respondent sells to a farm bureau at 14¢ and also sells at 14¢ to a competing wholesaler. Respondent departs from its regular policy with this wholesaler and does not allow the return of goods but only the 2¢ credit for each empty can returned. However, the farm bureau purchases on a 14¢ delivered price basis whereas the competing wholesaler purchases on a 14¢ non-delivered price basis, that is in the latter instance F. O. B. Columbus, Ohio.

PAR. 5. The granting of a lower price to some customers competitively engaged with other customers in the resale of the inoculant is under the circumstances set forth above a discrimination in price in commerce between purchasers of respondent's product, which pur-

chases are for use, consumption or resale within the United States.

PAR. 6. The effect of said discriminations in price may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which the respondent is engaged and in the line of commerce in which its distributors are engaged; and the effect of said discrimination may be to injure, destroy or prevent competition with the respondent and with certain favored distributors and with customers of such favored distributors.

PAR. 7. The costs of growing, selling and delivery are generally not substantially affected by quantity purchases, largely due to the practice of accepting the return of goods unsold, which returned goods are then practically valueless.

PAR. 8. The discriminations in price set forth above do not make only due allowance for differences in the cost of manufacture, sale, or delivery, resulting from the differing methods or quantities in which such commodity is to such purchasers sold or delivered. That such price differentials were not in response to changing conditions affecting the market for or the marketability of the goods concerned.

CONCLUSION

The aforesaid acts and practices of respondent, as set out in paragraph 5 hereof, are in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C. title 15, section 13), 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 respondent admitting all the material allegations of the complaint to be true and waiving the taking of evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

It is ordered, That the respondent, Agricultural Laboratories, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of commercial inoculant

Order

26 F. T. C.

in interstate commerce or in the District of Columbia do forthwith cease and desist from the unlawful discriminations in price found in paragraph 5 of the aforesaid findings as to the facts and conclusion.

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

Syllabus

IN THE MATTER OF

HANSEN INOCULATOR COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1938

Docket 3264. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a corporation engaged in sale and distribution of bacteria inoculation for leguminous plants, as member of the commercial legume inoculant industry, and, as such, in competition with others engaged in sale and distribution in commerce of commercial inoculants, costs of growing, selling, and delivering which are generally not substantially affected by quantity purchases, and in selling, as thus engaged, through salesmen, at varying price not related to savings in cost of production, sale, or delivery or to buyer resale functions, to customers whom it classified as consumers, retail dealers, and jobbers, but who included farm bureaus reselling large portion of its product to farmers and occasionally to local elevators and other dealers, and who, as "jobbers," generally sold both consumers and dealers, and of whom farm bureau competed with retailers in sale to farmers, and customer "jobbers" resold to consumers at lower price than customer "retailers,"—

- (a) Discriminated in price through sale to its said customers at prices based on, and varying in accordance with, aforesaid classifications, and involving price differentials which did not make only due allowance for differences in cost of manufacture, sale, or delivery resulting from different methods or quantities in which commodity in question was to such purchasers sold or delivered, and were not in response to changing conditions affecting the market for, or marketability of, the goods concerned, and which constituted discrimination, respectively, as to customers competitively engaged in resale of inoculant of like grade and quality to consumers, and as to customers competitively engaged in resale of such products to dealers; and
- (b) Discriminated in price through sale to certain dealer "jobber" of one of its said products under private brand at fifteen cents, while requiring of other dealer customers, in competition with aforesaid dealer "jobber," twenty-four cents for same quantity of same product sold under similar labels, and thereby exacted price differential and discrimination which did not make only due allowance for differences in cost of manufacture, etc., as above set forth, and were not in response to changing conditions, etc., as hereinbefore described;

With result that effect of said discriminations in price might be substantially to lessen competition and tend to create a monopoly in the line of commerce in which it was engaged, and that in which its distributors were engaged, and might be to injure, destroy or prevent competition with it and with certain favored distributors and customers thereof:

Held, That such acts and practices constituted a violation of the provisions of Subsec. (a) of Sec. 2 of an act of Congress approved Oct. 15, 1914, as amended.

Complaint

26 F. T. C.

Mr. A. W. DeBirny for the Commission.

Williamson & Winkelmann, of Urbana, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Hansen Inoculator Company, Inc., hereinafter called respondent, since June 19, 1936, has been and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936, (Public No. 692, the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Illinois and has its principal office and place of business at 808 North Lincoln Avenue in the city of Urbana, Ill.

PAR. 2. For many years prior hereto and since June 19, 1936, respondent has been and is now engaged in the business of developing, manufacturing, selling, and distributing certain nitrogen-fixing bacteria, which is a commodity commonly known as a commercial inoculant and is useful in promoting the growth of leguminous plants and crops. In the course and conduct of its said business the respondent has been and is now developing and manufacturing said bacteria at its place of business in the State of Illinois and has been and is now, in direct active competition with other persons, partnerships, and corporations similarly engaged, selling, shipping, and distributing said bacteria in commerce from its said place of business in the State of Illinois to various purchasers of said bacteria located in the State of Illinois and the several other States of the United States and in the District of Columbia. For many years prior hereto and since June 19, 1936, there has been and is now between respondent and purchasers of said bacteria a course of trade and commerce in said bacteria in and between the State of Illinois and the several other States of the United States and the District of Columbia.

PAR. 3. Since June 19, 1936, in the course and conduct of its business described in paragraph 2 hereof and while engaged in trade

and commerce between the State of Illinois and the other States of the United States and the District of Columbia as therein described, the respondent has been and is now, in the course of such commerce, discriminating in price between different purchasers of bacteria of like grade and quality sold and shipped in commerce, as aforesaid, by respondent to said purchasers and by them purchased from respondent in commerce for use, consumption, or resale within the State of Illinois and the several other States of the United States and the District of Columbia, in that the respondent has been and is now selling bacteria to some of said purchasers at prices lower than the prices at which respondent has been and is now selling bacteria of like grade and quality to other of said purchasers, and the respondent has been and is now allowing to some of said purchasers a larger discount from the prices at which bacteria was and is sold to them by respondent than the discount, if any, which respondent has been and is now allowing to other purchasers of bacteria of like grade and quality purchased from respondent at the same prices.

PAR. 4. Since June 19, 1936, many purchasers of bacteria and customers of respondent receiving the benefit of the aforesaid discriminations in price, hereinafter referred to as favored customers, have been and are now in substantial competition in the use, consumption, sale, resale, and distribution of said bacteria with many other purchasers of bacteria and customers of respondent not receiving the benefit of said discriminations in price, hereinafter referred to as disfavored customers, and many customers of said favored customers have been and are now in like competition with many customers of said disfavored customers, and the effect of the aforesaid discriminations in price may be substantially to lessen competition in the sale or distribution of said bacteria or to injure, destroy, or prevent competition in the use, consumption, sale, resale, or distribution of said bacteria between and among said favored customers and said disfavored customers and between and among the customers of said favored customers and the customers of said disfavored customers, and between and among the respondent and other persons, partnerships, and corporations similarly engaged in the sale and distribution of commercial inoculants.

PAR. 5. The aforesaid acts of respondent constitute a violation of the provisions of Section 2 (a) of the above mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2

of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (Public No. 692, the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), the Federal Trade Commission on November 10, 1937, issued and served its complaint in this proceeding upon the respondent, Hansen Inoculator Company, Inc., a corporation, charging it with discriminating in price between different purchasers of inoculants in violation of subsection (a) of section 2 of the aforesaid act.

After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, Hansen Inoculator Company, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of Illinois, with its principal office and plant located at 808 North Lincoln Avenue, Urbana, Ill. At all times herein mentioned, said respondent has been engaged in the business of selling and distributing bacteria inoculation for the seeds of leguminous plants to customers located in the several States of the United States, more particularly to customers in States between Maine and Minnesota on the North, and Mississippi and Florida on the South, and including these named States, and there has been and is now a course in trade and commerce in said

bacteria in and between the State of Illinois and the several States of the United States.

PAR. 2. The respondent is a member of the commercial legume inoculant industry of the United States which industry grows, sells and distributes commercial inoculants to the value of approximately \$1,000,000 in gross annual sales. There are approximately fourteen members of this industry, all competitively engaged one with the other in the sale and distribution in commerce of commercial inoculants. The bacteria are grown for the inoculation of seeds of leguminous plants. The bacteria are encouraged to multiply from various strains and are then placed in a carrier, which is either a jelly or a humus medium such as peat or charcoal, for commercial distribution. Seeds of leguminous plants are saturated with the bacteria before planting. These bacteria have the function of associating with legume plants, with the result that an adequate number of bacterial nodules are formed on the roots of the plants to extract nitrogen from the air for the purpose of aiding luxuriant growth of the plant. Principally these inoculants are placed upon alfalfa and sweet clover seeds, soy beans, peas, and other legumes.

PAR. 3. Said respondent classifies its customers as consumers, retail dealers, and jobbers. One who sells to consumers is considered to be a retail dealer and one who sells to dealers a jobber. However, in this industry there are very few distributors who sell only as dealers or jobbers. Generally distributors called jobbers sell both to consumers and to dealers. Additionally a large portion of the respondent's product is sold through farm bureaus which, in turn, sell the inoculant to farmers and occasionally to local elevators and other dealers.

PAR. 4. Some of the respondent's customers are competitively engaged in commerce in the resale and distribution of the inoculant product with other of respondent's customers. The farm bureaus compete with retail dealers in selling to the farmers. Customers classified by the respondent as jobbers usually purchase in commerce respondent's inoculant, which they re-sell to consumers at a lower price than do other of respondent's customers competing for the same consumer business but who are classified and sold at retailers' list.

PAR. 5. Said respondent, Hansen Inoculator Company, Inc., issued a 1937 Distributor Price List effective January 1, 1937. Respondent has been and now is generally selling his products to its customers at such list prices less 20% off such jobbers' and dealers' lists, said distributor price list being as follows:

Findings

26 F. T. C.

1937 DISTRIBUTOR PRICE LIST

Prices herein shown are effective Jan. 1, 1937 and are subject to change without notice

ALFALFA, SWEET CLOVER, CLOVERS

Groups 1 and 2

Size	Inoculates	Prepared in—	No. per case	Con-sumer price	Dealer price	Jobber price
¼ bu.....	30 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
1 bu.....	60 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
2½ bu.....	150 lbs. seed.....	Humus or jelly.....	12, 24, 36	1.00	.60	.40

SOY BEANS, COWPEAS, GARDEN PEAS and BEANS

Groups 3, 4, 5, and 6

1 bu.....	60 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
2 bu.....	120 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
5 bu.....	300 lbs. seed.....	Humus or jelly.....	12, 24, 36	1.00	.60	.40
10 bu.....	600 lbs. seed.....	Humus only.....	12	1.75	1.05	.70
25 bu.....	1500 lbs. seed.....	Humus only.....	6	3.00	1.80	1.20

LESPEDEZA

Group 7

1 bu.....	30 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
2 bu.....	60 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
5 bu.....	150 lbs. seed.....	Humus or jelly.....	12, 24, 36	1.00	.60	.40

AUSTRIAN WINTER PEAS and VETCH

Group 4a

¼ bu.....	30 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
1 bu.....	60 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
1¾ bu.....	100 lbs. seed.....	Humus only.....	12, 24, 36	.60	.36	.24
5 bu.....	300 lbs. seed.....	Humus only.....	12	1.75	1.05	.70
Garden size.....	10 lbs. or less of seed.	Humus only.....	12	.20	.12	.08

Prices F. O. B. Urbana, Illinois. Terms: 2% 10 days, net 30 days. Left over cultures are returnable, prepaid, for credit or exchange. The consumer's price is placed on the labels of the products. In many instances the labels, whether they bear private brand names or the Hansen name, resemble each other having green borders and background of leguminous plants and similar language. The inoculant is the same regardless of the label on the container. Prices to county farm bureaus vary and are frequently as low as 14¢ for the one bushel size.

PAR. 6. County farm bureaus retail the one bushel size frequently for 30¢ having purchased the same at 14¢, or retail the 2½ bushel

size at 50¢ where they purchase at 28¢. Competing dealers pay 24¢ for the one bushel size and 48¢ for the 2½ bushel size. County farm bureaus sell to non-members also.

PAR. 7. Said respondent distributes its inoculant by means of traveling salesmen in the States of Iowa, Minnesota, Pennsylvania, and Ohio. Orders obtained by the salesmen are delivered by the respondent and collections are also made by the respondent. Such salesmen work on a commission basis. These salesmen sell at varying prices which are not related to savings in cost of production, sale, or delivery or functions performed by the buyer in the resale of the goods.

PAR. 8. The difference in prices, resulting from the said classifications as set forth in paragraphs 3 and 5, of inoculant of like grade and quality to customers competitively engaged in reselling the same to consumers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondent's inoculant.

PAR. 9. The difference in prices, resulting from the said classifications as set forth in paragraphs 3 and 5, of inoculant of like grade and quality to customers competitively engaged in reselling the same to dealers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondent's inoculant.

PAR. 10. Respondent sells to a certain dealer-jobber the one bushel size humus or jelly for 15¢ under a private brand. The dealer-jobber, in turn, resells and distributes the same in commerce to consumers located in adjoining states for 35¢. The said dealer referred to herein is in competition with other dealer customers of the respondent, who are required to pay 24¢ for the one bushel size of the same inoculant sold under respondent's name. The dealer referred to advertises in commerce that the inoculator "is made for us under our own label, by a reliable manufacturer at Urbana, Illinois" and, as stated in paragraph 5 hereof, the labels are similar regardless of whether they bear the Hansen or private brand name. The differential in price amounts to and is under the circumstances set forth above a discrimination in price in commerce between purchasers of respondent's product, which purchases are for use, consumption and resale within the United States.

PAR. 11. The effect of said discriminations in price may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which the respondent is engaged and in the

line of commerce in which its distributors are engaged; and the effect of said discriminations may be to injure, destroy or prevent competition with the respondent and with certain favored distributors and with customers of such favored distributors.

PAR. 12. The costs of growing, selling, and delivery are generally not substantially affected by quantity purchases, largely due to the practice of accepting the return of goods unsold, which returned goods are then practically valueless.

PAR. 13. The discriminations in price set forth above do not make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodity is to such purchasers sold or delivered. That such price differentials were not in response to changing conditions affecting the market for or the marketability of the goods concerned.

CONCLUSION

The aforesaid acts and practices of respondent as set out in paragraphs 8, 9, and 10 hereof are in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, section 13), 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 respondent admitting all the material allegations of the complaint to be true and waiving the taking of evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

It is ordered, That the respondent, Hansen Inoculator Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of commercial inoculant in interstate commerce or in the District of Columbia, do forthwith cease and desist from the unlawful discriminations in price found in paragraphs 8, 9, and 10 of the aforesaid findings as to the facts and conclusion.

303

Order

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

IN THE MATTER OF

ALBERT L. WHITING AND LUCILLE D. WHITING,
TRADING AS THE URBANA LABORATORIES

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

Docket 3265. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a firm engaged in sale and distribution of bacteria inoculation for leguminous plants, as members of the commercial legume inoculant industry, and, as such, in competition with others engaged in sale and distribution in commerce of commercial inoculants, costs of growing, selling, and delivering which are generally not substantially affected by quantity purchases, and in selling, as thus engaged, its said products to customers, of whom some were competitively engaged in resale and distribution of its said products with other customers, and whom it classified as consumers, retailers, and jobbers, and who included farm bureaus as purchasers of large portion of its product for resale, in competition with retailers, to farmers, and, occasionally, to local elevators and other dealers, and of whom its distributor "jobbers" generally sold both to consumers and to dealers—

- (a) Discriminated in price, through sale to customers at prices based on, and varying in accordance with, aforesaid classification, and involving price differentials which did not make only due allowance for differences in cost of manufacture, sale or delivery resulting from different methods or quantities in which commodity in question was to such purchasers sold or delivered, and were not in response to changing conditions affecting the market for, or marketability of, the goods concerned, and which constituted discrimination, respectively, as to customers competitively engaged in resale of inoculant of like grade and quality to consumers, and as to customers competitively engaged in resale of such products to dealers; and
- (b) Discriminated in price, through sale to county farm bureaus at price basis under which they frequently retailed at lower price than that of small independent merchant, and through practice under which postage, absorbed in case of some customers, was required to be paid in case of others, and through concession to meet, as asserted, competition of farm bureau, extended to one, but not another, and thereby imposed price differential and discrimination which did not make only due allowance for differences in cost of manufacture, etc., as above set forth, and were not in response to changing conditions, etc., as hereinbefore described;

With result that the effect of said discrimination in price might be substantially to lessen competition and tend to create a monopoly in the line of commerce in which it was engaged, and that in which its distributors were engaged, and might be to injure, destroy or prevent competition with it and with certain favored distributors and customers thereof:

Held, That such acts and practices constituted a violation of the provisions of Subsec. (a) of Sec. 2 of an act of Congress approved Oct. 15, 1914, as amended.

Mr. A. W. DeBirny for the Commission.

Williamson & Winkelmann, of Urbana, Ill., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that Albert L. Whiting and Lucille W. Whiting, individuals trading under the firm name and style of "The Urbana Laboratories," hereinafter called respondents, since June 19, 1936, have been and are now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936, (Public No. 692, the Robinson-Patman Act), hereby issues this its complaint against respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership, have their principal office and place of business at 406 North Lincoln Avenue, Urbana, Ill.

PAR. 2. For many years prior hereto and since June 19, 1936, respondents have been and are now engaged in the business of developing, manufacturing, selling, and distributing certain nitrogen-fixing bacteria, which is a commodity commonly known as a commercial inoculant and is useful in promoting the growth of leguminous plants and crops. In the course and conduct of their said business the respondents have been and are now developing and manufacturing said bacteria at their place of business in the State of Illinois and have been and are now, in direct active competition with other persons, partnerships and corporations similarly engaged, selling, shipping, and distributing said bacteria in commerce from their said place of business in the State of Illinois to various purchasers of said bacteria located in the State of Illinois and the several other States of the United States and in the District of Columbia. For many years prior hereto and since June 19, 1936, there has been and is now between respondents and purchasers of said bacteria a

course of trade and commerce in said bacteria in and between the State of Illinois and the several other States of the United States and the District of Columbia.

PAR. 3. Since June 19, 1936, in the course and conduct of their business described in paragraph 2 hereof and while engaged in trade and commerce between the State of Illinois and the other States of the United States and the District of Columbia as therein described, the respondents have been and are now, in the course of such commerce, discriminating in price between different purchasers of bacteria of like grade and quality sold and shipped in commerce, as aforesaid, by respondents to said purchasers and by them purchased from respondents in commerce for use, consumption, or resale within the State of Illinois and the several other States of the United States and the District of Columbia, in that the respondents have been and are now selling bacteria to some of said purchasers at prices lower than the prices at which respondents have been and are now selling bacteria of like grade and quality to other of said purchasers, and the respondents have been and are now allowing to some of said purchasers a larger discount from the prices at which bacteria was and is sold to them by respondents than the discount, if any, which respondents have been and are now allowing to other purchasers of bacteria of like grade and quality purchased from respondents at the same prices.

PAR. 4. Since June 19, 1936, many purchasers of bacteria and customers of respondents receiving the benefit of the aforesaid discriminations in price, hereinafter referred to as favored customers, have been and are now in substantial competition in the use, consumption, sale, resale, and distribution of said bacteria with many other purchasers of bacteria and customers of respondents not receiving the benefit of said discriminations in price, hereinafter referred to as disfavored customers, and many customers of said favored customers have been and are now in like competition with many customers of said disfavored customers, and the effect of the aforesaid discriminations in price may be substantially to lessen competition in the sale or distribution of said bacteria or to injure, destroy, or prevent competition in the use, consumption, sale, resale, or distribution of said bacteria between and among said favored customers and said disfavored customers and between and among the customers of said favored customers and the customers of said disfavored customers and between and among the respondents and other persons, partnerships and corporations similarly engaged in the sale and distribution of commercial inoculants.

PAR. 5. The aforesaid acts of respondents constitute a violation of the provisions of Section 2 (a) of the above-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936 (Public No. 692, the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), the Federal Trade Commission on November 10, 1937, issued and served its complaint in this proceeding upon the respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership charging them with discriminating in price between different purchasers of inoculants in violation of subsection (a) of section 2 of the aforesaid act.

After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs, and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership and maintaining their principal office and plant at 406 North Lincoln Avenue, Urbana, Ill. At all times herein mentioned, said respondents have been engaged in the business

of selling and distributing bacteria inoculation for the seeds of leguminous plants to customers located in the several States of the United States, more particularly to customers in the States located between Ohio, on the East, and Kansas, on the West, and North and South the width of the country, and there has been and is now a course of trade and commerce in said bacteria in and between the State of Illinois and the several States of the United States.

PAR. 2. Said respondents are members of the commercial legume inoculant industry of the United States which grows, sells, and distributes commercial inoculants to the value of approximately \$1,000,000 in gross annual sales. There are approximately fourteen members of this industry, all competitively engaged one with the other in the sale and distribution in commerce of commercial inoculants. The bacteria are grown for the inoculation of seeds of leguminous plants. The bacteria are encouraged to multiply from various strains and are then placed in a carrier, which is either a jelly or a humus medium such as peat or charcoal, for commercial distribution. Seeds of leguminous plants are saturated with the bacteria before planting. These bacteria have the function of associating with legume plants, with the result that an adequate number of bacterial nodules are formed on the roots of the plants to extract nitrogen from the air for the purpose of aiding luxuriant growth of the plant. Principally these inoculants are placed upon alfalfa and sweet clover seeds, soy beans, peas, and other legumes.

PAR. 3. Said respondents classify their customers as consumers, retail dealers and jobbers. One who sells to consumers is considered to be a retail dealer and one who sells to dealers a jobber. However, in this industry there are very few distributors who sell only as dealers or jobbers. Generally distributors called jobbers sell both to consumers and to dealers. Additionally a large portion of respondents' product is sold through farm bureaus which, in turn, sell the inoculant to farmers and occasionally to local elevators and other dealers.

PAR. 4. Some of respondents' customers are competitively engaged in commerce in the resale and distribution of the inoculant product with certain other of respondents' customers. The farm bureaus compete with retail dealers in selling to the farmers.

PAR. 5. Said respondents issued a 1937 dealer price list, effective January 1, 1937. Respondents have and are generally selling their products to their customers at such list prices, said price list being as follows:

Findings

Alfalfa, Sweet Clovers (Group 2)

Red, Alsike, White, Crimson, Mammoth Clovers (Group 1)

Quantity	1 bu. size	2½ bu. size
Each.....	\$0.38	\$0.75
1 dozen.....	.32	.65
3 dozen.....	.30	.62
Retail Price.....	.50	1.00

Soy Beans (Group 5)
 Cowpeas, Lima Beans, Velvet Beans (Group 3)
 Peas, Vetches, Austrian Peas (Group 4)
 Beans (Group 6)

Quantity	2 bu. size	5 bu. size
Each.....	\$0.38	\$0.75
1 dozen.....	.32	.65
3 dozen.....	.30	.62
Retail Price.....	.50	1.00

Smaller Sizes—Alfalfa, Sweet Clovers, Clovers, Soy Beans, Cowpeas, Peas,
 Vetches, Beans

Quantity	½ bu. size	1 bu. size
Each.....	\$0.28	\$0.28
1 dozen.....	.22	.22
3 dozen.....	.20	.20
Retail Price.....	.35	.35

Left over cultures are returnable, prepaid, for credit or exchange.

The consumer's price is placed on the labels of the products. Prices to certain county farm bureaus vary and are frequently as low as 17¢ for the one-bushel size which is sold to many dealers for 30¢ and to a number for 20¢. County farm bureaus retail the one-bushel size frequently at a lower price than small independent merchants, having purchased the one-bushel size at from 17¢ to 20¢ or the 2½-bushel size at from 34¢ to 40¢. A typical competitive situation disclosed one dealer selling at 50¢ and purchasing the one-bushel size at 30¢. A competing dealer likewise sold at 50¢ and likewise purchased at 30¢ but had the postage paid. Another dealer, competing with the first-named, sells at 40¢ but buys at 20¢ and states that his lower price is made to meet competition created by the county farm bureau. Many county farm bureaus sell to nonmembers also. These county farm bureaus are direct competitors of independent retail merchants buying at higher prices. Where, in fact, jobbing services are rendered by State or county farm bureaus, nothing herein contained shall preclude jobber prices on that portion which is jobbed.

PAR. 6. The difference in prices, resulting from the said classifications as set forth in paragraphs 3 and 5, of inoculant of like grade and quality to customers competitively engaged in reselling the same to consumers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondents' inoculant.

PAR. 7. The difference in prices, resulting from the said classifications as set forth in paragraphs 3 and 5, of inoculant of like grade and quality to customers competitively engaged in reselling the same to dealers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondents' inoculant.

PAR. 8. The effect of said discriminations in price may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which the respondents are engaged and in the line of commerce in which their distributors are engaged; and the effect of said discrimination may be to injure, destroy, or prevent competition with the respondents and with certain favored distributors and with customers of such favored distributors.

PAR. 9. The costs of growing, selling, and delivery are generally not substantially affected by quantity purchases, largely due to the practice of accepting the return of goods unsold, which returned goods are then practically valueless.

PAR. 10. The discriminations in price set forth above do not make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodity is to such purchasers sold or delivered. That such price differentials were not in response to changing conditions affecting the market for or the marketability of the goods concerned.

CONCLUSION

The aforesaid acts and practices of respondent, as set out in paragraphs 6 and 7 hereof, are in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, Section 13), 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 respondents admitting all the material allegations of the complaint to be true and

waiving the taking of evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

It is ordered, That the respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership, their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of commercial inoculant in interstate commerce or in the District of Columbia, do forthwith cease and desist from the unlawful discriminations in price found in paragraphs 6 and 7 of the aforesaid findings as to the facts and conclusion.

It is further ordered, That the said respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership, within 60 days from the date of the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
THE NITRAGIN COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1938

Docket 3266. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a corporation engaged in the development of nitrogen fixing bacteria and in the sale and distribution of such inoculants, costs of growing, selling, and delivering which are generally not substantially affected by quantity purchases, in competition with others engaged as members of the commercial legume inoculant industry, to customers whom it classified as consumers, retailers, and jobbers, but who included, as purchasers of a large portion and of a considerable portion of its product, respectively, county farm bureaus reselling to farmers and occasionally to local elevators and other dealers, and mail order catalog houses reselling to consumers, and of whom farm bureaus competed with retailers in sale of its said product to farmers, jobbers resold to consumers at lower price than did other competitor-customers classified and sold to as retailers, and mail order houses competed with retailer-dealers in sale to farmers, and of which customers, specially favored county farm bureaus competed generally with both jobbers and retailers, and certain similarly favored jobbers were enabled to sell to such bureaus at jobbers' prices—

- (a) Discriminated in prices through sale to its said customers at prices based on, and varying in accordance with, aforesaid classifications, and through according some, but not all, mail order houses, ordinarily sold at jobbers' prices, twenty percent off list, and some, but not all, jobbers, similar concession, and through according jobber prices to retailers purchasing \$100 or more yearly; and
- (b) Discriminated in prices through according twenty percent off list, denied to certain competitor jobbers, to certain county farm bureaus purchasing at jobbers' prices and selling, in some instances, to jobbers, retailers, and consumers, and in competition generally with both aforesaid distributive classes, and through according aforesaid twenty percent concession from jobbers' price to favored jobber customers, thereby enabled to sell at jobber prices to county farm bureaus, and through granting of such prices to certain retailers above noted, an additional twenty percent concession from jobbers' list to some, but not all, mail order houses;

With result that effect of said discriminations in price and price differentials, which did not make only due allowance for differences in cost of manufacture, sale or delivery resulting from different methods or quantities in which such commodity was to such purchasers sold or delivered, and were not in response to changing conditions affecting market for, or marketability of, goods concerned, might be substantially to lessen competition and tend to create monopoly in line of commerce in which its distributors were engaged, and to injure, destroy, or prevent competition with it and with certain favored distributors and customers of such distributors;

Held, That such acts and practices constituted a violation of the provisions of Subsec. (a) of Sec. 2 of an Act of Congress approved Oct. 15, 1914, as amended.

Mr. A. W. DeBirny for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Nitragin Company, Inc., hereinafter called respondent, since June 19, 1936, has been and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (Public No. 692, the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Wisconsin and has its principal office and place of business at 3747 North Booth Street in the city of Milwaukee, Wis.

PAR. 2. For many years prior hereto and since June 19, 1936, respondent has been and is now engaged in the business of developing, manufacturing, selling, and distributing certain nitrogen-fixing bacteria, which is a commodity commonly known as a commercial inoculant and is useful in promoting the growth of leguminous plants and crops. In the course and conduct of its said business the respondent has been and is now developing and manufacturing said bacteria at its place of business in the State of Wisconsin and has been and is now, in direct active competition with other persons, partnerships and corporations similarly engaged, selling, shipping, and distributing said bacteria in commerce from its said place of business in the State of Wisconsin to various purchasers of said bacteria located in the State of Wisconsin and the several other States of the United States and in the District of Columbia. For many years prior hereto and since June 19, 1936, there has been and is now between respondent and purchasers of said bacteria a course of trade and commerce in said bacteria in and between the State of Wisconsin and the several other States of the United States and the District of Columbia.

PAR. 3. Since June 19, 1936, in the course and conduct of its business described in paragraph 2 hereof and while engaged in trade and commerce between the State of Wisconsin and the other States of the United States and the District of Columbia as therein described, the respondent has been and is now, in the course of such commerce, discriminating in price between different purchasers of bacteria of like grade and quality sold and shipped in commerce, as aforesaid, by respondent to said purchasers and by them purchased from respondent in commerce for use, consumption, or resale within the State of Wisconsin and the several other States of the United States and the District of Columbia, in that the respondent has been and is now selling bacteria to some of said purchasers at prices lower than the prices at which respondent has been and is now selling bacteria of like grade and quality to other of said purchasers, and the respondent has been and is now allowing to some of said purchasers a larger discount from the prices at which bacteria was and is sold to them by respondent than the discount, if any, which respondent has been and is now allowing to other purchasers of bacteria of like grade and quality purchased from respondent at the same prices.

PAR. 4. Since June 19, 1936, many purchasers of bacteria and customers of respondent receiving the benefit of the aforesaid discriminations in price, hereinafter referred to as favored customers, have been and are now in substantial competition in the use, consumption, sale, resale, and distribution of said bacteria with many other purchasers of bacteria and customers of respondent not receiving the benefit of said discriminations in price, hereinafter referred to as disfavored customers, and many customers of said favored customers have been and are now in like competition with many customers of said disfavored customers, and the effect of the aforesaid discriminations in price may be substantially to lessen competition in the sale or distribution of said bacteria or to injure, destroy, or prevent competition in the use, consumption, sale, resale, or distribution of said bacteria between and among said favored customers and said disfavored customers and between and among the customers of said favored customers and the customers of said disfavored customers and between and among the respondent and other persons, partnerships, and corporations similarly engaged in the sale and distribution of commercial inoculants.

PAR. 5. The aforesaid acts of respondent constitute a violation of the provisions of Section 2 (a) of the above-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved

October 15, 1914 (Public No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15 sec. 13), and for other purposes," approved June 19, 1936 (Public No. 692, the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), the Federal Trade Commission on November 10, 1937, issued and served its complaint in this proceeding upon the respondent, The Nitragin Company, Inc., a corporation, charging it with discriminating in price between different purchasers of inoculants in violation of subsection (a) of section 2 of the aforesaid act.

After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs, and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now 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. Said corporate respondent, The Nitragin Company, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of Wisconsin, with its principal office and plant located at 3747 North Booth Street, Milwaukee, Wis. At all times herein mentioned, said respondent has been engaged in the business of developing, selling, and distributing certain nitrogen fixing bacteria, useful for inoculating the seeds of leguminous plants, from its said place of business in the State of Wisconsin to various purchasers of said bacteria located in the State of Wisconsin and the several States of the United States and there has been and is now between respondent and purchasers of said

bacteria a course of trade and commerce in said bacteria in and between the State of Wisconsin and the several States of the United States.

PAR. 2. The respondent is the largest member of the commercial legume inoculant industry of the United States which industry grows, sells and distributes commercial inoculants to the value of approximately \$1,000,000 in gross annual sales. There are approximately fourteen members of this industry, all competitively engaged one with the other in the sale and distribution in commerce of commercial inoculants. The bacteria are grown for the inoculation of seeds of leguminous plants. The bacteria are encouraged to multiply from various strains and are then placed in a carrier, which is either a jelly or a humus medium such as peat or charcoal, for commercial distribution. Seeds of leguminous plants are saturated with the bacteria before planting. These bacteria have the function of associating with legume plants, with the result that an adequate number of bacterial nodules are formed on the roots of the plants to extract nitrogen from the air for the purpose of aiding luxuriant growth of the plant. Principally these inoculants are placed upon alfalfa and sweet clover seeds, soy beans, peas and other legumes.

PAR. 3. Said respondent classifies its customers as consumers, retail dealers and jobbers. One who sells to consumers is considered to be a retail dealer and one who sells to dealers a jobber. However, in this industry there are very few distributors who sell only as dealers or jobbers. Generally distributors called jobbers sell both to consumers and to dealers. Additionally a large portion of the respondent's product is sold through county farm bureaus which, in turn, sell the inoculants to farmers and occasionally to local elevators and other dealers. A considerable portion of the respondent's product is also sold to mail order catalog houses who resell to consumers.

PAR. 4. Some of respondent's customers are competitively engaged in commerce in the resale and distribution of the inoculant product with other of respondent's customers. The farm bureaus compete with retail dealers in selling to the farmers. Customers classified by the respondent as jobbers usually purchase in commerce respondent's inoculant, which they resell to consumers at a lower price than do other of respondent's customers competing for the same consumer business but who are classified and sold at retailers' list. Mail order catalog houses compete with retail dealers in selling to farmers.

PAR. 5. Said respondent, The Nitragin Company, Inc., issued a 1937 Distributor Price List effective January 1, 1937. Respondent has been and now is generally selling its products to its customers at such list prices. However, some mail order catalog houses and some

320

Findings

jobbers also receive an additional 20% off jobbers' list price, said distributors' price list being as follows:

Alfalfa and All Clovers
Cultures "A" and "B"

To inoculate	Jobber Price	Dealer Price	Consumer Price
¾ bu.—30 lbs.....	\$0.17	\$0.23	\$0.35
1 bu.—60 lbs.....	.28	.36	.55
2½ bu.—150 lbs.....	.60	.78	1.20

Lespedeza
Culture "L"

1 bu.—30 lbs.....	\$0.17	\$0.23	\$0.35
2 bu.—60 lbs.....	.28	.36	.55
5 bu.—150 lbs.....	.60	.78	1.20

Soy Beans

Culture "S"

Cowpeas and Lima Beans

Culture "E"

1 bu.—60 lbs.....	\$0.17	\$0.23	\$0.35
2 bu.—120 lbs.....	.28	.36	.55
5 bu.—300 lbs.....	.60	.78	1.20

Vetch and Peas

Culture "C"

Beans

Culture "D"

¾ bu.—30 lbs.....	\$0.15	\$0.20	\$0.30
1 bu.—60 lbs.....	.22	.29	.45
1¾ bu.—100 lbs. ¹33	.42	.65
5 bu.—300 lbs.....	.93	1.20	1.85

¹ Only culture "E" packed in this size.

Left over cultures are returnable, prepaid, for credit or exchange.

The consumer's price is placed on the labels of the products. The inoculant, whether distributed under private label or under the producer's label is of like grade and quality. Prices to county farm bureaus vary but are generally jobbers' prices and in some instances an additional 20% off the jobbers' price is allowed.

PAR. 6. County farm bureaus purchasing at jobbers' price less 20% sell in some instances to jobbers, retailers and consumers and are generally in competition with both jobbers and retailers. Certain of these competing jobbers do not receive the 20% additional

discount and thus competition with the county farm bureaus, receiving the additional 20% in addition to the jobbers, discount, is practically impossible. County farm bureaus sell in competition with independent retailers to non-members as well as to their own members.

PAR. 7. Certain jobbers receiving the jobbers' price less the additional 20% sell to county farm bureaus at jobbers' prices whereas other customers not receiving the 20% additional allowance are prevented from doing so.

PAR. 8. The respondent sells to retailers who purchase \$100 or more in a year at jobbers' prices. Mail order catalog houses buy at jobbers' prices and some but not all receive an additional 20% off such jobbers' list.

PAR. 9. The difference in prices, resulting from the said classifications as set forth in paragraphs 3, 6, and 8, of inoculant of like grade and quality to customers competitively engaged in reselling the same to consumers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondent's inoculant.

PAR. 10. The difference in prices, resulting from the said classifications as set forth in paragraphs 6, 7, and 8, of inoculant of like grade and quality to customers competitively engaged in reselling the same to dealers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondent's inoculant.

PAR. 11. The effect of said discriminations in price may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which its distributors are engaged; and the effect of said discriminations may be to injure, destroy or prevent competition with the respondent and with certain favored distributors and with customers of such favored distributors.

PAR. 12. The costs of growing, selling, and delivery are generally not substantially affected by quantity purchases, largely due to the practice of accepting the return of goods unsold, which returned goods are then practically valueless.

PAR. 13. The discriminations in price set forth above do not make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodity is to such purchasers sold or delivered. That such price differentials were not in response to changing conditions affecting the market for or the marketability of the goods concerned.

CONCLUSION

The aforesaid acts and practices of respondent as set out in paragraphs 9 and 10 hereof are in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Section 13), 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 respondent admitting all the material allegations of the complaint to be true and waiving the taking of evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

It is ordered, That the respondent, The Nitragin Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of commercial inoculant in interstate commerce or in the District of Columbia, do forthwith cease and desist from the unlawful discriminations in price found in paragraphs 9 and 10 of the aforesaid findings as to the facts and conclusion.

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

IN THE MATTER OF

**K & S SALES COMPANY, IN ITS OWN NAME AND RIGHT,
AND TRADING AS GARDEN CITY NOVELTY MANU-
FACTURING COMPANY, ETC.**

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

Docket 1857. Complaint, Feb. 25, 1937¹—Decision, Jan. 13, 1938

Where a corporation engaged in sale and distribution of women's and men's hosiery, clocks, cameras, fountain pens, radios, toys, novelties, and other articles—

- (a) Furnished, along with instructions for agent or operator, various devices and plans of merchandising involving variety of punchboards, push cards or similar devices for retailer's or operator's use in selling and delivering to purchasing public its said products, under schemes by which chance purchaser received more costly article, or nothing further, dependent upon success or failure in selection of right number or name, and paid, in accordance with particular plan, fixed, or varying, amount, dependent upon number secured; operators were compensated by receipt of article; and makers of last punch or push were, in some cases, also awarded prize thereof; and thereby supplied to and placed in hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of its said merchandise, with knowledge and intent that such various plans were and would be used in such distribution to public by lot or chance and in competition with many who are opposed to use of punchboards, push cards and other devices in sale and distribution of their merchandise, and, as contrary to public policy, refrain from furnishing the same;

With result that many dealers in and ultimate purchasers of merchandise similar to or identical with that thus dealt in by it were attracted by said methods and element of chance involved in sale thereof as aforesaid, and were thereby induced to buy, sell or distribute its said merchandise in preference to that offered and sold by competitors who do not use such or equivalent methods, and trade was thereby diverted to it from them, to the prejudice and injury of the public and competitors, and there was a restraint upon and a detriment to the freedom of sale and legitimate competition; and

- (b) Represented and caused to be represented, through firm name word "Manufacturing," that it was manufacturer of some or all of merchandise sold and distributed by it, notwithstanding fact it neither owned, controlled, nor operated any factory whatsoever and did not make any merchandise sold by it;

With effect of misleading and deceiving many customers into erroneous belief that it made some or all of such merchandise, and that persons dealing with it were buying directly from the manufacturer and thereby eliminating profits of middlemen and obtaining advantages not had by those buying from such persons, and of diverting trade to it from others, and those who do not falsely represent that they manufacture their said products; and

¹ Amended and supplemental.

(c) Represented, in advertisements in newspapers and periodicals of general circulation, that merchandise sold and distributed by it was given away or might be obtained free of charge, through such statements as "GIVE AWAY! You get one—Your friends get one—without cost. * * *," "* * * big money by showing others how to obtain without cost," etc., facts being articles thus referred to were not given away and it did not pay big money for giving away such articles, but persons receiving same were required to forward money in payment therefor, and articles in question were distributed through lottery plans above described and by lot or chance, with person or agent selling same receiving such article as compensation for so doing;

With effect of misleading and deceiving purchasing public and prospective sales agents, and inducing them to become its agents or representatives or to distribute its said merchandise, and of diverting trade to it from others selling similar products who do not make such claims or representations:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on July 11, 1930, issue its complaint herein, charging and alleging that respondent had been guilty of unfair methods of competition in commerce, as "commerce" is defined in an Act of 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

Whereas, This Commission, having reason to believe that respondent herein has been and is using unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, Acting in the public interest pursuant to the provisions of the Act aforesaid, the Federal Trade Commission charges that the K & S Sales Company, a corporation, in its own name and right, and also trading under the names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of

business located at 4329 East Ravenswood Avenue, in the city of Chicago, State of Illinois. Respondent advertises, offers for sale, and sells its merchandise, hereinafter referred to, under its own corporate name and also advertises, offers for sale, and sells its merchandise under the trade names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company. Respondent is now, and for several years last past has been, engaged in selling various articles of merchandise to purchasers thereof located in various States of the United States and in the District of Columbia. It causes said merchandise when sold to be transported from its place of business in the State of Illinois into and through other States of the United States and the District of Columbia to purchasers thereof located in a State or States of the United States other than the State of Illinois and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the sale and distribution of its said merchandise or products, said respondent has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is distributed to the ultimate consumers wholly by lot or chance. Said devices or plans of merchandising consist of a variety of punchboards, push cards, or fortune boards, or other similar devices, the method or use of which by retail dealers or individuals in connection with the sale and delivery to the purchasing public of respondent's said merchandise or products was and is substantially as follows:

(a) Said punchboards consist of boards of various shapes and sizes with from 100 to 4,000 holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing consecutive numbers according to the number of holes contained in the board but not arranged in numerical sequence, and said slips are so placed and secreted in said punchboards that they cannot be seen by the customer except when they are punched from the board. The punchboards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. Customers pay 5¢ to 10¢ for each punch from the board, and the purchasers of punches who receive numbers calling for an article of merchandise receive such article, and purchasers who receive numbers other than those enumerated on the board, or who do not

qualify by purchasing the last punch on the boards receive nothing for their money. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board, and the combined value of the articles of merchandise is much less than the cost of the total punches on the board.

(b) The push cards have a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. There are as many separate numbers as there are disks on the board, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said disks are effectively concealed from customers and prospective customers until a selection has been made and the disk selected separated from the card. The price of sales varies, but on some of the cards the price which customers pay ranges from 1¢ to 29¢, depending upon the number obtained. Numbers from 1 to 29 pay the amount of the number in cents; numbers over 29 pay 29¢. The push card bears statements or legends informing the customers and prospective customer that certain numbers entitle the purchaser obtaining the same to certain specified merchandise. Purchasers of pushes who receive one of the specified numbers receive the articles of merchandise as described in said statements or legends. Purchasers who do not receive one of the specified numbers receive nothing for their money other than the privilege of pushing a disk from said card. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push card.

(c) Other push cards have a number of girls' names immediately above the partially perforated disks, and when all the disks have been separated from the push card a master seal on said card is removed exposing a girl's name similar to one of those mentioned on said card, and the purchaser who pushed the disk under that name is entitled to the article of merchandise specified. On still other push cards certain specified numbers are free, and the winner is ascertained after all the pushes have been purchased by removing a master seal and disclosing a legend. On some of the push cards the purchasers pay from 1¢ to 35¢, depending upon the number pushed out; numbers under 35 pay the amount of the number in cents; and numbers over 35 pay 35¢.

The said punchboards, push cards and fortune boards vary in detail but involve substantially the same features as the above plans and lottery schemes.

Complaint

26 F. T. C.

Respondent furnishes retail dealers and individuals with various display posters, advertisements and printed instructions, to be used by such merchants and individuals in distributing and using said punchboards, push cards and fortune boards.

The merchandise sold and distributed by respondent includes, among other things, radio receiving sets, clocks, hosiery, portable mixers, sandwich toasters, roasting ovens, washing machines, pocket knives, razors, fountain pens, automatic pencils, pen and pencil sets, jewelry, pipes and other smokers' accessories, flashlights, cigarette cases, ladies' compacts, beaded bags, manicure sets, toilet sets, and various other articles of merchandise.

The purchasing public is induced and persuaded into purchasing punches from said boards and cards in the hope that they may obtain one of the prize-winning numbers and thus obtain one of the prizes called for by said numbers. Merchandise of the respondent is thus distributed to purchasers of the punches from the boards and cards wholly by lot or chance.

PAR. 3. The aforesaid retail dealers of respondent expose said articles of merchandise in connection with the aforesaid punchboards, push cards or fortune boards, and sell punches, pushes or fortune slips to the purchasing public in accordance with the aforesaid plans, whereby the said merchandise of the respondent is distributed to the purchasers of punches, pushes or fortune slips from the said boards or cards wholly by lot or chance.

The respondent forwards its push cards to individuals who sell pushes from said cards and deliver to the successful purchasers the merchandise to which they are entitled, in accordance with the sales plans hereinbefore described.

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 plans hereinabove set forth.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at a price much less than the normal retail price thereof.

The use by respondent of said methods in the sale of its merchandise, and the sale of its merchandise by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, are un-

willing to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. The use of said methods by respondent has the tendency and capacity, because of said game of chance, to divert trade and custom to respondent from its said competitors who do not use the same or equivalent methods.

PAR. 5. Many dealers in and ultimate purchasers of respondent's merchandise are attracted by respondent's said methods and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods, and trade is thereby diverted to respondent, from its said competitors.

PAR. 6. In the course and conduct of its said business respondent has caused and causes the representation to be made to its customers and prospective customers, by use of the firm name and style of Garden City Novelty Manufacturing Company and by others means, that it is the manufacturer of the merchandise which it sells and distributes. A substantial portion of the purchasing public have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman.

The use by respondent of said representation that it is a manufacturer has the capacity and tendency to and does mislead and deceive many of respondent's said customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which the merchandise sold by respondent is manufactured, and that persons dealing with respondent are buying said merchandise directly from the manufacturer thereof, thereby eliminating the profits of middleman and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any merchandise sold by it. There are many competitors of respondent who do not falsely represent that they manufacture the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to and does unfairly divert trade to respondent from its said competitors.

Complaint

26 F. T. C.

PAR. 7. In the course and conduct of its business, respondent has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, containing, among others, statements and representations of which the following are typical illustrations:

(a) (PICTURE OF A CLOCK) GIVEN AWAY! You get one—Your friends get one—without cost. Let us give you the details of this amazing Time Teller. Also it can pay you big money giving it away free. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4338 Ravenswood Ave.,

Chicago, Ill.

(b) (PICTURE OF A CLOCK) GIVEN AWAY! You get one—Your friends get one—without cost. Let us give you the details of this amazing TIME TELLER. Also it can pay you big money by showing others how to obtain without cost. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4344-B Ravenswood Ave.,

Chicago, Ill.

The respondent inserted and caused to be published these advertisements in newspapers, magazines and other periodicals of general circulation with the intent and knowledge that the advertising would be displayed before and read by the public. The advertisements referred to above are false and misleading, in that: the clocks are not given away; persons answering the advertisement do not receive one without cost; their friends do not receive one without cost; respondent does not pay big money for giving them away free; respondent requires persons receiving clocks to sell chances on push cards, or to render other services, or to pay cash for the said clocks; it is necessary for somebody to buy or sell something before the clocks are delivered.

Each and all of the foregoing false, misleading, and exaggerated claims and representations hereinabove set out have and have had the capacity and tendency to mislead and deceive the purchasing public and prospective sales agents into the belief that they are true, and to induce them to purchase the clocks of respondent or become agents of the respondent in such belief, and to unfairly divert trade to respondent from its competitors who do not make such false, misleading or exaggerated claims, statements or representations concerning the products sold or offered for sale by such competitors.

PAR. 8. The aforesaid methods, acts, and practices of the respondent are all to the prejudice of the public and respondent's competitors. Said methods, acts and practices 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 July 11, 1930, issued and served its complaint in this proceeding upon respondent K & S Sales Company, a corporation. Thereafter on February 25, 1937, the Federal Trade Commission issued and served an amended and supplemental complaint upon the respondent, K & S Sales Company, a corporation, in its own name and right and trading under the names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk 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 amended and supplemental complaint and the filing of respondent’s answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. In addition to said testimony and other evidence, a stipulation as to certain facts was entered into between W. T. Kelley, Chief Counsel of the Federal Trade Commission, and John A. Nash, counsel for the respondent.

Said testimony and other evidence and stipulation were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said amended and supplemental complaint, answer thereto, testimony and other evidence, stipulation of counsel, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and for the respondent; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, K & S Sales Company, is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 4329

East Ravenswood Avenue in the city of Chicago, State of Illinois. The respondent does business in its own name and right and also uses the trade names and styles, Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company. Respondent is now, and for several years last past has been engaged in advertising, offering for sale, and selling various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, and causes its said merchandise, when sold, to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in the State of Illinois and in practically all the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. The merchandise so sold and distributed by respondent includes ladies' and men's hosiery, locks, cameras, fountain pen desk sets, radios, food mixers, toastmaster and hospitality trays, roastmasters, vacuum cleaners, washing machines, watches, cigarette lighters, penknives, hunting knives, ladies' vanity cases, opera and field glasses, military brush sets, pipes, air rifles and toys, and novelties as well as various other articles of merchandise. In so carrying on said business respondent is, and has been, engaged in active competition with other corporations and with partnerships and individuals engaged in the manufacture, sale and distribution of similar or like articles of merchandise, or in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 above, respondent furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes in distributing said merchandise to the ultimate consumers wholly by lot or chance. Said devices or plans of merchandising consist of a variety of punchboards, push cards, or fortune boards, or other similar devices, the use of which by retail dealers or individuals in connection with the sale and delivery to the purchasing public of respondent's said merchandise or products was, and is, substantially as follows:

(a) Said punchboards consist of boards of various shapes and sizes with from 100 to 4,000 holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing consecutive numbers according to the number of holes

contained in the board but not arranged in numerical sequence, and said slips are so placed and secreted in said punchboards that they cannot be seen by the customer except when they are punched from the board. The punchboards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. Customers pay 5¢ or 10¢ for each punch from the board, and the purchasers of punches who receive numbers calling for an article of merchandise receive such article, and purchasers who receive numbers other than those enumerated on the board, or who do not qualify by purchasing the last punch on the board, receive nothing for their money. The said articles or merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board, and the combined value of the articles of merchandise is much less than the cost of the total punches on the board.

(b) The push cards have a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. There are as many separate numbers as there are disks on the board, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said disks are effectively concealed from customers and prospective customers until a selection has been made and the disk selected separated from the card. The price of sales varies, but on some of the cards the price which customers pay ranges from 1¢ to 29¢ depending upon the number obtained. Numbers from 1 to 29 pay the amount of the number in cents; numbers over 29 pay 29¢. The push card bears statements or legends informing the customers and prospective customers that certain numbers entitle the purchasers obtaining the same to certain specified merchandise. Purchasers of pushes who receive one of the specified numbers receive the articles of merchandise as described in said statements or legends without additional cost. Purchasers who do not receive one of the specified numbers receive nothing for their money other than the privilege of pushing a disk from said card. The said articles of merchandise vary in value but each of said articles of merchandise is of greater value than the cost of a single push from said push card.

Other push cards have a number of girls' names immediately above the partially perforated disks, and when all the disks have been separated from the push card a master seal on said card is removed exposing a girl's name similar to one of those mentioned on said card, and the purchaser who pushes the disk under that name is entitled to the article of merchandise specified without additional cost. On

still other push cards certain specified numbers are free, and the winner is ascertained after all the pushes have been purchased by removing a master seal and disclosing a legend. On some of the push cards the purchasers pay from 1¢ to 35¢, depending upon the number pushed out; numbers under 35 pay the amount of the number in cents; and numbers over 35 pay 35¢. The said punchboards, push cards and fortune boards vary in detail but all involve substantially the same features as the above plans and lottery schemes. In all of the aforesaid plans the person who receives the article of merchandise is selected wholly by lot or chance and makes no additional payment, while the other purchasers receive nothing for their money other than the privilege of making a push or punch.

PAR. 3. Respondent furnishes its customers and prospective customers with various display posters, advertisements, and printed instructions to be used in distributing and using said punchboards, push cards, fortune boards, and other devices in connection with the sale and distribution of the aforesaid merchandise. On one of the said printed instruction circulars, there are, among other things, the following printed legends, to wit:

HOW TO OBTAIN YOUR MODERNE ROTARY CLOCK

This card consists of 32 girls' names—beneath each name is a concealed number which shows the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from No. 1 to No. 52 but your customers pay only 1¢ to 29¢, according to the number disclosed under the disc punched. For instance, if customer punches 1 he pays 1¢. If 10 is punched, he donates 10¢, or if 50 is punched, he pays only 29¢. **NOTHING HIGHER THAN 29¢—29¢ is maximum cost.** (Total \$3.60.)

When all names have been punched and collections made, you then remove the large seals and disclose the winners—the persons who punched the corresponding name received One (1) Moderne Rotary Clock, valued at \$5.00.

And, for your efforts, you also receive one Moderne ROTARY CLOCK.

Upon receipt of your order (see other side) with the \$3.60 remittance, (or we will ship C. O. D., F. O. B. Chicago) we immediately ship you Three (3) Moderne Rotary Clocks, Two (2) of which may be given the holders of the names under the large seals—the other may be retained by you.

Isn't this an easy way to obtain a clock valued at \$5.00? Nothing hard about this—nothing complicated—you merely show the clock or illustration to your friends, neighbors, coworkers in the office, shop, etc. They will all want it.

This material is sent you absolutely free for your use if you wish. It can be used with any merchandise. If you desire to purchase from us, you can do so at any time.

NOTE—Write purchaser's name opposite the girls name he selects and then remove disc by pushing with pencil or any pointed object.

Don't forget the surprise gift—send your order and remittance within 15 days and the FREE gift will certainly SURPRISE you.

As stated above, the other devices which respondent furnishes are identical in principle but vary in detail. The members of the public to whom respondent furnishes its said devices and literature use the same in the manner suggested by respondent thereby distributing respondent's merchandise to others and procuring respondent's merchandise for themselves. The sale and distribution of respondent's merchandise through the use of, or by means of, said punchboards, push cards, or other devices constitutes the operation of lottery games of chance or gift enterprises, and the respondent, in furnishing said punchboards, push cards, or other devices, puts in the hands of others the means of conducting lottery games of chance or gift enterprises in the distribution of its merchandise.

PAR. 4. The respondent, in furnishing said punchboards, push cards, and other devices, has knowledge that the said devices are, and have been, used in distributing its merchandise and furnishes said punchboards, push cards, and other devices so that its merchandise may be sold or distributed to the public by lot or chance.

PAR. 5. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondent who do not furnish punchboards, push cards, or devices similar to those furnished by respondent, and who do not furnish any devices by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondent who are opposed to the use of punchboards, push cards, and other devices in the sale and distribution of their merchandise and such competitors refrain from furnishing such devices. Competitors of respondent were called as witnesses and testified in this proceeding, and the Commission finds that the sale of merchandise by means of said punchboards, push cards, and other devices, injuriously affects the sale of similar or like merchandise by such competitors, and that trade is diverted to respondent from its said competitors by reason of the furnishing of said punchboards, push cards, or like devices. The use of such methods by the respondent in the sale and distribution of its merchandise is prejudicial and injurious to the public and to respondent's 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 sale and legitimate competition.

PAR. 6. Many dealers in, and ultimate purchasers of, merchandise similar to or identical with respondent's merchandise are attracted by respondent's said methods and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy, sell, or distribute respondent's merchandise in

preference to merchandise offered for sale and sold by competitors of respondent who do not use the same or equivalent methods, and trade is thereby diverted to respondent from its said competitors.

PAR. 7. As stated previously in these findings, the respondent sells its merchandise in practically all of the States of the United States and in the District of Columbia, and while the annual volume of respondent's business was not shown exactly, an official of the respondent testified, and the Commission finds that approximately 150,000 push cards were distributed for the distribution of ladies' and men's silk hosiery and that sales of such hosiery were in excess of \$15,000; that during the period of about one year immediately preceding the hearings in this case, the respondent distributed approximately 1,000,000 push cards for the distribution of one type of clock; and that it distributed approximately 100,000 push cards for the distribution of one of its cameras. And, further, that in the sale and distribution of its merchandise by push cards, the respondent during the period from March until October, 1936, both months inclusive, distributed approximately 1,500,000 push cards. The Commission also finds that its sale of merchandise by means of punchboards and other devices is, and has been, substantial.

PAR. 8. The Commission finds that the sale and distribution in interstate commerce of merchandise as described in paragraph 1 hereof, by means of lot or chance, is contrary to public policy.

PAR. 9. In the course and conduct of its business, respondent has caused, and causes, the representation to be made to its customers and prospective customers by the use of the firm name and style, Garden City Novelty Manufacturing Company, that it is the manufacturer of some or all of the merchandise which it sells and distributes, which representation is false and misleading for the reason that the respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any merchandise sold by it.

The Commission further finds that a considerable number of the purchasing public has a preference for dealing direct with the manufacturer of products being purchased believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman. The use by respondent of said representation that it is a manufacturer has the capacity and tendency to, and does, mislead and deceive many of respondent's said customers into the erroneous belief that respondent manufactures some or all of the merchandise sold by it and that persons dealing with the respondent are buying said merchandise directly from the manufacturer thereof, thereby elimi-

nating the profits of middlemen and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. There are persons, firms, and corporations selling merchandise similar to the merchandise sold and distributed by respondent who do not falsely represent that they manufacture the merchandise sold by them. The use by respondent of the representation that it is the manufacturer of some or all of the merchandise sold and distributed by it has the tendency and capacity to, and does, divert trade to respondent from other persons, firms, and corporations, selling similar merchandise.

PAR. 10. In the course and conduct of its business respondent has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States containing among other statements and representations of which the following are typical illustrations:

(b) (PICTURE OF A CLOCK) GIVEN AWAY You get one—Your friends get one—without cost. Let us give you the details of this amazing Time Teller. Also it can pay you big money giving it away free. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4338 Ravenswood Ave.

Chicago, Ill.

(b) (PICTURE OF A CLOCK) GIVEN AWAY! You get one—Your friends get one—without cost. Let us give you the details of this amazing TIME TELLER. Also it can pay you big money by showing others how to obtain without cost. Nothing to buy or sell! Write fast.

GARDEN CITY NOVELTY CO.

4344-B Ravenswood Ave.

Chicago, Ill.

The clocks referred to in said advertisements are not given away. Persons answering the advertisement do not receive one without cost, and friends of persons answering said advertisements do not receive one without cost. Respondent does not pay big money for giving away said clocks free, the facts being that respondent requires persons receiving clocks to forward money in payment therefor. The said clocks are distributed by means of push cards heretofore described in these findings, the said clocks thus being distributed by lot or chance to a purchaser of such a chance from said push cards and the person or agent of the respondent who sells the said chances receiving a clock for their services.

Such false, misleading, and exaggerated advertisements and representations have the capacity and tendency to, and do, mislead and deceive the purchasing public and prospective sales agents and induce such persons to become agents or representatives of the respondent or to distribute respondent's merchandise. Such claims and rep-

Order

26 F. T. C.

resentations have the capacity and tendency to, and do, divert trade to respondent from others selling similar merchandise who do not make such claims or representations.

CONCLUSION

The aforesaid acts and practices of the respondent, K & S Sales Company, 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 amended and supplemental complaint of the Commission, the answer of respondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said amended and supplemental complaint and in opposition thereto, stipulation of counsel as to certain facts, briefs filed herein, and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondent, and the Commission having made its findings as to the facts and 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, K & S Sales Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of various articles of merchandise in interstate commerce or in the District of Columbia do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards, punchboards, or similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping or transporting to the members of the public or to dealers push cards, punchboards, or similar devices so prepared or printed as to enable said persons or dealers by the use thereof to sell or distribute merchandise being offered for sale and sold by respondent;

3. Selling or otherwise disposing of various articles of merchandise by the use of push cards, punchboards, or similar devices;

Order

4. Representing by the use of the firm name, Garden City Novelty Manufacturing Company, or otherwise, that it is the manufacturer of some or all of the merchandise which it sells and distributes;

5. Representing directly or indirectly by the use of advertisements in magazines and periodicals or otherwise that the merchandise which it sells or distributes is given away or may be obtained free of charge.

It is further ordered, That the respondent, K & S Sales Company, a corporation in its own name and right, and trading under the names and styles of Garden City Novelty Manufacturing Company, Garden City Novelty Company, and Montrose Silk Company, shall, within 30 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

MIKE GELLMAN AND NATE GELLMAN, INDIVIDUALLY,
AND TRADING AS GELLMAN BROTHERS

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

Docket 1880. Complaint, Nov. 28, 1930—Decision, Jan. 13, 1938

Where a firm engaged in sale and distribution of hunting knives, clocks, wrist watches, compacts, cameras and various other articles of merchandise—
Furnished various devices and plans of merchandising involving variety of punchboards, push cards, or similar devices for retailer's or operator's use in selling and delivering to purchasing public its said products, under schemes by which chance purchaser received more costly article, or nothing further, dependent upon success or failure in selection of right number, and paid, in accordance with particular plan, fixed, or varying, amount, or nothing, dependent upon particular number secured; and thereby put in hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of their merchandise, with knowledge and intent that such devices were and would be used in such distribution to public by lot or chance by retail dealers and other vendees of their said products, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who are opposed to use of such devices in sale and distribution of their merchandise, and refrain from furnishing the same;

With result that sale of merchandise by means of said devices by competitors was injuriously affected, and trade was diverted to them from competitors by reason of furnishing the same, to their prejudice and injury and that of public, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Mike Gellman and Nate Gellman, individually and as copartners trading as Gellman Brothers, hereinafter referred to as respondents, have been and are using unfair methods of competition

in interstate commerce in violation of the provisions of Section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondents, Mike Gellman and Nate Gellman, are copartners doing business under the firm name and style of Gellman Brothers, and have their principal office and place of business located in the city of Minneapolis, State of Minnesota. They are now and for more than four years last past have been engaged in selling various articles of merchandise to purchasers thereof located in various States of the United States. They cause said merchandise, when sold, to be transported from their place of business in the State of Minnesota into and through other States of the United States to purchasers thereof located in a State or States of the United States other than the State of Minnesota. In the course and conduct of their business respondents are engaged in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof the respondents have been and are now soliciting the sale of, and selling and transporting in commerce to retail dealers in various States of the United States certain articles of merchandise, and in the sale and distribution of their said merchandise or products said respondents have furnished various devices and plans of merchandising which involves the operation of gift enterprises and/or lottery schemes, and a distribution of such merchandise or products to the ultimate consumers wholly by lot or chance. Said devices or plans consist of a variety of punchboards, push cards or fortune boards, and other similar devices, the method or use of which by retail dealers in connection with the sale and delivery to the purchasing public of respondents' said merchandise or products was and is substantially as follows:

Said punchboards consist of boards of various shapes and sizes, with from one hundred to four thousand holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing consecutive numbers according to the number of holes contained in the board, and said slips are so placed and secreted in said punchboard that they cannot be seen by the customer except when they are punched from the board. The punchboards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. Every customer pays 5¢ or 10¢ for each punch from the board and the purchasers of punches who receive

Complaint

26 F. T. C.

numbers other than those enumerated on the board, or who do not qualify by purchasing the last punch on the board, receive nothing for their money. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board, and the combined value of the articles of merchandise is much less than the cost of the total punches on the board.

The purchasing public are thus induced and persuaded into purchasing punches from the said boards in the hope that they may obtain one of the prize winning numbers and thus obtain one of the prizes called for by the said numbers. The merchandise of the respondents is thus distributed to the purchasers of punches from the board wholly by lot or chance.

The said punchboards also make use of various other plans or schemes for the distribution of merchandise to the consuming public other than that just above described. These various forms or schemes are known and described by the respondents as "Put and Take," "Hit Me—Take Me," "Numbers from 1 to 22, pay what you draw. Numbers over 22 pay 22¢," "New Style 'Double Pay' Merchandise Assortment 5¢ punch pays single on money winners, 10¢ punch pays double on money winners," "Combination Merchandise Assortments. New Three Way Sales Board," "Full Value Every Punch a Winner," "Sweets for your Sweetie. Has special 'money row with 36 additional punches free'," "This year's sales board surprise. 600 free punches (each marked free) with equal chance to win," "Lucky Stops," "Lucky Cash," "Gallop Dominoes," "Game of Hands," "Top the Seven," "Down the Stretch," "Lose and Win," "Movie Stars," "Big Business," "Teapot Dome Oil Gusher," "Rays of Fortune," "Pick your favorite fruit," "Can Can," "Cash Register," "K. O. Vendor," "Odd Ball," "Blond or Brunette," "Kelly Pool," "Batter Up," "Horse Race," "Ace High," and various other titles or schemes.

The punch cards and fortune boards involve substantially the same plan or plans as referred to above.

PAR. 3. The aforesaid retail dealers of the respondents expose said articles of merchandise in connection with the aforesaid punchboards, push cards, or fortune boards, and sell punches, pushes, or fortune cards to the purchasing public in accordance with the aforesaid plans whereby the said merchandise of the respondents is distributed to the purchasers of punches, pushes, or fortune cards from the said boards wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting a lottery in the sale of their products in accordance with the respondents' sales plan hereinabove set forth.

PAR. 4. The respondents' sales plans as mentioned in paragraphs 2 and 3 thus tend to and do induce many of the consuming public to purchase respondents' said products in preference to the products of respondents' said competitors because of the chance of obtaining one of said articles of merchandise at a price of 5¢ or 10¢, rather than at the normal retail price of the same, which is many times greater than 5¢ or 10¢, or because of the chance of obtaining one of the said articles of merchandise at a price less than its normal retail price by one of the various other plans, schemes or methods described in paragraph 2, and the distribution of said articles of merchandise to the consuming public is determined wholly by lot or chance.

PAR. 5. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in 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 28, 1930, issued, and on December 1, 1930, served, its complaint in this proceeding upon the respondents, Mike Gellman and Nate Gellman, individually and as copartners trading as Gellman Brothers, 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 other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondents, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest

Findings

26 F. T. C.

of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO FACTS

PARAGRAPH 1. The respondents, Mike Gellman and Nate Gellman, are individuals doing business as a copartnership under the firm name and style of Gellman Brothers, and have their principal office and place of business located in the city of Minneapolis, State of Minnesota. They are now and for several years last past have been engaged in the sale and distribution of various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. They cause said merchandise, when sold, to be shipped from their principal place of business in the State of Minnesota to purchasers thereof in the State of Minnesota and in practically all the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now and has been for several years last past a course of trade and commerce by said respondents in such merchandise between and among the States of the United States and in the District of Columbia. In the year 1936 such commerce amounted to approximately \$8,000 of sales volume. In so carrying on said business, respondents are and have been engaged in active competition with other partnerships and with corporations and individuals engaged in the manufacture of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In connection with the sale and distribution of such merchandise said respondents have furnished various selling and merchandising devices and plans which involve the operation of gift enterprises, lottery schemes, or games of chance. Said devices or plans consist of a variety of punchboards, push cards, or fortune boards, and other similar devices, the method of use of which by retail dealers in connection with the sale and delivery to the purchasing public of respondents' said merchandise or products was and is substantially as follows:

Said punchboards consist of boards of various shapes and sizes, with from one hundred to four thousand holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing consecutive numbers according to the number of holes contained in the board. These numbers are not arranged in numerical sequence. Said slips are so placed and secreted in said punchboard that they cannot be seen by the cus-

tomers except when they are punched from the board. The punchboards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. Each customer pays 5¢ or 10¢ for each punch from the board and the purchasers of punches who receive numbers other than those enumerated on the board or who do not qualify by purchasing the last punch on the board, receive nothing for their money. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board.

The said punchboards also make use of various other plans or schemes for the distribution of merchandise to the consuming public other than that just above described. These various forms or schemes are known and described by the respondents as "Put and Take," "Hit Me—Take Me," "Numbers from 1 to 22, pay what you draw, Numbers over 22 pay 22¢." "New Style 'Double Pay' merchandise assortment 5¢ punch pays single on money winners, 10¢ punch pays double on money winners," "Combination Merchandise Assortments, New Three Way Sales Board," "Full Value Every Punch A Winner," "Sweets for your Sweetie. Has special 'money row with 36 additional purchases free'," "This year's sales board surprise. 600 free punches (each marked free) with equal chance to win," "Lucky Stops," "Lucky Cash," "Galloping Dominoes," "Game of Hands," "Top the Seven," "Down the Stretch," "Lose and Win," "Movie Stars," "Big Business," "Teapot Dome Oil Gusher," "Rays of Fortune," "Pick your favorite fruit," "Can Can," "Cash Register," "K. O. Vender," "Odd Ball," "Blond or Brunette," "Kelly Pool," "Batter Up," "Horse Race," "Ace High," and various other titles or schemes.

The merchandise sold and distributed by respondents included penknives, hunting knives, clocks, wrist watches, novelty smoker sets, cigarette lighters, pipes, ladies' compacts, cameras, and various other articles of merchandise. The said punchboards, push cards and fortune boards vary in detail but all involve substantially the same features as the above plans and lottery schemes. In all of the aforesaid plans the person who receives the article of merchandise is selected wholly by lot or chance and makes no additional payment, while the other purchasers receive nothing for their money other than the privilege of making a push or punch.

PAR. 3. The retail dealers and the members of the public to whom respondents sell and distribute their merchandise, together with the punchboards, push cards, fortune boards, or other devices, use such

devices to distribute respondents' merchandise as described above. The sale and distribution of respondents' merchandise through the use of or by means of said punchboards, push cards, fortune boards, or other devices constitute the operation of lotteries, games of chance, or gift enterprises. The respondents in furnishing said devices put in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of their merchandise.

PAR. 4. The respondents in furnishing said devices have knowledge that said devices are and have been and will be used in distributing their merchandise, and furnish said devices so that their merchandise may be sold or distributed to the public by lot or chance. The use by respondents of said method in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States.

PAR. 5. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondents who do not furnish punchboards, push cards, fortune boards, or other devices similar to those furnished by respondents and who do not furnish any devices by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondents who are opposed to the use of such devices in the sale and distribution of their merchandise, and such competitors refrain from furnishing such devices. Competitors of respondents were called as witnesses and testified in this proceeding and the Commission finds that the sale of merchandise by means of said devices injuriously affects the sale of similar or like merchandise by competitors and that trade is diverted to respondents from competitors by reason of the furnishing of said punchboards, push cards, fortune boards, or like devices. The use of such methods by the respondents in the sale and distribution of their merchandise is prejudicial and injurious to the public and to respondents' competitors, and has resulted in the diversion of trade to respondents from their said competitors and is a restraint upon and a detriment to the freedom of fair and legitimate competition.

CONCLUSION

The aforesaid acts and practices of the respondents, Mike Gellman and Nate Gellman, individually and trading as Gellman Brothers, are to the prejudice of the public and of respondents' competitors and are unfair methods of competition in commerce and constitute a viola-

tion 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 respondents, testimony and other evidences taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondents, and the Commission having made its findings as to the facts 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, Mike Gellman and Nate Gellman, individually and trading as Gellman Brothers, their agents, representatives, and employees, in connection with offering for sale, sale and distribution of various articles of merchandise in interstate commerce or in the District of Columbia do forthwith cease and desist from:

1. Supplying to or placing in the hands of retail dealers or others punchboards, push cards, fortune boards, or similar devices so as to enable such retail dealers and others to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping, or transporting to retail dealers or others punchboards, push cards, fortune boards, or similar devices so prepared or printed as to enable such retail dealers or others to sell or distribute merchandise by the use thereof;

3. Selling or otherwise disposing of various articles of merchandise by the use of punchboards, push cards, fortune boards or similar devices.

It is further ordered, That the respondents, Mike Gellman and Nate Gellman, individually or trading as Gellman Brothers, shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order to cease and desist hereinabove set forth.

IN THE MATTER OF
MARCH OF TIME CANDIES, INC.

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

Docket 2806. Complaint, May 15, 1936—Decision, Jan. 13, 1938

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to the consumers thereof, and one of which was composed of a number of penny pieces of uniform size and shape, together with number of packages of candy to be given as prizes to those purchasers of aforesaid penny candies procuring piece, colored center of which differed from that of majority, and together with large candy bar to be given free to purchaser of last piece in assortment—
Sold, to wholesalers and to retailers for display and resale to purchasing public, in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with aforesaid plans, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition in trade involved and tend to create monopoly thereof in it and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate therefrom all actual and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Beach, Fathchild & Scofield, 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 March of Time Candies, 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, March of Time Candies, Inc., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 446 North Hermitage Avenue, Chicago, Ill. Respondent is now, and for one year last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for one year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments of candy is composed of a number of pieces of candy of uniform size and shape, together with a number of packages of candy and a large bar of candy, which packages and large bar of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape, in the following manner: The majority of the said pieces of candy of uniform size and shape in said assortment have centers of the same color, but a small

number of said pieces of candy have centers of a different color; the said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchasers who procure one of the said candies having a center colored differently from the majority of said candies is entitled to receive, and is to be given free of charge, one of the said packages of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive, and is to be given free of charge, the large bar of candy also contained in said assortment. The color of the center of the said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The aforesaid purchasers of said candies, who procure a candy having a center colored differently from the majority of said pieces of candy in said assortment, thus procure one of the said packages or large bar of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortment for sale 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, and with the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure packages or a large bar of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling

to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, 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.

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 15, 1936 issued, and on May 18, 1936 served, its complaint in this proceeding upon respondent, March of Time Candies, 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, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which amended answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the amended answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, March of Time Candies, Inc., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 446 North Hermitage Avenue, Chicago, Ill. Respondent is now, and for one year last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for one year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

One of said assortments of candy is composed of a number of pieces of candy of uniform size and shape, together with a number of packages of candy and a large bar of candy, which packages and large bar of candy are to be given as prizes to purchasers of said

pieces of candy of uniform size and shape, in the following manner: The majority of the said pieces of candy of uniform size and shape in said assortment have centers of the same color, but a small number of said pieces of candy have centers of a different color; the said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchasers who procure one of the said candies having a center colored differently from the majority of said candies are entitled to receive, and are to be given free of charge, one of the said packages of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive, and is to be given free of charge the large bar of candy also contained in said assortment. The color of the center of the said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The aforesaid purchasers of said candies, who procure a candy having a center colored differently from the majority of said pieces of candy in said assortment, thus procure one of the said packages of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortment for sale 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.

PAR. 4. The sale of said candy to the purchasing public, in the manner above found, involves a game of chance or the sale of a chance to procure packages of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, March of Time Candies, 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 and the amended answer of respondent, March of Time Candies, Inc., admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its con-

clusion 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, March of Time Candies, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments 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 and shape having centers of different colors together with larger pieces of candy which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

It is further ordered, That the respondent, March of Time Candies, Inc., a corporation, shall within 30 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 the order to cease and desist hereinabove set forth.

Complaint

26 F. T. C.

IN THE MATTER OF

INDIANAPOLIS SOAP COMPANY, ALSO TRADING AS
SANISOAP COMPANY, AND W. W. SOAP MANUFACTUR-
ING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2966. Complaint, Nov. 4, 1936—Decision, Jan. 13, 1938*

Where a corporation engaged in manufacture of soap and soap products, and in sale and distribution thereof, through mail order concerns and house-to-house canvassers, throughout the United States, in substantial competition with others similarly engaged in such sale and distribution, or manufacture, sale, and distribution, including competitors who, as manufacturers and distributors of such products, in no way mark the same with retail prices, and also those who place thereon only price marks at which their products are actually offered and sold in usual course of business—

Made use of expression "Combination Price, 75¢" on the three-bar cartons in which it put up such soap, and which it sold, thus packaged and conspicuously labeled, at 5¢ per carton, or thereabouts, to aforesaid canvassers for resale and distribution in conjunction with other products or separately, as desired, and in accordance with their practice and within their discretion, at approximately 25¢ per carton;

With effect of deceiving and misleading substantial portion of purchasing public into erroneous belief that said cartons of soap had retail value or price in excess of actual one, and were actually normally offered and sold at said marked price per carton in usual course of business, and with result that public, acting under mistaken and erroneous beliefs induced by such false and misleading representation, purchased substantial volume of its soap and trade was unfairly diverted to it thereby from competitors similarly engaged in manufacture, sale and distribution, or sale and distribution, of such products, and who truthfully represent the quality and value thereof, and the price at which same are offered and sold to public:

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

Before *Mr. John L. Hornor*, trial examiner.

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 Indianapolis Soap Company, a corporation, trading as Sanisoap Company, and as W. W. Soap Manufacturing Company, 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 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, Indianapolis Soap Company, trading as Sanisoap Company, and as W. W. Soap Manufacturing Company, is a corporation, organized in 1922, and doing business under the laws of the State of Indiana, having its principal office and place of business at 1249 Roosevelt Avenue, Indianapolis, Ind.

Respondent is now, and for several years last past has been, engaged in the sale of soap to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and for several years last past has caused, its soap, when sold by it, to be shipped from its place of business in Indianapolis, Ind., to the purchasers thereof, located in the various States of the United States, and in the District of Columbia. There is now, and has been for several years last past, a constant current of trade and commerce, by the respondent, in soap, between and among the various States of the United States, and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other corporations, individuals, firms, and partnerships, engaged in the sale of soap in commerce 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, as described in paragraph 1 hereof, respondent offers for sale and sells its soap packed in cardboard boxes. For the purpose of inducing the purchase of its said soap respondent has been, and is now, engaged in, fictitious price marking. On the lid of each box of said soap appears one of the following representations: "3 Bars—Combination Price 75¢," "Price 75¢," or "Combination Price 75¢."

The said soap above mentioned is sold by the respondent principally to house-to-house canvassers for resale to ultimate consumers. The prices marked on the boxes in which the soap above mentioned is sold are many times in excess of the actual selling price to said house-to-house canvassers and many times in excess of the actual value thereof and are much greater than the actual price at which said soap is sold by said canvassers to said ultimate purchasing and using public. The prices so indicated were not intended by the respondent to be the true retail price or the true retail value of said soap, and are false and fictitious, and in no sense represent either the true

value or the true selling price of the soap so price marked. The prices marked as above indicated, were intended by the respondent and the canvasser purchasing for resale, to be far in excess of the price actually charged the ultimate consumer.

PAR. 3. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and does mislead a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said soap from respondent on account of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of soap who do not misrepresent in any way the prices at which their products are sold in the usual course of trade, who likewise advertise, sell, and distribute their soap among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors, thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 4. The above alleged acts and practices of respondent are all to the injury and 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 November 4, 1936, issued, and on November 6, 1936, served, its complaint in this proceeding upon respondent, Indianapolis Soap Company, a corporation, also trading as Sanisoap Company and W. W. Soap Manufacturing 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 other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Jesse M. Daily, counsel for the respondent, before John L. Hornor, an examiner of the Commission theretofore duly designated by it; and

said testimony and other 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 other evidence, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Indianapolis Soap Company, is an Indiana corporation, organized in 1922. Its office and manufacturing plant are located at 1249 Roosevelt Avenue, Indianapolis, Ind. It is engaged in the manufacture, sale and distribution of soap and soap products. Respondent also offers its said products for sale under the trade names Sanisoap Company and W. W. Soap Manufacturing Company.

Respondent's said soap and soap products are manufactured and prepared for the market at its said place of business in Indianapolis, Ind., and distributed to the public through mail order houses and house-to-house canvassers throughout the United States. About one-third of its output is marketed through house-to-house canvassers. When orders are received for respondent's said soap and soap products, it causes such products to be shipped from its place of business in Indianapolis, Ind. to the purchasers thereof located at various points in the States of the United States other than the State of Indiana. At all times mentioned herein, the respondent has maintained a course of trade in said soap and soap products in commerce among and between the various States of the United States.

At all times since respondent entered into said business, it has been in substantial competition with other corporations, and with partnerships and individuals, engaged in the sale and distribution, or in the manufacture, sale, and distribution, of soap and soap products, in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. Respondent's bar soap is put up in pasteboard cartons, three bars to the carton. On each of the cartons conspicuously appears the expression "Combination Price, 75¢." Thus packaged and labeled, respondent's bar soap is sold by respondent for approximately 5¢ per carton to house-to-house canvassers, located at various points in States of the United States other than the State of Indiana,

who in turn sell and distribute same to the purchasing public for approximately 25¢ per carton.

The house-to-house canvassers usually carry, in addition to the cartons of soap, other products such as soap flakes, cleansers and soap powders. The canvassers determine what item or items shall be included in their stock in trade and respondent's sales to the canvassers do not always include the auxiliary products. It is within the discretion, also, of the canvassers to determine what item or items they shall offer for sale and sell and the price or prices at which the said item or items are offered for sale and sold. Respondent's cartons of soap labeled "Combination Price, 75¢" are not intended by respondent to be sold at retail, nor are they actually sold for 75¢ per carton retail. As a rule, they are actually sold at retail for approximately 25¢ per carton, the canvasser paying only 5¢ per carton therefor. The cartons may or may not be sold in conjunction with other products depending on whether the particular canvasser chooses to offer the cartons of soap singly, in groups, or in conjunction with other products.

PAR. 3. There are, among the competitors of respondent referred to in paragraph 1 hereof, manufacturers and distributors of soap and soap products who in no way mark their soap and soap products with retail prices. There are also among said competitors those who place upon their soap and soap products only the price marks at which their products are actually offered for sale and sold in the usual course of business.

PAR. 4. The use by respondent of the expression "Combination Price, 75¢" on its cartons of soap, which cartons do not in fact sell for 75¢ each, but actually sell for a price much less than 75¢ each, has had, and now has, the capacity and tendency to, and does, deceive and mislead a substantial portion of the purchasing public into the erroneous belief that said cartons of soap have a retail value or price in excess of the actual value or price thereof and are actually normally offered for sale and sold at 75¢ per carton in the usual course of business. Acting under the mistaken and erroneous beliefs induced by the false and misleading representation above referred to, the public has purchased a substantial volume of respondent's soap with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the manufacture, sale and distribution, or in the sale and distribution, of soap and soap products, who truthfully represent the quality and value of their respective products and the price at which their said products are offered for sale and sold to the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Indianapolis Soap Company, a corporation, also trading as Sanisoap Company, and W. W. Soap Manufacturing Company, 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 respondent, testimony and other evidence taken before John L. Honor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested), 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, Indianapolis Soap Company, a corporation, doing business under its own name and also trading as Sanisoap Company and W. W. Soap Manufacturing Company, or trading under any other name, its agents, representatives and employees in connection with the offering for sale, sale and distribution of soap and soap products, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of fictitious price marks, or through the use of any other means or device, or in any manner, that its soap has a retail value or price which is in excess of the price at which said soap is actually and customarily offered for sale and sold to the ultimate consumer thereof.

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

26 F. T. C.

IN THE MATTER OF

GABRIEL S. DUSCH, SR., AND GABRIEL S. DUSCH, JR.,
TRADING AS GABRIEL'S LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3016. Complaint, Dec. 19, 1936—Decision, Jan. 13, 1938*

Where a firm engaged in preparation of its "Gabriel's Mange Formula," and in distribution and sale thereof to purchasers at various points in other States and in the District of Columbia, in substantial competition with others engaged in manufacture, distribution, and sale of mange cures or other products designed, intended, and sold for same purposes for which its aforesaid preparation was sold in commerce as above set forth, and including many who manufacture, compound, distribute, and sell various products designed, intended and sold to cure, relieve, or treat said ailment and allied diseases, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness in use; in advertising the same in different magazines circulating throughout the various States and aforesaid District—

Represented that its said product was an effective cure for all types of mange and would effect cures thereof overnight, through such statements as "Kills mange overnight or money back," "Kill mange mites and eggs overnight * * *," " * * * The mites which cause sarcoptic mange are killed almost instantly * * *," etc., facts being said formula or product had no effect or curative value whatever upon follicular mange, needed to be applied for weeks upon sarcoptic mange, provided in no instance overnight cure of either type of said disease, and claims and representations made by it as above indicated, with respect to nature and effect of its said preparation when used for purpose for which same was sold, were grossly exaggerated, misleading, and untrue;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous belief that use of aforesaid product would accomplish results claimed, and with result that number of purchasing public, by virtue of such belief, bought substantial quantity of its said preparation, and trade was unfairly diverted to it from competitors engaged in manufacture and sale in interstate commerce of medicinal products designed for treatment of said disease and who do not falsely represent curative value thereof; to the injury of 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. Alden S. Bradley and 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Gabriel S. Eusch, Sr., and Gabriel S. Eusch, Jr.,¹ individuals and co-partners, trading as Gabriel's Laboratories, hereinafter referred to as respondents, have been and are 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. Respondents, Gabriel S. Eusch, Sr., and Gabriel S. Eusch, Jr., maintain a copartnership, trading under the name of Gabriel Laboratories, and have their main office and place of business at 402 Main Street, Tell City, Ind. Respondents are now and have been for some years past engaged in the business of preparing, distributing, and selling in commerce, as herein set out, certain medicines designed, intended, and represented as mange cures and distemper cures by the respondents.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said medicines, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a constant current of trade and commerce in said products so prepared, distributed, and sold by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling mange cures and distemper preparations or other products designed, intended, and sold for the same purposes for which respondents' products are sold, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said medicines, respondents have caused advertisements to be printed and circulated in various magazines, to wit, "Dog World," "Dog News," "Field and Stream," "Outdoor Life," "Blood Lines Journal," "Red Ranger," "American Hound Journal," "Hounds & Hunting," "Hunting & Fishing," and "Outdoors." Each of such magazines have a circulation throughout the

¹ Respondents, joined and named in the complaint as Gabriel S. Eusch, Sr., and Gabriel S. Eusch, Jr., trading as Gabriel's Laboratories, answered as Gabriel S. Dusch, Sr., and Gabriel S. Dusch, Jr., trading as Gabriel's Laboratories, and were thus named and identified in the findings and order.

Complaint

26 F. T. C.

various States of the United States and the District of Columbia.
In such advertisements the following statements were made:

**KILLS
MANGE
OVERNIGHT
or Your Money Back**

This positive guarantee on Gabriel's Mange Formula protects you in trying a remedy that has succeeded where all else has failed, in hundreds of obstinate cases. Used and endorsed by many of America's finest kennels. It is the product of scientific men who are nationally known as dog-owners and dog-breeders, with fifty years of actual experience. The mites which cause sarcoptic mange are killed almost instantly, yet the irritated skin is promptly soothed and healed. Equally effective for many other skin diseases of dogs, foxes and livestock. Money promptly refunded if it does not please and satisfy you in every way. Don't delay! Mange spreads rapidly. Simple home treatments won't heal it, and it won't "heal itself". Sent postpaid. 12-ounce Size, \$1; Kennel size, \$2.75 (Stamps or money order). Full information upon request, on our mange remedy or any other dog problem.

GABRIEL'S LABORATORIES, Desk 4, Tell City, Ind.

**SAVE ME from
DISTEMPER!**

If your dog could talk, he'd plead for "ON-THE-NOSE" whenever he suspected the slightest symptom of that dread disease. New. Positive. Quick Acting. Effective against DISTEMPER. Easily spread on the nose like salve, "ON-THE-NOSE" reaches every infected part without struggling or forcing. Fully Guaranteed. Get a tube today—at leading stores, pet shops, kennels, and veterinarians, or send postpaid for \$1.00.

TESTED SPECIALTIES CO.
Dept. DW-104
809 W. Madison Street
Chicago, Ill.

Ask for ON THE NOSE. Nothing else will do!

said statements and other statements of like character and nature, purport to be descriptive of respondents' products and their effectiveness in treating or curing mange. In all of their advertising literature, respondents represent, through statements and representations herein set out and other statements of similar import and effect, that "Gabriel's Mange Formula" is an effective cure for all types of mange and will effect cures of mange overnight, and that "On-the-Nose" is an effective cure for distemper.

PAR. 5. The representations made by the respondents with respect to the nature and effect of their product when used are grossly exaggerated, false, misleading and untrue. Two types of mange are recognized by the veterinarian, follicular and sarcoptic. In truth and in fact the use of the Gabriel Mange Cure upon a case of follicular

mange has no effect and no curative value whatever. Upon sarcoptic mange, it must be applied actively for a period of weeks. The "On-the-Nose" treatment for distemper has no curative value, has no effect against the spread of distemper and does not relieve distemper.

PAR. 6. There are among the respondents' competitors many who manufacture, compound, distribute, and sell various products designed, intended, and sold for the purpose of curing, relieving, or treating mange, distemper, and allied diseases, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing their products and the effectiveness of said products for curing, treating, or alleviating the diseases herein described, in offering for sale and selling their said products were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said products will, in truth, accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended and sold for use, cure, relief and treatment of the diseases herein described, and who truthfully represent the effectiveness of their respective products. As a result thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. 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 December 19, 1936 issued and served its complaint in this proceeding upon said respondents, Gabriel S. Dusch, Sr. and Gabriel S. Dusch, Jr., individuals and copartners, trading as Gabriel's Laboratories, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 23, 1936, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the 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 this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Gabriel S. Dusch, Sr., heretofore known in the complaint as Gabriel S. Eusch, Sr., and Gabriel S. Dusch, Jr., heretofore known in the complaint as Gabriel S. Eusch, Jr., are individuals who maintain a copartnership, trading under the name of Gabriel's Laboratories, and have their main office and place of business at 402 Main Street, Tell City, Ind. Respondents are now, and have been for some years last past, engaged in the business of preparing, distributing, and selling, in commerce as herein set out, a certain preparation designated as "Gabriel's Mange Formula" which is represented by the respondents as a mange cure.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said preparation, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a course of trade in commerce in said preparation so prepared, distributed and sold by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling mange cures or other products designed, intended, and sold for the same purposes for which respondents' preparation is sold in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said preparation, respondents have caused advertisements to be printed and circulated in various magazines, to wit: "Dog World," "Dog News," "Field and Stream," "Outdoor Life," "Blood Lines Journal," "Red Ranger," "American Hound Journal," "Hounds & Hunting," "Hunting & Fishing," and "Outdoors." Each of such magazines has a circulation throughout the various States of the United States and the District of Columbia.

In such advertisements the following statements were made:

**KILLS
MANGE
OVERNIGHT
or Your Money Back**

This positive guarantee on Gabriel's Mange Formula protects you in trying a remedy that has succeeded where all else has failed, in hundreds of obstinate cases. Used and endorsed by many of America's finest kennels. It is the product of scientific men who are nationally known as dog-owners and dog-breeders, with fifty years of actual experience. The mites which cause sarcoptic mange are killed almost instantly, yet the irritated skin is promptly soothed and healed. Equally effective for many other skin diseases of dogs, foxes and livestock. Money promptly refunded if it does not please and satisfy you in every way. Don't delay! Mange spreads rapidly. Simple home treatments won't heal it, and it won't "Heal itself." Sent postpaid 12-ounce Size, \$1; Kennel size, \$2.75 (Stamps or money order). Full information upon request, on our mange remedy or any other dog problem.

GABRIEL'S LABORATORIES, Desk 4, Tell City, Ind.

Subsequent to April 1, 1935, respondents also used advertisements such as the following:

Kills mange overnight or money back.

Succeeds where other methods fail. Endorsed by largest kennels.

Large size \$1.00 postpaid. Gabriel's Laboratories, Desk 2, Tell City, Indiana.

Kill mange mites and eggs overnight * * *.

Overnight mange mites and their eggs are killed * * *.

Said statements and other statements of like character and nature, purport to be descriptive of respondents' preparation and its effectiveness in treating or curing mange. In all of their advertising literature, respondents represent, through statements and represen-

tations herein set out and other statements of similar import and effect, that "Gabriel's Mange Formula" is an effective cure for all types of mange and will effect cures of mange overnight.

PAR. 5. The claims and representations made by the respondents as aforesaid with respect to the nature and effect of their preparation when used for the purpose for which the same is sold are grossly exaggerated, misleading and untrue. Of the two types of mange, follicular and sarcoptic, recognized by veterinarians, the so-called "Gabriel's Mange Formula" has no effect or curative value whatever upon that known as follicular mange. Upon sarcoptic mange the said remedy must be applied actively for weeks. In no instance is there an "overnight" cure of either type of said disease.

PAR. 6. There are among the respondents' competitors many who manufacture, compound, distribute, and sell various products designed, intended and sold for the purpose of curing, relieving, or treating mange and allied diseases, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each of the false and misleading statements and representations made by the respondents in describing their preparation and its effectiveness for curing the disease herein described had and now has a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that the use of said preparation will accomplish the results claimed. By virtue of such belief a number of the purchasing public have purchased a substantial quantity of respondents' preparation with the result that trade has been unfairly diverted to the respondents from competitors engaged in the business of manufacturing and selling in interstate commerce medicinal products designed for the treatment of said disease and who do not falsely represent the curative value of the same. As a result thereof, injury has been, and is now being, done to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Gabriel S. Dusch, Senior, and Gabriel S. Dusch, Junior, individuals and co-partners, trading as Gabriel's Laboratories, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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, and the agreed stipulation of facts entered into between the respondents herein, Gabriel S. Dusch, Senior, and Gabriel S. Dusch, Junior, individuals and copartners, trading as Gabriel's Laboratories, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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, Gabriel S. Dusch, Sr., and Gabriel S. Dusch, Jr., individually and trading under the name Gabriel's Laboratories, or under any other trade name, their representatives, servants, agents, and employees, in connection with the offering for sale, sale and distribution of a preparation designed for the treatment of mange now designated as "Gabriel's Mange Formula," or of said preparation or any other preparation containing similar ingredients and possessing similar properties whether sold under that name or under any other name, do cease and desist from:

1. Representing, in any manner, that said preparation is a cure or remedy for, or has any beneficial value in, the treatment of mange, except that type designated as sarcoptic mange;
2. Representing, through statements such as "Kills Mange Overnight" and "Kill Mange Mites and Eggs Overnight," or through any similar statements, or in any manner, that said preparation will cure sarcoptic mange overnight, or will cure sarcoptic mange without extended treatments;
3. Representing that all forms of mange can be cured by the use of said preparation.

It is further ordered, That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
MIDLAND DISTILLERIES, INC.

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

Docket 2469. Complaint, June 28, 1935—Decision, Jan. 19, 1938

Where a corporation engaged, as rectifier of distilled spirits, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in purchasing all distilled spirits sold and used in its said products, and in compounding, from purchased alcohol and flavors, gin dealt in by it, and with two small experimental or test stills and one small discontinued still employed for vaporization in connection with manufacture of liqueur sold by it, and in substantial competition, as thus engaged in sale and distribution of its aforesaid product to wholesalers and distributors from coast to coast through traveling salesmen, with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various spirituous liquors and similarly selling same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other spirituous liquors sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, and advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "distilleries" in its corporate name, printed on its stationery, catalogs, and advertising, and on the labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller, and that the whiskies and other spirituous liquors contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not own, operate or control any place or places where spirituous liquors are made by process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilleries" used in connection with liquor industry and products thereof in the trade and by the ultimate purchasing public, and it had no permit to operate as distiller, nor distillers' bond, and never did so operate, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller and that the whiskies and other spirituous liquors sold by it were by it made or distilled from mash, wort, or wash,

by one continuous process, and of giving it unfair advantage over its competitors, and of inducing dealers and purchasing public, acting in aforesaid beliefs, to buy its said whiskies and other spirituous liquors, rectified, and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade names, or in any other manner, misrepresent that they are distillers; to the substantial injury of competition in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Dubinsky & Duggan, of St. Louis, 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, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Midland Distilleries, 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 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 Missouri, with its office and principal place of business in the city of St. Louis, 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, 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 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 true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, 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 purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors 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. Upon the premises of respondent's place of business aforesaid there is installed a miniature still for experimental purposes, which still is not used for the distillation from mash, wort, or wash of either spirits or gin. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, not as commonly understood by the public and the liquor industry. For a long period of time the word "Distilleries" when used in connection with the liquor industry and with 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, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and 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 said whiskies, gins, and other spirituous liquors therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous liquors by it so bottled, labeled, sold, and transported, and merely by the use for experimental purposes of a miniature still as set forth in paragraph 2 hereof respondent does not distill the whiskies, gins, and other spirituous liquors by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and under-

stood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous liquors are manufactured by a process of original and continuous 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, whiskies, gins, and other spirituous liquors 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, catalogs, 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 liquors who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and 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 spirituous liquors rectified and bottled 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.

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 21, 1935 issued and served its complaint in this proceeding upon respondent, Midland Distilleries, 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 other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Jerome F. Duggan, attorney for the respondent; and said testimony and other 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 other evidence, and brief in support of the complaint; no brief in opposition thereto having been filed or oral arguments of counsel having been made; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent company was incorporated in February, 1934, under the laws of the State of Missouri, and since its organization in the following June, it has been and now is engaged in business as a rectifier of distilled spirits with its office and principal place of business at 314 Market Street, in the city of St. Louis, under a rectifier's basic permit originally issued by the Federal Alcohol Control Administration, under date of November 25, 1935 and later renewed by the Federal Alcohol Administration Division of the United States Treasury Department. Said basic permit is known and designated as "R-424." In the course of its said business, it purchases, rectifies, blends and bottles whiskies, gins, and other spirituous beverages and sells 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.

When sold, it causes said products to be transported from the State of Missouri into and through various other States of the United

States and the District of Columbia to wholesalers and distributors to whom respondent has sold said products through the medium of salesmen who travel over the United States from coast to coast. 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 true distillation of whiskies, gins, and other spirituous liquors from mash, wort or wash, 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 corporatins and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors 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. Respondent has three (3) stills upon its premises—one is a small fifty-gallon still, which was formerly used for vaporization of spirits in connection with the manufacture of the liqueur "Southern Comfort," respondent's principal product. This still is no longer so used. Respondent has two other stills—one a glass still of a three-quart capacity, used for experimental purposes in the nature of sales exhibitions to prospective customers—and the other still is a test still with a capacity of less than a pint, used to check sugar content of respondent's products. Respondent also sells gins and whiskies. The gin which it sells is not made by it from tax-paid and purchased alcohol redistilled over juniper berries and other aromatics, but is compounded by the respondent from purchased alcohol and flavors, and all of the distilled spirits which it sells and uses in its products are purchased.

PAR. 3. For a long period of time, the word "distilleries," when used in connection with the liquor industry, and with 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, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. This respondent does not now and never did own, operate, or control any such place or places, and has never had any permit to operate as a distiller, and has no distillers' bond, and does not now and never did so operate.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and 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 said whiskies, gins and other spirituous liquors therein contained were by it manufactured through the process of distillation from mash, wort, or wash. The use by respondent for experimental purposes of the stills hereinbefore described does not constitute it a distiller of the whiskies, gins and other spirituous liquors by it so bottled, labeled, sold, and transported, in the sense in which the word "distilleries," is commonly used and understood by those engaged in the liquor trade and by the public, and does not constitute respondent a distillery or distiller as defined by Section 3247 of the Revised Statutes of the United States regulating Internal Revenue.

PAR. 5. The Commission called a large number of public witnesses for the purpose of ascertaining the reaction of the public to the use of the name "Midland Distilleries, Inc.," in connection with the distilled spirits industry. Of the said public witnesses, some twenty-seven in all, nearly all testified that the corporation name, "Midland Distilleries, Inc.," would lead them to believe that the respondent was a distiller and the manufacturer of the products sold under its label; practically all of the said twenty-seven witnesses testified that they would have a preference for a liquor bottled by a distiller or the manufacturer, and that the respondent's name on its packages would induce them to purchase the products of that concern, or others using such name on the label of the bottle containing the product, in the belief that it was a distiller's product and that a distiller's product would be more uniform and there would be more protection to them in the products made by a distiller than by a rectifier. It was generally testified by all of the above mentioned witnesses that the use of the words "distilling," "distillers," "distilleries," or "distillery" used generally in the trade would lead them to believe that any one using such name was engaged in the "distilling business." The Commission finds that a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 6. Several members of the trade, distillers, rectifiers and wholesalers, were called as witnesses and testified generally that the competition of the Midland Distilleries, Inc., and other rectifiers calling themselves distillers, was harmful to the whiskey industry;

that in competition sales resistance was increased for the reason that there is a preference on the part of wholesalers and jobbers to deal with a distiller. All of the above mentioned witnesses are in competition with respondent. The evidence discloses that wholesalers were misled by use of the word "Distilleries" in the firm name and on the labels of respondent. The evidence showed that the respondent adopted the name "Midland Distilleries," because at the time of its adoption the president of the company considered that it would be to his benefit from a competitive standpoint, due to the fact that "at that time rectifiers were in very ill repute; the Government had licensed lots of fly-by-night concerns, and a lot of good reputable businesses were ruined, the market was flooded with horrible blends, and at that stage of the game it would have been to our advantage." The Commission finds that the use by respondent of the term "Distilleries" in its corporate name, as aforesaid, on its labels and in its advertising, gave this respondent an unfair competitive advantage over its competitors. 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, whiskies, gins, and other spirituous liquors 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, catalogs, 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 liquors who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 7. The representations by respondent, as set forth in paragraph 4 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and 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 spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent

Order

26 F. T. C.

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 aforesaid acts and practices of the respondent, Midland Distilleries, 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 respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto and upon brief filed herein in support of the allegations of the complaint by PGad B. Morehouse, counsel for the Commission, no brief in opposition thereto having been filed or oral arguments of counsel, having been made, 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, Midland Distilleries, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of a liqueur known as "Southern Comfort," gins, whiskies, liquors and all other alcoholic beverages, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "Distilleries" 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, gins, or of a liqueur known as "Southern Comfort" or other spirituous beverages; or (b) that the said whiskies, gins, or liqueur known as "Southern Comfort," 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 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.

IN THE MATTER OF
**SAMUEL GOLDBERG, TRADING AS U. S. SPECIALTY &
MFG. CO.**

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

Docket 2722. Complaint, Feb. 17, 1936—Decision, Jan. 19, 1938

Where an individual engaged in sale and distribution of candy, including certain assortments, which, sold to jobbers, wholesalers, retailers, and schools, were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumer, were made up of penny candy inferior to that usually retailing for such amount, and were composed of a number of small penny packages within which were included and concealed, as prizes, along with candy, articles of, or coupons representative of, merchandise of unequal and, chiefly, of very little value, but, in case of small number thereof, greater than candy's penny cost—

- (a) Sold to wholesalers and retailers for display to purchasing public in accordance with aforesaid sales plan said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with aforesaid plan, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing such product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by him, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to him trade and custom from his said competitors as aforesaid, exclude from said candy trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and tend to create monopoly thereof in him and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method; and

- (b) Represented to customers and prospective customers through use of firm name and style including abbreviation "Mfg.," that he was manufacturer of some or all of said merchandise distributed and sold by him, facts being he neither owned, controlled, nor operated any factory whatsoever and did not manufacture any of such merchandise;

With effect of misleading and deceiving many of his said customers into erroneous belief that he made some or all of aforesaid merchandise, and that persons dealing with him were buying same directly from manufacturer thereof, and thereby eliminating profits of middlemen and obtaining various advantages not had by those buying therefrom, and of diverting trade to him from others selling similar merchandise, including those who do not falsely represent themselves as manufacturers of their products:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Samuel Goldberg, an individual trading as U. S. Specialty & Mfg. Co., 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 is an individual doing business as U. S. Specialty & Mfg. Co., with his principal office and place of business located at 10222 Superior Avenue, in the city of Cleveland, State of Ohio. He is now and during the past year has been engaged in the sale and distribution of candy to wholesale dealers, jobbers, retail dealers, and schools located at points in the various States of the United States and causes the said product, when so sold, to be transported from his principal place of business in the city of Cleveland, Ohio, to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent has caused and causes the representation to be made to his customers and prospective customers by his salesmen and agents, and has caused

Complaint

26 F. T. C.

and causes said representation to be set forth on his business stationery, billheads, invoices, catalogues, labels, and other trade literature, to the effect that he controls and operates factories and is the manufacturer of said candy in which he deals.

PAR. 3. The use by respondent of said representation that he is a manufacturer of candy 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 factory in which aforesaid candy sold by respondent is manufactured, and that persons dealing with respondent are buying said candy directly 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 factory whatsoever and does not manufacture said candy sold by him, but, on the contrary, only purchases and repacks the candy which he sells.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture the candy which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the candy in which they deal and resell the same at a profit to themselves over and above the cost of said candy to said competitors, and who in nowise represent that they manufacture said candy. 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. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to jobbers, wholesale and retail dealers, and to schools a package or assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and is as follows:

The said assortment of candy is composed of a number of small packages containing several small pieces of candy, which said packages retail at a price of 1 cent each. They are designated "Pirate's Treasure Tubes." Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of

merchandise or prizes are of a value greater than 1 cent. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for 1 cent. The purchasers of the said small packages of candy containing an article or merchandise or prize, or coupon entitling the holder to a prize greater in value than 1 cent, thus procure the article of merchandise or prize wholly by lot or chance.

PAR. 6. The jobbers and wholesale dealers to whom respondent sells his assortment resell said assortment to retail dealers, and said retail dealers, and the retail dealers and schools to whom respondent sells direct, expose said assortment for sale 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 his product 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 candy offered for sale and sold by his competitors.

PAR. 7. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise.

The use by respondent of said method of the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 8. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

PAR. 9. 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 or any other method that is contrary to public policy.

PAR. 10. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

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 17, 1936, issued, and on February 18, 1936, served, its complaint in this proceeding upon the respondent, Samuel Goldberg, an individual trading as U. S. Specialty & Mfg. 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, respondent filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business under the firm name and style of U. S. Specialty & Mfg. Co., with his principal office and place of business located at 10222 Superior Avenue in the city of Cleveland, State of Ohio. Since the year 1935 the respondent has been engaged in the sale and distribution of candy to wholesale dealers, jobbers, retail dealers, and schools located at points in the various States of the United States and causes the said product, when so sold, to be transported from his principal place of business in the city of Cleveland, Ohio, to purchasers thereof in other States of the United States at their respective places of business. There is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to jobbers, wholesale and retail dealers, and to schools a package or assortment of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and which is described as follows:

The said assortment of candy is composed of a number of small packages containing several small pieces of candy, which said packages retail at a price of 1 cent each. They are designated "Pirate's Treasure Tubes." Each of said small packages of candy contain, in addition to the candy, an article of merchandise, or a prize, or, in the event that the article of merchandise or prize is too large to be packed within the package, a printed coupon or premium notice entitling the holder thereof to the larger article of merchandise or

prize. The majority of these articles of merchandise or prizes contained within the said packages are of very little value, but a small number of the said articles of merchandise or prizes are of a value greater than 1 cent. The articles of merchandise, or prizes, or printed coupons entitling the holder thereof to a prize, are concealed from the consuming or purchasing public within the packages of candy until after the packages have been purchased and broken open by the said purchasing or consuming public. The articles of merchandise or prizes thus obtained by the purchasing or consuming public are of unequal value. The candy contained in each of the said packages is not the equivalent in quantity or quality to candy that ordinarily retails for 1 cent. The purchasers of the said small packages of candy containing an article of merchandise or prize, or coupon entitling the holder to a prize greater in value than 1 cent, thus procure the article of merchandise or prize wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells his assortments resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, 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 his products in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this: to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

PAR. 6. In the course and conduct of his business respondent has caused, and causes, the representation to be made to his customers and prospective customers by the use of the firm name and style, U. S. Specialty & Mfg. Co., that he is the manufacturer of some or all of the merchandise which he sells and distributes, which representation is false and misleading for the reason that the respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any merchandise sold by him.

The Commission further finds that a considerable number of the purchasing public has a preference for dealing direct with the manufacturer of products being purchased, believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman. The use by respondent of said representation that he is a manufacturer has the capacity and tendency to, and does, mislead and deceive many of respondent's said customers into the erroneous belief that respondent manufactures some or all of the merchandise sold by him and that persons dealing with the respondent are buying said merchandise directly from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. There are persons, firms, and corporations selling merchandise similar to the merchandise sold and distributed by respondent who do not falsely

Order

26 F. T. C.

represent that they manufacture the merchandise sold by them. The use by respondent of the representation that he is the manufacturer of some or all of the merchandise sold and distributed by him has the tendency and capacity to, and does, divert trade to respondent from other persons, firms, and corporations selling similar merchandise.

CONCLUSION

The aforesaid acts and practices of the respondent, Samuel Goldberg, an individual trading as U. S. Specialty & Mfg. Co., 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, and the answer of respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, Samuel Goldberg, an individual, trading as U. S. Specialty & Mfg. Co., or under any other trade name, his agents, representatives and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments 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 and shape and premium notices, together with articles of merchan-

384

Order

dise which said articles of merchandise are to be given as prizes to the purchaser procuring said premium slips;

4. Representing by the use of the firm name U. S. Specialty & Mfg. Co., or otherwise, that he is the manufacturer of some or all of the merchandise which he sells and distributes, unless and until he actually owns and operates or directly and absolutely controls the plant wherein said candy is manufactured by him.

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

IN THE MATTER OF
SAMUEL STECKENBERG AND ABRAHAM M. FYNKE,
TRADING AS COLONIAL RIBBON MILLS

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

Docket 2921. Complaint, Sept. 16, 1936—Decision, Jan. 19, 1938

Where two partners engaged, as selling agents or jobbers in concept of trade and industry involved, in distribution of ribbons and narrow fabrics of silk and rayon, made for and bought by them from mills under arrangements whereby mills allocated number of looms and employees thereat for manufacture into finished products of material sent by partners from time to time, and in accordance with instructions, and were compensated on basis of cost of manufacture and incidental overhead for looms' maintenance and operation, and in sale of such material, made for and bought by them, as above set forth, to manufacturers of handkerchiefs, ladies' and children's underwear, greeting cards, dolls, candies, toys, and novelties—
Made use of and featured trade name including word "Mills" in cards, invoices, letterheads, and other business stationery printed and circulated throughout the various States to customers and prospective customers, and thereby represented to aforesaid customers and general buying public that they owned, operated, or controlled a mill in which said ribbons and narrow fabrics were by them manufactured, notwithstanding fact looms and employees above referred to, under aforesaid arrangement, were not operated, supervised, or controlled by them, but by the respective owners thereof, and they neither owned and operated nor controlled any manufacturing plant or mill and did not make aforesaid products, sold by them, and owned no interest in aforesaid two manufacturers thereof, and were not manufacturers, as understood by trade and purchasing public generally;
With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that aforesaid representations were true and that they were actually manufacturers of products sold by them, and with result that number of consuming public, as direct consequence of mistaken and erroneous belief so induced, purchased substantial volume of their said ribbons and narrow fabrics, and trade was unfairly diverted to them from their competitors likewise engaged in distribution and sale of such products and who truthfully advertise and represent the nature and character of their business; to the substantial injury of competition in commerce:

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

Before *Mr. Miles J. Furnas* and *Mr. John W. Addison*, trial examiners.

Mr. J. T. Welch and *Mr. Joseph C. Fehr* for the Commission.

Mr. Gustave A. Steckenberg, of New York City, for respondents.

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 Samuel Steckenberg and Abraham M. Fynke, partners, trading as Colonial Ribbon Mills, 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, Samuel Steckenberg and Abraham M. Fynke, are trading and doing business under the trade name and style of Colonial Ribbon Mills with their office and principal place of business located at 95 Madison Avenue, in the city of New York, State of New York. Respondents are now, and have been since 1932, engaged in the business of distributing and selling, in commerce as herein set out, ribbons and narrow fabrics made of silk, satin, taffeta and rayon to manufacturers of handkerchiefs, ladies' and children's underwear, greeting cards, dolls, candies, and toys and novelties.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said ribbons and narrow fabrics, when sold, to be transported from their office and principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York. Respondents have at all times maintained a constant current of trade in said ribbons and narrow fabrics, sold, and distributed by them, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are now, and have been since 1932, in substantial competition with other firms and with individuals and corporations likewise engaged in the business of distributing and selling ribbons and narrow fabrics 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 said business, and for the purpose of inducing individuals, firms, and corporations to purchase the ribbons and narrow fabrics sold by them, respondents have caused cards, invoices, letterheads, and other business stationery to be printed and circulated throughout the various States of the United

States to customers and prospective customers. In all of said cards, invoices, letterheads, and other business literature, respondents have caused their firm name "Colonial Ribbon Mills" to be prominently and conspicuously displayed.

The use of the word "Mills" in their firm name serves as a representation to the respondents' customers, prospective customers, and the general buying public that the respondents own, operate, or control a mill wherein ribbons and narrow fabrics are manufactured.

PAR. 5. Respondents do not, in fact, own, operate, or control any mill or mills for the manufacture of ribbons and narrow fabrics from raw materials. Respondents are not engaged in the business of manufacturing and are not manufacturers as those terms are understood by the trade and the purchasing public generally, but are engaged solely in the business of distributing and selling ribbons and narrow fabrics manufactured from raw products by others.

PAR. 6. A substantial portion of the wholesale and retail purchasers of ribbons and narrow fabrics have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman or anyone else.

PAR. 7. Many of the respondents' competitors who distribute and sell ribbons and narrow fabrics do not manufacture products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 8. The false and misleading representation made by the respondents in designating themselves, through the use of their firm name "Colonial Ribbon Mills," as manufacturers of the products which they distribute and sell was, and is, calculated to, and had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true and that the respondents are actually manufacturers of the products which they sell. As a direct consequence of the mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased a substantial volume of ribbons and narrow fabrics sold by the respondents with the result that trade has been unfairly diverted to the respondents from their competitors likewise engaged in the business of distributing and selling ribbons and narrow fabrics who truthfully advertise and represent the nature and character of their business. As a result thereof, substantial injury has been, and is now being, done by respondents to 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, 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 September 16, 1936, issued, and on September 18, 1936, served, its complaint in this proceeding upon respondents, Samuel Steckenberg and Abraham M. Fynke, partners, trading as Colonial Ribbon 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, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, before Miles J. Furnas and John W. Addison, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Gustave A. Steckenberg, attorney for the respondent; and said testimony and other 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, and answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto (oral argument having been waived by respondents); and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Samuel Steckenberg and Abraham M. Fynke, are trading and doing business under the trade name and style of Colonial Ribbon Mills. Their office and principal place of business is located at 95 Madison Avenue, New York City, N. Y. Respondents engage three employees. Ever since starting in busi-

ness together in 1932, respondents have been engaged in the business of distributing and selling ribbons and narrow fabrics made of silk and of rayon to manufacturers of handkerchiefs, ladies' and children's underwear, greeting cards, dolls, candies and toys, and novelties.

PAR. 2. In the operation of their business, as aforesaid, respondents have at all times maintained a course of trade in said ribbons and narrow fabrics thus sold and distributed by them, and have caused a substantial part of said ribbons and narrow fabrics, when sold, to be transported from their office and place of business in New York City, N. Y., to purchasers thereof at various points in other States of the United States. Ever since the year 1932, respondents have been in substantial competition with other individuals, partnerships, firms, and corporations engaged in selling and distributing ribbons and narrow fabrics in commerce among and between the various States of the United States.

PAR. 3. In the course of the operation of said business, as aforesaid, and for the purpose of inducing individuals, partnerships, firms, and corporations to purchase the ribbons and narrow fabrics sold by them, respondents have caused cards, invoices, letterheads, and other business stationery to be printed and circulated throughout the various States of the United States to customers and prospective customers. In all of said cards, invoices, letterheads, and other business literature, respondents have caused their firm name "Colonial Ribbon Mills" to be prominently and conspicuously displayed.

The use of the word "Mills" in their firm name serves, and has served, as a representation to the respondents' customers, prospective customers, and the general buying public that the respondents own, operate, or control a mill wherein said ribbons and narrow fabrics are manufactured by them.

PAR. 4. Respondents do not actually own and operate, or control, any manufacturing plant or mill, and do not make the ribbons and narrow fabrics sold by them. The ribbons sold by respondents are made for respondents by the Rose Ribbon Mills, Inc., of East Stroudsburg, Pa., and the Champin Ribbon Mills of Paterson, N. J. Respondents own no interest in either of said manufacturers.

PAR. 5. Respondents have a written arrangement with the Rose Ribbon Mills, Inc., called a lease, whereby the Rose Ribbon Mills, Inc., allocates five of its looms, and the workers at said looms, to the manufacture into finished products of the material that respondents send to said factory or mill from time to time. By this arrangement, respondents agree to pay said Rose Ribbon Mills,

Inc., the cost of manufacture and incidental overhead expenses necessary for the maintenance and operation of said five looms. The said five looms are at no time operated, supervised, or controlled by respondents. They are at all times managed, controlled, and supervised by said Rose Ribbon Mills, Inc., the owner of said looms and not by the respondents herein.

PAR. 6. Respondents have a similar arrangement with the Champin Ribbon Mills, by which the said Champin Ribbon Mills supplies respondents with ribbons and other narrow fabrics manufactured at the instance of respondents and in accordance with certain instructions submitted to said manufacturer by respondents. For this purpose the Champin Ribbon Mills allocates four looms in its factory, located at Paterson, N. J., for the manufacture of finished products for and on behalf of respondents.

PAR. 7. There is usually one worker, or operator, to every two looms in both said mills. These workers are employed by, and receive their wages from, the owners of said mills. The owners of said mills also pay all the taxes on said properties, pay all other overhead charges, and otherwise manage, supervise, operate, and control said establishments without interference of any character whatsoever by, or from, respondents, or anyone else. For the work done by these mills for and upon the order of respondents, the said Rose Ribbon Mills, Inc., and Champin Ribbon Mills receive checks approximately twice a month from the respondents, which checks vary in amount according to the amount of work and time spent on said looms.

PAR. 8. Respondents are not engaged in the business of manufacturing, and are not manufacturers, as those terms are understood by the trade and the purchasing public, generally, but are engaged in the business of distributing and selling ribbons and narrow fabrics manufactured by others. Respondents are regarded in the trade and in the industry as selling agents or jobbers. A selling agent is one who receives the products of looms owned by others on consignment and returns to the principal all monies except the selling commission. A jobber is one who buys the products from a manufacturer and pays for them outright for resale. A manufacturer in the ribbon industry is understood to be one who weaves fabrics, under 18 inches, of silk, rayon, cotton, or mixed fabrics on a plain, jacquard, or Sauer loom.

PAR. 9. A substantial portion of the wholesale and retail purchasers of ribbons and narrow fabrics have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages in dealing direct with the manufacturer rather than a selling agency, or middleman, or anyone else.

PAR. 10. Many of the respondents' competitors who distribute and sell ribbons and narrow fabrics do not manufacture products sold by them, and do not in any way represent that they are the manufacturers of said products.

PAR. 11. The aforesaid acts, practices, and methods of the respondents in designating themselves, through the use of their firm name "Colonial Ribbon Mills," as manufacturers of the products which they distribute and sell, were and are, calculated to, and had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true and that the respondents are actually manufacturers of the products which they sell. As a direct consequence of the mistaken and erroneous beliefs so induced, a number of the consuming public have purchased a substantial volume of ribbons and narrow fabrics sold by the respondents, with the result that trade has been unfairly diverted to the respondents from their competitors likewise engaged in the business of distributing and selling ribbons and narrow fabrics who truthfully advertise and represent the nature and character of their business. As a result thereof, substantial injury has been, and is now being, done by respondents to 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 respondents, Samuel Steckenberg and Abraham M. Fynke, partners, trading as "Colonial Ribbon Mills," are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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 other evidence taken before Miles J. Furnas and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by Joseph C. Fehr and James T. Welch, counsel for the Commission, and by Gustave A. Steckenberg, counsel for the respondents (oral argument having been waived by respondents), and the Commission having made its find-

Order

ings 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, Samuel Steckenberg and Abraham M. Fynke, partners trading as Colonial Ribbon Mills, or under any other trade name, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of ribbons and narrow fabrics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through the use of the word "Mills," or any other word or term of similar import and meaning, in their trade name, or in any other manner, that they are manufacturers, mill operators, or mill owners, unless and until they actually own and operate, or directly and absolutely control, a factory, plant, or mill wherein said products are made by them.

It is further ordered, That the said respondents shall, within 30 days from the date of service upon them of this order, file with this Commission a report in writing setting forth the manner and form in which they have complied with this order.

IN THE MATTER OF
**FRANK URBAN, GEORGE A. URBAN, AND E. T. URBAN,
INDIVIDUALLY AND TRADING AS CLOSE & COMPANY**

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

Docket 3144. Complaint, June 4, 1937—Decision, Jan. 19, 1938

Where two partners engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of a number of individually wrapped penny pieces of candy of uniform size and shape, together with number of other articles of merchandise to be given as prizes to chance purchasers of relatively few of said pieces centers of which differed in color from majority thereof, and to purchaser of last of said uniform pieces in assortment—

Sold to wholesalers and jobbers for display and resale to purchasing public by their retailer vendees, in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their products in accordance with aforesaid plan, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by them, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to them trade and custom from their said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and tend to create monopoly thereof in them and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Frank Urban, George A. Urban, and E. T. Urban, individually and as co-partners trading as Close & Company, hereinafter referred to as respondents, have been and are 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. The respondents, Frank Urban, George A. Urban, and E. T. Urban, are individuals and are doing business as a co-partnership with their principal office and place of business located at 2021 Fulton Street, in the city of Chicago, State of Illinois. Respondents are now, and for some time last past have been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States. Respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondents in such candies between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and individuals and with corporations engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers and jobbers assortments of candy so packed and assembled as to involve or which are designed to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of pieces of candy of uniform size and shape, together with a number of other articles of merchandise, which other articles of merchandise are to be given as prizes to purchasers of the pieces of candy of uniform size and shape in the

Complaint

26 F. T. C.

following manner: The pieces of candy of uniform size and shape are each contained within wrappers and retail at the price of 1 cent each. The majority of the said pieces of candy of uniform size and shape are of the same color throughout, but a small number of said pieces of candy have centers of a color different from the majority. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed.

Purchasers procuring one of the pieces of candy having a center colored differently from the majority are entitled to receive free of charge and are to be given as a prize one of the other articles of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive free of charge and is to be given as a prize one of the said other articles of merchandise. The other articles of merchandise contained in said assortment are thus distributed to purchasers of candy from said assortment wholly by lot or chance.

The respondents manufacture, sell, and distribute several assortments involving lot or chance in their distribution to the public, but all of said assortments involve the same principle as set forth above and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth; and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to candy offered for sale and sold by their competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondents of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or an equivalent or

similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondents and in such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondents has the tendency and capacity 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 an equivalent method.

PAR. 6. The aforementioned method, acts, and practices of respondents are all to the prejudice of the public and of respondents' 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, 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 4, 1937 issued, and on June 7, 1937 served, its complaint in this proceeding upon the respondents, Frank Urban, George A. Urban, and E. T. Urban, individually and

as copartners trading as Close & 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 respondents' answer, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which amended answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and amended answer; and the Commission having duly considered the matter 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, Frank Urban, George A. Urban, and E. T. Urban, are individuals doing business as a copartnership under the firm name and style of Close & Company, and have their principal office and place of business located at 2021 Fulton Street in the city of Chicago, State of Illinois. Respondents are now and for some time last past have 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 cause said products when so sold to be transported from their place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States as their respective places of business. There is now and has been for several months last past a course of trade and commerce by said respondents in such candy between and among the States of the United States. In the course and conduct of the said business, respondents are in competition with other partnerships and with individuals and corporations engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers and jobbers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said assortments are composed of a number of pieces of candy of uniform size and shape, together with a number of other articles of merchandise, which other articles of merchandise are to be given as

prizes to purchasers of the pieces of candy of uniform size and shape in the following manner: The pieces of candy of uniform size and shape are contained within wrappers and retail at the price of 1 cent each. The majority of the said pieces of candy of uniform size and shape are of the same color throughout, but a small number of said pieces of candy have centers of a color different from the majority. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. Purchasers procuring one of the pieces of candy having a center colored differently from the majority are entitled to receive free of charge and are to be given as a prize one of the other articles of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive free of charge and is to be given as a prize one of the said other articles of merchandise. The other articles of merchandise contained in said assortment are thus distributed to purchasers of candy from said assortment wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondents sell their assortments, resell said assortments to retail dealers, and said retail dealers expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise.

The use by respondents of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondents are unwilling to offer for sale or sell candy so packed and assembled as above described, or other-

wise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' 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 respondents, in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondents and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondents has the capacity and tendency 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondents, Frank Urban, George A. Urban, and E. T. Urban, individually and as copartners trading as Close & Company, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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 amended answer of respondents, Frank Urban, George A. Urban, and E. T. Urban, individually and as copartners trading as Close & Company, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, Frank Urban, George A. Urban, and E. T. Urban, individually and as copartners trading as Close & Company, or trading under any other name, their agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments 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 and shape having centers of different colors together with other articles of merchandise which said articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

It is further ordered, That the respondents shall within 30 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 forth.

IN THE MATTER OF
N. R. BASKIN, INDIVIDUALLY, AND TRADING AS AMERICAN RADIO COMPANY, AMERICAN NOVELTY COMPANY, AND AMERICAN RADIO AND NOVELTY COMPANY

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

Docket 2401. Complaint, May 20, 1935—Decision, Jan. 20, 1938

Where an individual engaged in sale and distribution of radios, bathroom scales, clocks, cameras, and variety of other so-called novelty merchandise, together with "sales booklets," and "sales cards" or "pull boards" and "punch boards" as instrumentality for sale of his said products in conjunction therewith and through use of lottery and chance schemes thereby entailed, as operated by customers whom he (1) solicited thus to sell his said products, (2) supplied, in response to their inquiry, with certain literature and materials descriptive of one or more of his aforesaid articles, and with circular letter descriptive of his sales plans and methods of operation, list of prizes and order blank, and (3) compensated, upon undertaking such sale, through merchandise or money, as case might be—

- (a) Represented, in soliciting customers and persons to buy and sell his said products under aforesaid plan, in advertising therefor in various magazines circulated among members of the buying public, that he was offering "New Sales Plan" and "New Free Gift Plan" involving giving away of radios and other products, and that persons made as much as \$100 a week under former and \$150 a week under latter, while giving away merchandise, facts being said scheme did not constitute "New Sales Plan" or "New Free Gift Plan," neither he nor his customers or customers' agents handed out or distributed free gifts, but each article distributed required payment of valuable consideration, and he was thus compensated, either in money or services or both, representations as to earnings, as possibility and representation applicable to most, constituted gross exaggeration of benefits or profits to be expected or derived by persons dealing with him, who could not determine whether or not they could make any such sums until after purchase and resale of his said merchandise, with resultant benefits to him of such sales as they might and did effect;

With tendency and capacity to induce members of public to buy his said products and undertake and effect distribution thereof to members of buying and consuming public, and with result, substantially, of such sale and distribution, to his benefit and profit and to injury and prejudice of competitors; and

- (b) Offered, sold, and distributed his aforesaid products as above set forth, together with sales cards, pull boards, or punch boards, for distribution to ultimate consumers or purchasers under plans by which, as case might be, chance purchaser received article being thus disposed of or nothing other than chance, dependent upon success or failure in selection of right name, as finally revealed under so-called master seal, and paid, in accordance

with particular plan, fixed or varying amount or nothing, dependent upon disclosure after purchase, selection and removal of seal, in competition with many who condemn use and encouragement of such cards or methods as not legitimate and as gambling devices and involving operation in violation of law and public policy of most of the States and of the United States, and as a lottery, and involving acquisition of business unfairly among members of the trade, and as otherwise contrary to good morals, and refrain therefrom;

With effect of diverting substantial trade in commerce to said individual from competitors who do not encourage or employ such methods and are not free so to do:

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

Before *Mr. John W. Bennett* and *Mr. John J. Keenan*, trial examiners.

Mr. Jay L. Jackson 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that N. R. Baskin, an individual doing business under the trade names American Radio Company, American Novelty Company, and American Radio and Novelty 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 it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating therein its charges as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade names American Radio Company, American Novelty Company, and American Radio and Novelty Company, with his principal office and place of business in the city of Chicago, State of Illinois. Respondent, for more than one year last past, has been engaged in the sale and distribution of radios, liquor serving sets, sales booklets, punch sales cards, punch sales boards, and other articles of merchandise to wholesale dealers, retail dealers, distributors, and agents located at points in the various 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 Chicago, Ill., or from the State of origin of the shipment, 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 1 year last past, a course of trade in commerce by the said respondent in such merchandise 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 substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of radios, liquor serving sets, other merchandise, sales books, punch sales cards and punch sales boards 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 his business as described in paragraph 1 hereof, the respondent sells and has sold to wholesale dealers, retail dealers and to individual distributors merchandise so arranged as to involve the use of a lottery scheme or game of chance when resold and distributed to the ultimate purchasers thereof in accordance with respondent's sale plan.

The said sales books, punch sales cards, and punch boards are sold separately and also in combination with other merchandise. Several of said merchandise combinations are composed of radios and sales books, radios and 100-hole sales boards, liquor serving sets and punch sales cards, and other merchandise in combination with the sales books, punch sales cards, and 100-hole sales boards, respectively, which radios, liquor serving sets, and other merchandise is to be given to agents in furtherance of said sale plan as compensation for services rendered in the promotion of a lottery scheme or game of chance and as prizes to purchasers who are holders of chances bearing a name or other legend as follows:

The booklets, punch sales cards, and punch boards contain 100 names more or less or other legends which are sold at not less than 1 cent nor more than 35 cents (with 10 names free). The said names or other legends have concealed thereunder from the purchasers the figures indicating the amount to be paid therefor, and they do not know until after the selection has been made and the secret purchase price has been disclosed how much they must pay for the privilege of selecting the chance or whether they will receive one of the free chances. The booklets, punch sales cards, and punch boards contain a master seal, and the name, number, or other legend concealed thereunder is not disclosed until after all the chances have been sold and the purchaser receiving the chance bearing the name or other legend corresponding to the name or other legend appearing under the master seal receives the merchandise offered as a prize and the other purchasers receive nothing of value for the money which they have paid.

The purchasing public, in accordance with respondent's sale plan, are thus induced to purchase the name, number, or other legend from the booklet, punch card, punch board, or other method of lottery scheme or game of chance in the hope that they may select by chance and purchase the prize winning name, number, or other legend concealed under the master seal and thus obtain a valuable article of merchandise either free or at a cost not to exceed 35 cents, which article of merchandise is distributed wholly by chance, and which has a value much greater than the maximum charge of 35 cents.

PAR. 3. The wholesale dealers, retail dealers, and individual distributors to whom respondent sells his merchandise expose said booklets, punch cards, punchboards, and said merchandise combinations for sale and resell said booklets, punch cards, punchboards, and merchandise combinations to individuals who sell the chances in the said sales books, punch sales cards, and 100-hole punch sales boards, respectively, to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of his customers the means of conducting lotteries in the sales of his merchandise as a means of inducing purchasers thereof to purchase respondent's said merchandise in preference to similar merchandise offered for sale and sold by his competitor.

PAR. 4. The sale of said merchandise to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure such merchandise in the manner alleged. Such game of chance and the sale of such chance to procure such merchandise in the manner alleged are contrary to the established public policy of the State of Illinois and of the Government of the United States, and are contrary to local criminal statutes of many States of the United States.

By reason of said facts, many persons, firms, and corporations who sell and distribute such merchandise in competition with respondent as above alleged are unwilling to offer for sale, and they refrain from selling, merchandise so assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a lottery or a game of chance.

PAR. 5. Many dealers in and ultimate purchasers of such merchandise are attracted by respondent's said method and manner of combining said merchandise and by the element of chance involved in the sale and distribution thereof in the manner above described and are thereby induced to purchase said merchandise sold by respondent in preference to similar merchandise offered for sale and

sold by said competitors of the respondent who do not use the same or equivalent methods.

Many dealers are induced to purchase such merchandise so offered for sale and sold by respondent in preference to similar merchandise sold by competitors, because said ultimate purchasers thereof give preference to respondent's said merchandise on account of said lottery and game of chance so involved in the sale whereby the recipient has the chance of obtaining the merchandise free or at a cost not exceeding 35 cents rather than at the normal retail price, which is much greater than 35 cents.

PAR. 6. During the times above mentioned in paragraph 1 hereof, the respondent in the regular course of his business has been and now is soliciting the sale of merchandise through advertisements published in newspapers, magazines, and other periodicals circulating among the public and among the various States of the United States, and in circulars, pamphlets and booklets which respondent has caused to be distributed among the public of the various States.

In these advertisements, the respondent has caused statements to be made, among others, as follows:

New Free Gift Plan—Brings you up to \$150.00 weekly! Give away Radios and Liquor Sets—Hand Out Free Gifts. Collect dollars from men who haven't a dime. Make up to \$150.00 weekly. Brand new plan starts you making money first day. Two "Knock Out" Gifts Given Away. GUARANTEED AMERICAN AC-DC Radio, true tone—great volume. Great selectivity and distance. Beautiful cabinet with self-contained ground and aerial. Use anywhere. Also unique Liquor Set. Beautiful metal banded, charred oak, half-gallon barrel, complete with chromium plated revolving stand and glasses. Nothing else like it in the country. These are the most attractive deals out. Write quick for complete line.

A "BRANDY" NEW DEAL.—MAKE UP TO \$100.00 A WEEK—Giving Away Beautiful Liquor Serving Sets—Thanks to repeal. Biggest money making plan in years. No experience necessary. Income starts right away. Yes, sir. Through our unique "Punch Sales Card" plan, you actually give away these beautiful Liquor Serving Sets and make up to \$100.00 cash each week for yourself. Everybody is a prospect—stores, offices, factories, individuals, lodges, and clubs will "jump at" this chance to receive absolutely Free This Beautiful Liquor Serving Set. SENSATIONAL NEW SALES PLAN—Our new, unique sales plan allows you to actually give away free Beautiful Liquor Serving Sets. Charred barrel, made of finest oak wood, holds approximately ½ gallon, and is beautifully finished with chromium bands and spigot. Revolving tray with glasses makes serving easy. No home is now complete without this Beautiful Liquor Serving Set. Get full details of our sensational plan at once.

MAKE UP TO \$100.00 A WEEK With Our New Sales Plan—Biggest money-maker out. American Radio—guaranteed. Self-contained aerial and ground. Super-dynamic speaker. True tone. Great volume. Wonderful distance. Distributors now making up to \$100 weekly with new 100-hole sales boards (10¢ each), taking in \$28.50. Order today. Send \$3, pay balance C. O. D.—or write for details.

When you explain to them how they may receive these gifts absolutely without cost, they will want both of them and that will mean repeat business for you.

The sales booklets for the Liquor Serving Sets contain 80 names, which are sold at not less than 1¢ or more than 35¢ (with 10 names free). The total receipt from this salesbook is \$21.50 and you deliver two Beautiful Liquor Serving Sets, costing you \$5.35 each, which leaves you a net profit of \$10.70 on each deal.

It has been proved that the most effective manner of securing agents for the distribution of these salesbooks is to have a sample of the article to show. This is particularly true where you are securing agents who happen to be clerks in stores, refreshment establishments, etc., or employed in offices or factories. The instant you show these articles, they want them! And when you tell them that they can actually get them *Absolutely Free*, simply by co-operating with you, *You Have Another Agent Started*.

PAR. 7. The statements in the advertisements mentioned above in paragraph 6 hereof that the "New Free Gift Plan Brings You Up to \$150 Weekly," "Make Up to \$100 a Week With Our New Sale Plan," "Biggest Money-Maker Out," "Distributors Are Now Making Up to \$100 Weekly With New 100 Hole Sales Board," and that the radios or other merchandise are being given away free are false and misleading statements in that the plan is not new, the distributors or agents do not regularly earn up to \$100 per week as alleged therein, such earnings being special and unusual, and they are not the normal results which may be expected in the distribution of respondent's merchandise; no radios, liquor serving sets, or other merchandise are given away free but the respondent receives the full wholesale value thereof for all articles distributed by him; the agent receives merchandise as compensation for his services; and the ultimate purchaser, or recipient, receives merchandise through devices or plans of merchandising which involve the operation of lottery schemes or games of chance in violation of public policy and certain criminal statutes. Such false and misleading statements and advertisements of such lottery schemes and games of chance induce agents or individuals to solicit the sale of and sell the merchandise of the respondent, and thus prevent them from soliciting the sale and selling the merchandise of competitors of the respondent, thereby diverting substantial trade from the competitors of the respondent to the respondent.

PAR. 8. The use of said methods by respondent has and has had the tendency and capacity unfairly, because of said lottery scheme and game of chance and said false and misleading advertising, to divert and has diverted to respondent trade and custom from his said competitors who do not use the same or equivalent methods. It has and has had the tendency and capacity unfairly to exclude from said

merchandise trade all actual and potential competitors who are unwilling to and do not use the same or equivalent methods which are contrary to public policy, detrimental to public morals, and in violation of the criminal statutes of certain of the States of the United States; to substantially lessen competition in the sale of said merchandise and to deprive the purchasing public of the benefit of free competition in those said commodities.

PAR. 9. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and to respondent's competitors, as herein alleged. Such methods, acts, and practices constitute unfair methods of competition 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 May 20, 1935, issued, and on May 22, 1935, served, its complaint in this proceeding upon respondent, N. R. Baskin, an individual and doing business under the separate trade names of American Radio Company, American Novelty Company, and American Radio and Novelty 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, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Jay L. Jackson, attorney for the Commission, in part before John W. Bennett, Esq., and in part before John J. Keenan, Esq., examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Messrs. John A. Nash and Horace J. Donnelly, attorneys for respondent; and said testimony and other 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, N. R. Baskin, is an individual, operating and trading under the trade names American Radio Company, American Novelty Company, and American Radio and Novelty Company, with his principal place of business located at 32 Randolph Street in the city of Chicago, State of Illinois, and under these names is now, and at all times material to the complaint in this proceeding has been, engaged in the business of selling and distributing radios, liquor serving sets, bathroom scales, clocks, cameras, smoking sets, fountain pens, and a variety of other so-called novelty merchandise, together and in connection or in combination with so-called "sales booklets," sometimes described as "sales books" and "sales cards," including sales cards commonly designated as "pull boards" and "punchboards." Respondent solicits customers and sells his said products, by the methods hereinafter described, in most of the States of the United States, and causes said products, when sold or ordered, to be shipped and transported from his said place of business in the city of Chicago, State of Illinois, to customers and to purchasers thereof located in various States of the United States.

PAR. 2. In the course and conduct of the business of respondent, as aforesaid, respondent has been, and is now, in competition with corporations, firms, partnerships, and individuals engaged in the business of offering for sale, selling and distributing radios, liquor serving sets, bathroom scales, clocks, cameras, smoking sets, fountain pens, and a variety of other so-called novelty merchandise like that offered and sold by respondent, in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of the business, as aforesaid, it has been, and is, the practice of respondent, through the medium of advertising in various magazines, circulated to and among members of the buying public, such as *Billboard*, *Opportunity*, *How to Sell*, *Specialty Salesmen*, and *Radio Guide*, to solicit customers and persons to buy and sell respondent's products, in the course of which respondent states and represents, among other things, that respondent offers a "New Sales Plan" under which persons make as much as \$100 a week while giving away merchandise; that respondent offers a "New Free Gift Plan" which involves the giving away of radios and other merchandise, and that under said plan persons make up to \$150 a week while giving away merchandise. Upon response to such advertisements, respondent mails certain literature to the responding person, inclusive of materials descriptive of one or more of respondent's products, a circular letter descriptive of respondent's

sales plan and method of operation, list of prices, and an order blank. In some instances one of respondent's so-called "sales booklets" or "sales card" is further included with such literature. Respondent also circularizes and solicits members of the public direct with sales literature descriptive of his products and sales plan and with sales cards for use in the distribution and sale of his products.

PAR. 4. As more fully hereinafter shown, the aforesaid sales cards are devices or instruments used, and intended to be so used, in effecting sale and distribution of respondent's products to members of the buying and consuming public. In some instances they appear as a single or double leaf card and sometimes are attached to, or within, a so-called "booklet." In either instance these materials carry, together with one or more of the aforesaid trade names of respondent and business address, pictorial and printed matter descriptive of one or more of the products offered and sold by respondent. The cards themselves are the devices for effecting the sale and disposition of the particular article or articles of merchandise so described and represented. Some of said cards entail disposition by respondent of two units of the same article of merchandise, one unit of which follows the sales card while the other unit is delivered to, and taken by, respondent's customer or the operator of the card as his consideration for effecting disposition and sale of the names appearing on the said card, the money income from which is remitted to respondent. In other instances the respondent's customers buy only one article of merchandise incident to each card and are left to take their profits in the form of money retained out of the money taken in from completed disposition and sale of the cards. Customers are encouraged and urged to employ others to effect disposition and sale of the cards and the merchandise incident thereto, this to the end of promoting a maximum business with customers. The merchandise incident to each card is sold and delivered to the customer in combination with the card, but in connection with a great number of these cards, the merchandise may be ordered and purchased by the customer subsequent to order and purchase of the cards. Each card, therefore, is so arranged and intended to entail and effect, and the said cards do effect, either immediately or eventually, the order and purchase from respondent of one or more articles of merchandise for each card eventually sold and disposed of by respondent's customers.

PAR. 5. The sales cards employed by respondent, as aforesaid, vary with the particular product or products offered and sold in connection therewith, but they all work and are operated on the same principle. Each entails the ultimate solicitation and sale to members of the buying and consuming public of one or more of the names, representing

chances, appearing on the face of seals, one name to each seal. In some instances the seals are arranged in such a way as to be pulled off, in others punched or pushed out. Accordingly, the cards are appropriately described as "pullboards" or "punchboards," depending upon the manual method by which the seal is either pulled off or pushed out. Each person solicited and selecting a name pays a consideration for each name drawn, except that with certain cards 10 free names or selections are provided for, the amount of which consideration is not disclosed at the time of purchase and selection, but immediately thereafter upon the inside portion of the seal after the same has been pulled off or punched out. With some cards the consideration varies from 1 cent to 29 cents; with others, from 1 cent to 35 cents. In all cases the total moneys taken by the completed sale of names on each card is sufficient to cover, and respondent receives from his customers, the list purchase price of all merchandise, and for each unit thereof, delivered by respondent to customers in connection with such card, and in most instances the total money taken in by completed sale and disposition of such cards is greatly in excess of all or any cost incident to purchase and supply of the merchandise connected therewith.

The purchase and selection of the names appearing on the so-called sales cards are all made by purchasers with a view to selecting that name which will correspond with the name which appears under a master seal in the upper corner of the card when the said seal is removed. The master seal is removed and the winning name therein disclosed only after all the visible names on the card have been purchased and drawn. Thus, at the time of purchase and drawing, the purchaser does not and cannot know either the amount of the consideration he pays for the same or whether or not he becomes thereby entitled to receive such article of merchandise as is described and offered in connection with the said card. A few of said cards allow of more than one winner, sometimes as many as three articles of merchandise being offered, but in most instances only one article of merchandise is offered, and only one purchaser of the group purchasing from the card receives, or becomes entitled to receive, the particular article so offered.

PAR. 6. Contrary to the advertising representations made by respondent, the selling plan under which he has been operating and operates is not a "new sales plan" or a "new" or "free gift plan." Neither respondent nor his customers or customer's agents "hand out" or distribute "free gifts," but each article of merchandise distributed by respondent, his customers, or customer's agents requires the payment of a valuable consideration, and for all merchandise distributed by respondent he receives a valuable consideration, either in the

form of money or services, or both. Further contrary to respondent's advertising representations, it does not appear that any of his customers have made or make as much as \$150 or \$100 a week. As a possibility and representation applicable to most persons undertaking to operate under respondent's selling plan, the said representation is a gross exaggeration of the benefits or profits to be expected or derived by persons dealing with respondent. Persons dealing with respondent in response to the said representations have no way of determining whether they can make \$150 or \$100 a week until after they have undertaken the purchase and resale of respondent's merchandise, during which, however, respondent receives the benefits of such sales as such persons may and do effect.

The aforesaid representations to the effect that respondent operates a new selling plan by which persons hand out, or give away, free gifts, and by which persons can make up to \$150 and \$100 per week are, and each of them is, false and misleading and have the tendency and capacity to induce members of the public to buy products of respondent, and to undertake and effect distribution of respondent's products to members of the buying and consuming public. The same substantially results in the sale and distribution of respondent's products to members of the buying and consuming public, inures to the benefit and profit of respondent, and is all to the injury and prejudice of respondent's competitors.

The aforesaid sales cards, otherwise known as "pullboards" and "punchboards," are gambling devices used and useful only in the operation of a lottery or sale by chance. The operation of said cards constitutes a lottery under the laws of the United States and statutory laws of most of the States of the United States, and under the public policy proclaimed by these laws, use of such cards and sale methods, and the encouragement of such use, is condemned and prohibited. Many of respondent's competitors refrain from the use of such cards or methods and condemn their use and encouragement upon the ground that the same are not legitimate, that the said sales cards are gambling devices and their operation a violation of the law and public policy of most of the States of the United States, that their operation constitutes a lottery and that the acquisition of business through such means is unfair among members of the trade and otherwise contrary to good morals.

The aforesaid representations and practices employed by respondent have the tendency and capacity unfairly to divert, and do divert, substantial trade in said commerce to respondent from his competitors, who do not employ or encourage such methods and who are not free to use the same.

CONCLUSION

The aforesaid acts and practices of respondent N. R. Baskin 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard before the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Bennett and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Jay L. Jackson, counsel for the Commission, and by John B. 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 respondent, N. R. Baskin, his representatives, agents, and employes, in connection with the offering for sale, sale, and distribution in interstate commerce of all so-called novelty products offered for sale or sold by respondent, including radios, liquor serving sets, bathroom scales, clocks, cameras, smoking sets, fountain pens, and other similar or like articles of merchandise, and of so-called sales books or booklets and sales cards, cease and desist:

1. From in any way representing, directly or indirectly, to members of the buying and consuming public, that respondent offers or employs a sales plan in connection with his products, which plan is "new," or a "free gift plan," or a plan under which persons hand out or give away merchandise, and make up to \$150 or \$100 a week, when in fact the plan offered or employed by respondent is not "new," or is not a "new free gift plan," or under which merchandise is not given away free, or when in fact no substantial number of persons dealing with respondent make as much as \$150 or \$100 a week under the plan offered and employed by respondent.

2. From offering for sale, selling, or distributing, in connection with the sale and distribution of said so-called novelty products, any instrument or means, inclusive of sales books or sales cards, pullboards, or punchboards, which may be employed or used as a gaming device,

Order

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or to conduct a lottery or sale by chance, in combination or connection with the sale or distribution of any product or products of novelty merchandise offered for sale, sold, or distributed by respondent.

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

Complaint

IN THE MATTER OF
CAPON WATER 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 2736. Complaint, Mar. 3, 1936—Decision, Jan. 20, 1938

Where two corporations engaged, as case might be, in ownership and operation of certain springs and sale of water therefrom, and the president and manager thereof and owner of the majority of stock in both and controller and director of their activities in sale and distribution of said water, and in substantial competition, as thus engaged in sale of said water through dealers and direct to purchasing and consuming public in the several States and in the District of Columbia, with others engaged in sale and distribution of so-called mineral waters and drugs and medicinal preparations used and useful for treatment of the various diseases, ailments, and conditions for which they recommended their said water; in describing said water in advertising matter sent to those making inquiry in response to label contained on containers thereof and inviting such inquiry "For Specific Purposes and Physicians' Statements"—

Represented, through pamphlets, booklets, leaflets, and other written matter containing many statements purportedly made by doctors and laymen, as well as directly, that use of said water alone would cure kidney and bladder trouble, and gout and rheumatism, as well as nephritis, arthritis, neuritis, high blood pressure, constipation, and numerous other ailments and conditions, as there specified, notwithstanding fact use of said water alone would not, either externally or internally, cure said various diseases, ailments, and afflictions;

With effect of misleading and deceiving purchasing public and causing them erroneously to believe that use thereof alone would cure such various diseases, ailments, and conditions for which they represented same as a cure, and to cause such public, by reason of such erroneous belief, to buy their said water, and of thereby unfairly diverting trade to them from their competitors who do not use such acts and practices, to their substantial injury and to that of the public:

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

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

Mr. Edw. W. Thomerson for the Commission.

Mr. Phillip W. Austin, of Washington, D. C., 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 the Capon

Water Company, a corporation, the Capon Springs Mineral Water, Inc., a corporation, and Louis Austin, an individual, 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. Respondent Capon Water Company, is a corporation existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 1712 Walnut Street, in the city of Philadelphia, State of Pennsylvania. Respondent Capon Springs Mineral Water, Inc., is a corporation existing under and by virtue of the laws of the State of West Virginia, with its office and principal place of business at 1712 Walnut Street, in the city of Philadelphia, State of Pennsylvania, and a branch office and place of business at Capon Springs, State of West Virginia. Respondent Louis Austin is president of, and the majority stockholder in, both of the other respondents, with his office and principal place of business at 1712 Walnut Street, in the city of Philadelphia, State of Pennsylvania, and with a branch office and place of business at Capon Springs, State of West Virginia.

Respondents are now, and have been for the several years last past, engaged in the sale and distribution, under the name Capon Springs Water, of a purported mineral water for human consumption and for external application to the body, and respondents cause said water, when sold, to be transported from their places of business in Philadelphia, Pa., and Capon Springs, W. Va., into and across the several States of the United States and the District of Columbia, to the purchasers thereof located at various points in said several States of the United States, other than in the States of Pennsylvania and West Virginia, and in the District of Columbia. Respondents make sales direct to consumers and through agents to said consumers.

In the course and conduct of their business as aforesaid, the respondents have been and are in substantial competition in commerce between and among the said several States of the United States and in the District of Columbia with corporations, associations, partnerships, and individuals, who truthfully advertise their products, engaged in said commerce in the sale and distribution of mineral waters and other products used and useful for the same purposes for which respondents recommend their said water. In the course and conduct of their said business as aforesaid, and in the use of the acts, practices, and methods hereinafter alleged, the said respondents have acted and do act together and in cooperation with each other.

PAR. 2. Respondents, in the course and conduct of their business as aforesaid, distribute and circulate, among prospective purchasers of their said water, booklets, leaflets, circulars, and other written matter which contain many statements concerning the curative qualities of respondents' said water. Many of said statements are purportedly made by doctors and laymen and the remainder by the respondents. In said booklets, leaflets, circulars, and other written matter respondents falsely represent and imply that said water will cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondents in their said booklets, leaflets, circulars, and other written matter, so distributed and circulated among prospective purchasers of their said water, as diseases, ailments, afflictions, and conditions which their said water will cure, or is beneficial in the treatment of, are the following: Kidney troubles, kidney pains, nephritis; bladder trouble; gout, rheumatism, syphilitic rheumatism, arthritis, neuritis; hyperacidity, uric acid, toxic poisons, acid conditions, acid poisons; catarrhal affections of the stomach and bowels, catarrhal affections of the organs of respiration, catarrhal affections of the kidney and bladder, uterine catarrh; scrofulosis; diabetes mellitus, diabetes; skin diseases, all affections of the skin, poison oak, ivy poison, and other skin affections; diseases of the urinary, digestive and reproductive organs, diseases peculiar to women, female disorders, dysmenorrhea, leucorrhoea, amenorrhoea, chronic cervical, corporeal endometritis; high blood pressure; chronic pneumonia; constipation; irregular bowels; calculi (kidney and gall stones), gall disorders; prostate troubles, chronic inflammation, enlargement and irritation of the prostate gland; stomach disorders; indigestion; chronic sinus infections; diseases of the liver, particularly hyperemia and fatty degeneration; aching joints, lameness; sterility; pyorrhoea; hives; obesity; and general debility.

In truth and in fact the use of respondents' said water, whether by drinking or external application, will not cure, nor is it beneficial in the treatment of all, or any of, the diseases, ailments, afflictions, and conditions above set out.

PAR. 3. Respondents, in said booklets, leaflets, circulars, and other written matter so distributed and circulated among prospective purchasers of their said water, falsely represent and imply that their said water acts "like magic"; "cures almost everything"; "aids digestions"; "restores energy"; is "beneficial to general health"; "keeps you fit"; "keeps you well"; that it has "eliminated tired feeling"; "maintains healthy digestive tract"; that it has "improved hearing"; is "indis-

pensible to health"; "acts as a natural tonic"; "restores mental alertness and vigor"; "will help every living thing"; assures "all year round health and long life"; "supplies every one of the 16 elements in body"; and contains "valuable medicinal properties."

In truth and in fact respondents' said water not only has not acted and does not act like magic, but has not acted and does not act at all on the human body in any different manner than does any pure, potable water, nor does it contain any elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any pure, potable water, and its use has not resulted and does not result in the benefits claimed for it by said respondents as above set out.

PAR. 4. Respondents, in the course and conduct of their business as aforesaid, and by the means and in the manner aforesaid, falsely represent and imply that the use of their said water "reduces surplus weight naturally, dissolving excess fat." In truth and in fact the use of respondents' said water, whether internally or externally, not only will not reduce surplus weight naturally, but it will not reduce surplus weight at all, nor will it dissolve excess fat.

PAR. 5. Many persons located in the said several States of the United States and in the District of Columbia desire to purchase or obtain a remedy or treatment that will cure, or is beneficial in the treatment of, the diseases, ailments, afflictions, and conditions about which said respondents have made and do make the representations and implications as hereinabove alleged. The acts, practices, and methods of the respondents, as hereinabove alleged, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of said prospective purchasers, and have caused and do cause such purchasers erroneously to believe that the said false representations and implications are true and that the respondents' said water will cure, or is beneficial in the treatment of, said diseases, ailments, afflictions, and conditions, and cause a substantial portion of such persons, because of such erroneous belief, to purchase respondents said water, thereby diverting trade to the respondents from their competitors who do not use the acts, practices, and methods used by the respondents, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 6. The acts, practices, and methods of the respondents, as hereinabove alleged, are all to the prejudice of the public and the respondents' said 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 March 3, 1936, issued and subsequently served its complaint in this proceeding upon the respondents Capon Water Company, a corporation, Capon Springs Mineral Water, Inc., a corporation, and Louis Austin, 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, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward W. Thomerson, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Phillip W. Austin, attorney for the respondents; and said testimony and other 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 other evidence, and briefs in support of the complaint in opposition thereto; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Capon Water Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has its principal office and place of business at 1712 Walnut Street, Philadelphia, Pa. It is engaged in the sale and distribution of a so-called mineral water which it secures from the respondent Capon Springs Mineral Water, Inc.

Respondent Capon Springs Mineral Water, Inc., is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business at Capon Springs, W. Va. This respondent owns and operates certain springs located at Capon Springs, W. Va., from which it secures so-called mineral water which it sells to the respondent Capon Water Company, and to other purchasers located at various points in the several States of the United States and in the District of Columbia. Respondent Capon Springs Mineral Water, Inc., also has an office

and place of business at 1712 Walnut Street, Philadelphia, Pa., which is the principal office and place of business of the respondent Capon Water Company.

Respondent Louis Austin is an individual, and he is president and manager of, and owns the majority of the stock in, both of the corporate respondents, and in his capacity as president and manager he controls and directs the activities of the two corporate respondents in the sale and distribution of said water. Respondent Louis Austin has so intermingled the affairs and the businesses of the two corporate respondents that it is not possible to differentiate the acts of one of the corporate respondents from the acts of the other of the corporate respondents, and both of said corporate respondents have been used by the respondent Louis Austin as instrumentalities in the furtherance of his policies in connection with the sale and distribution of said water. Said corporate respondents and the said respondent Louis Austin have cooperated fully and have acted in concert in doing the acts and things hereinafter set out.

PAR. 2. Respondent Louis Austin causes all sales of said water in Philadelphia and vicinity to be made by and through the respondent Capon Water Company, and causes all sales of said water to customers located in States other than the States of Pennsylvania and West Virginia to be made by and through the respondent Capon Springs Mineral Water, Inc. When orders for water from out-of-State customers are received by either of said corporate respondents, the order is transmitted to, and filled by, the corporate respondent Capon Springs Mineral Water, Inc. In the course and conduct of their business, as above stated, said respondents cause said water, when sold, to be shipped from said place of business in the State of Pennsylvania, or said place of business in the State of West Virginia, into and across the several States of the United States and the District of Columbia, to the purchasers thereof located at various points in said several States of the United States, other than in the States of Pennsylvania and West Virginia, and in the District of Columbia.

Respondents market said water through dealers for resale to the public and by sales direct to the purchasing and consuming public.

PAR. 3. Respondents are in substantial competition in commerce between and among the several States of the United States and in the District of Columbia, with individuals, firms, partnerships, and corporations, who are engaged in said commerce in the business of selling and distributing so-called mineral waters and drugs and medicinal preparations used and useful in the treatment of the various diseases, ailments, and conditions in which the respondents recommend the use of their said water.

PAR. 4. Said respondents cause to be placed upon the containers in which said water is sold and distributed in interstate commerce by Capon Springs Mineral Water, Inc., a label upon which appears, among others, the following statement:

For Specific Purposes
and Physicians' Statements Consult
Capon Water Co.
1712 Walnut St.
Philadelphia

When requests for advertising matter are received by either the respondent Capon Water Company or the respondent Capon Springs Mineral Water, Inc., such requests are usually complied with by the respondent Capon Water Company mailing to the person making the request one or more of the pamphlets, booklets, or leaflets hereinafter described, though on occasions the respondent Capon Spring Mineral Water, Inc., mails from its Philadelphia office such advertising matter in response to such requests.

PAR. 5. Respondents, in the course and conduct of their business as aforesaid, distribute and circulate among prospective purchasers of their said water pamphlets, booklets, and leaflets and other written matter containing many statements concerning the curative qualities of said water. Many of said statements are purportedly made by doctors and laymen, and the remainder by the respondents. In said pamphlets, booklets, and leaflets respondents represent and imply that the use of said water alone will cure kidney troubles; kidney pains; nephritis; bladder trouble; gout; rheumatism; syphilitic rheumatism; arthritis; neuritis; hyperacidity, uric acid, toxic poisons, acid conditions, acid poisons; catarrhal affections of the stomach, bowels, organs of respiration, kidneys and bladder; uterine catarrh; scrofulosis; diabetes mellitus; diabetes; skin diseases, ivy poison, and other skin affections; diseases of the urinary, digestive and reproductive organs; diseases peculiar to women, female disorders, dysmenorrhea, leucorrhea, amenorrhea; high blood pressure; constipation and irregular bowels; kidney and gall stones and gall disorders; prostate troubles, chronic inflammation, enlargement and irritation of the prostate gland; stomach disorders and indigestion; chronic sinus infections; diseases of the liver; aching joints; lameness; sterility; pyorrhea; hives; obesity and general debility.

In truth and in fact the use of said water alone, either externally or internally, will not cure kidney troubles, kidney pains, nephritis, bladder trouble; gout; rheumatism; syphilitic rheumatism; arthritis; neuritis; hyperacidity, uric acid, toxic poisons, acid conditions, acid

poisons; catarrhal affections of the stomach, bowels, organs of respiration, kidneys and bladder; uterine catarrh; scrofulosis; diabetes mellitus; diabetes; skin diseases, ivy poison and other skin affections; diseases of the urinary, digestive and reproductive organs; diseases peculiar to women, female disorders, dysmenorrhea, leucorrhea, amenorrhea; high blood pressure; constipation and irregular bowels; kidney and gall stones and gall disorders; prostate troubles, chronic inflammation, enlargement and irritation of the prostate gland; stomach disorders and indigestion; chronic sinus infections; diseases of the liver; aching joints; lameness; sterility; pyorrhea; hives; obesity; and general debility.

PAR. 6. The acts and practices of the respondents, as hereinabove set forth, have the tendency and capacity to, and do, mislead and deceive the purchasing public and cause them erroneously to believe that the use of said water alone will cure the various diseases, ailments, and conditions for which the respondents represent that said water is a cure, and cause them, because of said erroneous belief, to purchase respondents' said water. As a direct consequence of the acts and practices of the respondents, as hereinabove set forth, trade in said commerce is unfairly diverted to the respondents from their competitors who do not use the acts and practices used by the respondents to the substantial injury of such competitors in said commerce and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents Capon Water Company, Capon Springs Mineral Water, Inc., and Louis Austin are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress 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, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, briefs filed herein by Edward W. Thomerson, counsel for the Commission, and by Philip W. Austin, counsel for the respondents, and the Commission having made its findings as

to the facts and its conclusion that the 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, Capon Water Company, a corporation, and Capon Springs Mineral Water, Inc., a corporation, their officers, directors, agents, and employes, and Louis Austin, in connection with the offer for sale, sale, and distribution of the water known and described as "Capon Springs water" in interstate commerce and in the District of Columbia, do forthwith cease and desist from representing, directly or by implication, that the use of said water alone, either externally or internally, will cure kidney troubles; kidney pains, nephritis; bladder trouble; gout; rheumatism; syphilitic rheumatism; arthritis; neuritis; hyperacidity, uric acid, toxic poisons, acid conditions, acid poisons; catarrhal affections of the stomach, bowels, organs of respiration, kidneys and bladder; uterine catarrh, scrofulosis; diabetes mellitus; diabetes; skin diseases, ivy poison and other skin affections; diseases of the urinary, digestive and reproductive organs; diseases peculiar to women, female disorders, dysmenorrhea, leucorrhoea, amenorrhoea; high blood pressure; constipation and irregular bowels; kidney and gall stones and gall disorders; prostate troubles, chronic inflammation, enlargement and irritation of the prostate gland; stomach disorders and indigestion; chronic sinus infections; diseases of the liver; aching joints; lameness; sterility; pyorrhoea; hives; obesity; and general debility.

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

IN THE MATTER OF
DILLING & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2915. Complaint, Aug. 28, 1936—Decision, Jan. 20, 1938

Where a corporation engaged in manufacture and sale of candy, including various packages or assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included assortments composed of (1) number of pieces of candy, together with number of larger pieces and push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of smaller pieces or one of larger pieces, in accordance with number pushed by chance, and purchaser of last push received one of aforesaid larger pieces, and (2) number of candy bars, together with box of chocolate and punchboard, for sale under a plan, and in accordance with said board's explanatory legend, pursuant to which purchaser received one or two additional bars of candy, in accordance with number punched by chance, and purchaser of last punch received box of candy, and, thereby, value in excess of 5 cents paid, as did chance procurers of bars of candy as aforesaid—

Sold to retailers for display and resale to purchasing public in accordance with aforesaid sales plans said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said products in accordance with aforesaid sales plans, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, so as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by its said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Complaint

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.
Mr. Oren S. Hack, 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 Federal Trade Commission, having reason to believe that Dilling & 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 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 is a corporation, organized under the laws of Indiana, with its principal office and place of business at Dakota and Morris Streets and Chocolate Avenue, in the city of Indianapolis, State of Indiana. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Indianapolis, State of Indiana, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to retail dealers various 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. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments manufactured and distributed by respondent is composed of a number of pieces of candy and a number of larger pieces of candy, together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a legend or number is disclosed. Sales are 1 cent each, and the card bears statements informing customers and prospective customers that certain specified legends or numbers entitle the purchaser to one of the small pieces of candy, and that certain other specified legends or numbers entitle the purchaser to one of the larger pieces of candy. The purchaser of the last push from said card is also entitled to one of the larger pieces of candy. The legends or numbers on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The fact as to whether a purchaser receives one of the small bars of candy or one of the larger bars of candy for the price of 1 cent is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy and a box of chocolate, together with a device commonly called a punch board. The said bars of candy and box of chocolate are distributed to the consuming public by means of said punch board in the following manner:

The bars of candy are offered for sale at a price of 5 cents each. Each purchase of a bar entitles the purchaser to one push on the punch board. When punch is made from said board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement informing the customer as to which numbers receive one or two additional bars of candy. The numbers on said board are effectively concealed from the purchasers until a selection has been made and the particular punch separated from the board. The purchaser qualifying for the last punch on the board receives the box of chocolate. The several bars of candy and box of chocolate are worth more than 5 cents, and a purchaser who obtains one of the numbers calling for additional bars of candy, or the box of chocolate, receives the same for the price of 5 cents. The bars of candy and the box of chocolate are thus distributed from punches on said board wholly by lot or chance.

PAR. 3. The retail dealers to whom respondent sells its assortments expose said assortments for sale, and sell said candy to the purchas-

ing public in accordance with the aforesaid sales plans. 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 plans hereinabove set forth, with the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy, (b) additional bars of candy, or (c) boxes of chocolate.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

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.

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 28, 1936, issued, and on August 31, 1936, served, its complaint in this proceeding upon the respondent, Dilling & 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, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which amended answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and amended answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized under the laws of Indiana, with its principal office and place of business at

Dakota and Morris Streets and Chocolate Avenue, in the city of Indianapolis, State of Indiana. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Indianapolis, State of Indiana, to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been, for several years last past, a course of trade and commerce by said respondent in such candy between and among the various States of the United States. In the course and conduct of the said business respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to retail dealers various 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.

One of said assortments manufactured and distributed by respondent is composed of a number of pieces of candy and a number of larger pieces of candy, together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a legend or number is disclosed. Sales are 1 cent each and the card bears statements informing customers and prospective customers that certain specified legends or numbers entitle the purchaser to one of the small pieces of candy, and that certain other specified legends or numbers entitle the purchaser to one of the larger pieces of candy. The purchaser of the last push from said card is also entitled to one of the larger pieces of candy. The legends or numbers on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The fact as to whether a purchaser receives one of the small bars of candy or one of the larger bars of candy for the price of 1 cent is thus determined wholly by lot or chance.

Another assortment manufactured and distributed by respondent is composed of a number of bars of candy and a box of chocolate, together with a device commonly called a punch board. The said bars of candy and box of chocolate are distributed to the consuming public by means of said punch board in the following manner:

The bars of candy are offered for sale at a price of 5 cents each. Each purchase of a bar entitles the purchaser to one push on the punch board. When a punch is made from said board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement informing the customer as to which numbers receive one or two additional bars of candy. The numbers on said board are effectively concealed from the purchasers until a selection has been made and the particular punch separated from the board. The purchaser qualifying for the last punch on the board receives the box of chocolate. The several bars of candy and box of chocolate are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for additional bars of candy, or the box of chocolate, receives the same for the price of 5 cents. The bars of candy are thus distributed from punches on said board wholly by lot or chance.

PAR. 3. The retail dealers to whom respondent sells its assortments expose said assortments for sale, 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.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure larger pieces of candy or additional bars of candy.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Dilling & Company, 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 and the amended answer of respondent, Dilling & Company, admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, Dilling & Company, its officers, representatives, agents, and employees, in connection with the offer-

Order

26 F. T. C.

ing for sale, sale, and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public;

3. Supplying to or placing in the hands of dealers assortments of candy together with a device commonly called a push card, or a device commonly called a punch board, for use or which may be used in distributing or selling the said candy to the public at retail;

4. Furnishing to dealers a device commonly called a push card, or a device commonly called a punch board, either with packages or assortments of candy or separately, which push card or punch board is to be used or may be used in distributing or selling said candy to the public.

It is further ordered, That the respondent, Dilling & Company, a corporation, shall within 30 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

ARABIAN TOILET GOODS 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 2981. Complaint, Nov. 13, 1936—Decision, Jan. 20, 1938

Where a corporation engaged in manufacture, sale, and distribution of face powders, skin tonics, and skin creams—

- (a) Represented, through expression "CERTIFIED COSMETICS" displayed on labels of practically all of its products, that its said cosmetics had been certified by some governmental or official authority;
- (b) Represented, through such expressions on labels of its "Wrinkle Eradicator" or "Wrinkle Creme" as "Combined with 100% Pure Turtle Oil" or "Combined with pure turtle oil," and "Rejuvenates the skin and removes lines and wrinkles * * *," and "Will soften and nourish the skin. * * *," that its said skin cream, as thus variously designated, had such qualities or properties and would accomplish said results, and contained turtle oil; and
- (c) Represented, through sales girls or demonstrators employed by it for such purposes at appropriate places in department stores handling its said products, that its said "Wrinkle Creme" was guaranteed by the United States Government to contain pure turtle oil, and that such oil had been successfully used by the Government in removing scar tissue and wrinkles from wounded soldiers, and that use thereof was indorsed by the Government as a skin food and rejuvenator;

Facts being products in question had not been certified in any respect by any government or official authority, said cream would not rejuvenate the skin or nourish the same, or remove or eradicate wrinkles and lines, and did not contain turtle oil, and had not been guaranteed by the Government as so doing, and such oil had not been successfully used thereby as above represented, and Government had not indorsed use thereof as aforesaid, and use of creams or oils, notwithstanding certain temporary effects, cannot eliminate or eradicate lines and wrinkles or accomplish other results as aforesaid represented;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that its said cosmetics had been certified as above set forth, and that its said "Wrinkle Creme" was composed as above claimed, and would accomplish results as above specified, and had been guaranteed by the Government to contain pure turtle oil, successfully used and indorsed by said Government as aforesaid, and with result, further, that public, acting under mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its said products and trade was unfairly diverted to it from competitors likewise engaged in manufacture, sale and distribution, or in sale and distribution, of cosmetics, and who truthfully represent the character and nature of their products and the efficacy and beneficial value thereof:

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

Complaint

26 F. T. C.

Before *Mr. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Moody, Eberle, Dierssen & Crane, 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 Arabian Toilet Goods Company, 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 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, Arabian Toilet Goods Company, is a corporation, organized in 1923, and doing business under the laws of the State of Illinois, having its principal office and place of business at 225-227 West Huron Street, Chicago, Ill.

Respondent is now, and for several years last past has been, engaged in the manufacture and sale of cosmetics to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and for several years last past has caused, its products, when sold by it, to be shipped from its place of business in Chicago, Ill., to the purchasers thereof, located in the various States of the United States, and in the District of Columbia. There is now, and has been for several years last past, a constant current of trade and commerce, by the respondent, in cosmetics, between and among the various States of the United States, and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other corporations, individuals, firms, and partnerships, engaged in the sale of cosmetics in commerce 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, as described in paragraph 1 hereof, respondent offers for sale and sells its cosmetics, some of which are labeled as follows:

WRINKLE CREME

Combined with pure turtle oil. Will soften and nourish the skin. Leave on over night. If skin is abnormally dry and wrinkled, use "Wrinkle Creme and Muscle Oil mixed."

Complaint

"ARABIAN WRINKLE ERADICATOR

Combined With

100% Pure Turtle Oil

Rejuvenates the skin and removes lines and wrinkles around the eyes, throat, and mouth. First cleanse with Arabian Cleansing Cream, then apply Arabian Wrinkle Eradicator, leaving it on over night. Arabian Muscle Oil may be applied to give added strength and nourishment to the tissues."

In truth and in fact, the products so described and represented do not possess such properties as to nourish or rejuvenate the human skin, and neither will they eradicate wrinkles or give strength and nourishment to the tissues.

PAR. 3. Said respondent, acting through its duly authorized demonstrators and saleswomen whom it employs to display, demonstrate and sell its products in department stores, stated and represented to customers and prospective customers that its "Arabian Wrinkle Creme" is guaranteed by the United States Government to contain pure turtle oil; that such oil has been successfully used by the Government in removing scar tissue and wrinkles from wounded soldiers; and that the use of this ingredient is endorsed by the United States Government as a skin food and rejuvenator.

In truth and in fact, the United States Government has not used turtle oil in the manner described, and has not given any such guaranty or indorsement. The amount of turtle oil forming the fatty content of said product was not substantial nor sufficient to warrant the marking, branding, or representation of said product as containing "100% Turtle Oil."

PAR. 4. Said respondent further caused the words "Certified Cosmetics" to appear prominently on the labels affixed to the containers in which certain of its products were packed, sold, and distributed, as well as on the front page of price lists and other advertising literature distributed to purchasers and prospective purchasers wherein its products were sold.

In truth and in fact, said products were not certified, either as to their purity or in any other respect by any Government or other official authority.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and does mislead a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said cosmetics from respondent on account of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph

1 hereof, manufacturers and distributors of cosmetics who do not misrepresent the therapeutic qualities of their products, or otherwise publish claims for their products which are untrue, who likewise advertise, sell, and distribute their cosmetics among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors, thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 6. The above alleged acts and practices of respondent are all to the injury and 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 November 13, 1936, issued, and on November 17, 1936, served, its complaint in this proceeding upon respondent, Arabian Toilet Goods 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 other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by George J. Crane, attorney for the respondent, before John L. Hornor, an examiner of the Commission theretofore duly designated by it; and said testimony and other 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 other evidence, briefs in support of the complaint and in opposition thereto (no oral argument having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Arabian Toilet Goods Company, Inc., is an Illinois corporation organized on August 3, 1923. Its principal office and place of business are at 225-227 West Huron Street, Chicago, Ill. It is engaged in the manufacture, sale, and distribution of cosmetics such as face powder, skin tonics and skin creams.

Respondent's cosmetics are manufactured at its place of business in Chicago, Ill., and distributed through department and drug stores throughout the United States. When orders are received for respondent's cosmetics, it causes them to be shipped from its place of business at Chicago, Ill., to the purchasers thereof located at various points in the States of the United States other than the State of Illinois. Since the date of incorporation, the respondent has maintained a course of trade in said products, in commerce among and between the various States of the United States and in the District of Columbia.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution, or in the manufacture, sale, and distribution, of cosmetics in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. Respondent has advertised, and is now advertising, its cosmetics by means of labels attached to containers in which its products are packed, by sales talks, and by advertisements in daily newspapers having an interstate circulation. Until the early part of 1936, the front label of one of respondent's skin creams read as follows:

ARABIAN
WRINKLE ERADICATOR

The back label of said cream read as follows:

ARABIAN WRINKLE ERADICATOR
Combined with
100% Pure Turtle Oil
Rejuvenates the skin and
removes lines and wrinkles
around the eyes, throat and
mouth. * * *

The front label in current use on said cream reads:

ARABIAN
CERTIFIED COSMETICS

The back label in current use on the cream reads as follows:

WRINKLE CREME

Combined with pure turtle oil. Will
soften and nourish the skin. * * *

The expression "Certified Cosmetics" appears on the labels used on practically all of respondent's products.

The above statements serve as representations to purchasers and prospective purchasers and to the public generally that respondent's cosmetics have been certified by some governmental or official authority; that its skin cream, now designated Wrinkle Creme, will rejuvenate the skin and remove or eradicate wrinkles and lines; that said creme contains turtle oil and will nourish the skin.

One of respondent's methods of selling its products is through sales girls or demonstrators employed by respondent on a salary or commission basis. These sales girls or demonstrators occupy booths at appropriate places in the department stores which handle respondent's products. At these booths, the sales girls demonstrate and promote the sales of respondent's cosmetics. In promoting the sale of respondent's cosmetics, said demonstrators and sales girls have represented to purchasers and prospective purchasers (1) that respondents Wrinkle Creme was guaranteed by the United States Government to contain pure turtle oil; (2) that such oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers; and (3) that the use of said turtle oil is endorsed by the United States Government as a skin food and rejuvenator.

PAR. 3. Respondent's skin creme, now labeled Wrinkle Creme, contains white wax, spermacetti, anhydrous lanolin, cocoa butter, water, liquid petrolatum, perfume oil, and coloring. At one time said creme contained turtle oil, 1 to 2 percent; aquaphill, 2½ to 5 percent; cocoa butter, 2 to 2½ percent; beeswax, 45 to 46 percent; spermacetti, 45 to 46 percent; and mineral oil.

Based upon the testimony and other evidence in this record, it is found that respondent's products have not been certified in any respect by any government or official authority; respondent's Wrinkle Creme will not rejuvenate the skin and remove or eradicate lines and wrinkles; it will not nourish the skin; and it does not now contain turtle oil. The United States Government has not guaranteed that respondent's Wrinkle Creme contains pure turtle oil. Turtle oil has not been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers and the use of turtle oil is not endorsed by the United States Government as a skin food or as a rejuvenator. The skin obtains its food or is nourished by the blood stream as are the other parts of the body and, although the

use of creams or oils may tend to temporarily soften the skin and make lines and wrinkles less noticeable in some instances, nevertheless, they cannot be eliminated or eradicated thereby. Scars, especially superficial ones, can be made less noticeable through use of creams, oils, heat, and massage but they cannot be entirely eliminated by these treatments. The accepted specific treatment for removal of scars is surgery.

PAR. 4. The use by respondent of the representations set forth above in its advertising literature and by its sales persons has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous beliefs that respondent's cosmetics have been certified by some governmental or other official authority; that its facial cream designated Wrinkle Creme will eradicate or remove wrinkles and lines from the skin; that said Wrinkle Creme contains turtle oil and will nourish the skin; that said Wrinkle Creme has been guaranteed by the United States Government to contain pure turtle oil; that such oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers; and that the use of said turtle oil is endorsed by the United States Government as a skin food and rejuvenator. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the public has purchased a substantial volume of respondent's said products with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the manufacture, sale, and distribution, or in the sale and distribution of cosmetics who truthfully represent the character and nature of their cosmetics and the efficacy and beneficial value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Arabian Toilet Goods Company, Inc., 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 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 other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested), 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, Arabian Toilet Goods Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cosmetics in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That its cosmetics have been certified by any governmental or official authority;

2. That its skin cream now designated as Wrinkle Creme, or any other cream containing substantially the same ingredients or possessing the same properties, sold under that name or any other name

(a) Will nourish or rejuvenate the skin;

(b) Will remove wrinkles and lines from the skin;

(c) Contains turtle oil or is guaranteed by the United States Government to contain pure turtle oil;

3. That turtle oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers;

4. That the use of turtle oil has been endorsed or approved by the United States Government as a skin food and rejuvenator.

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.

Syllabus

IN THE MATTER OF

NATIONAL CANDY COMPANY, INC., IN ITS OWN NAME
AND RIGHT, AND TRADING AS PAN CONFECTION
FACTORYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1802. Complaint, Apr. 22, 1937¹—Decision, Jan. 22, 1938*

Where a corporation engaged in manufacture and sale of candies, including assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of (1) number of 2-for-a-penny pieces of chocolate covered candies of uniform size and shape, together with certain other articles of merchandise to be given as prizes to purchasers procuring, by chance, one of a relatively few of said uniform pieces, colored center of which differed from that of majority, and to purchaser of last of such uniform pieces in assortment, and together with, also, explanatory display card for retailers' use, and of (2) number of chocolate-covered candy malted milk balls, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, and in accordance with number pushed by chance, one or more of said malted milk balls, up to 20, and pursuant to which, further, purchaser of last push in first 3 of board's 4 sections received 5 of such balls and purchaser of last push received 15—

Sold to wholesalers, jobbers, and retailers, for display and resale to purchasing public in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, in accordance with aforesaid sales plan, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom; With result that many dealers in and ultimate purchasers of candy were attracted by its said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and

¹ Amended and supplemental complaint. Original findings and order in this matter on April 3, 1934 (18 F. T. C. 282), were vacated and set aside by order of April 21, 1937. See 24 F. T. C. 1395.

Complaint

26 F. T. C.

tend to create monopoly thereof in it and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent methods:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Lowenhaupt, Waite & Stolar, of St. Louis, Mo., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on April 30, 1930, issue its complaint herein, charging and alleging that respondent herein was and had been guilty of 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"; and

Whereas, This Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, Acting in the public interest pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that the National Candy Company, Inc., has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New Jersey, with its principal office and place of business located at 208 North Broadway, in the city of St. Louis, State of Missouri, and with a place of business located at 341 West Erie Street, in the city of Chicago, State of Illinois. Respondent conducts its business from its principal office and place of business in St. Louis, Mo., as the National Candy Company, Inc., and it does business at its Chicago office and place of business as the Pan Confection Factory, National Candy Company, Inc.

Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution

thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States. It causes said products when sold to be transported from its principal place of business in the city of St. Louis, State of Missouri, and from its place of business in the city of Chicago, State of Illinois, to the purchasers thereof in the State of Missouri and in the State of Illinois and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce 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 sells and has sold to wholesale dealers and jobbers and to retail dealers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of a number of pieces of chocolate-covered candies of uniform size and shape, together with certain other articles of merchandise, which other articles of merchandise are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of said chocolate-covered candies of uniform size and shape have centers of the same color, but a small number thereof have centers of a different color. The said pieces of candy of uniform size and shape retail at the price of 2 for 1 cent, but the purchaser who procures one of said candies having a center of a color different from the majority of said candies is entitled to receive, and is to be given free of charge, one of the said other articles of merchandise hereinbefore referred to. The purchaser of the last piece of chocolate-covered candies of uniform size and shape is entitled to receive, and is to be given free of charge, one of the other articles of merchandise. The color of the center of said pieces of chocolate-covered candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a piece of candy having a center colored differently from the majority and the purchaser of the last piece of candy in said assortment are thus to procure one of the other articles of merchandise wholly by chance.

Respondent furnishes to said wholesale dealers and jobbers and to retail dealers with each of said assortments a display card to be used

by the retail dealer in offering said candies for sale to the public, which display card bears a legend or statement informing the prospective purchaser that the candy contained in said assortment is being distributed in accordance with the above-described sales plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of chocolate-covered candy malted-milk balls, together with a device commonly called a "push card." The candy contained in said assortment is distributed to the consuming public by means of the said push card in the following manner:

The push card has a number of partially perforated disks, and the said disks are arranged on said card in four sections. Concealed within each of said disks is a legend. Sales are 1 cent each, and the card has statements or legends at the top thereof stating that certain specified legends entitled the purchaser to 1 of said chocolate-covered malted-milk balls; that certain other specified legends entitled the purchaser to 2 of said candy balls; others to 3 candy balls; others to 5 candy balls; others to 6 candy balls; others to 8 candy balls; others to 10 candy balls; and others to 20 candy balls. The card also bears statements or legends stating that the last play in each of the first 3 sections completed receives 5 balls. The last play on the card receives 15 balls. The statements or legends in said partially perforated disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives 1, 2, 3, 5, 6, 8, 10, 15, or 20 of said chocolate-covered malted-milk balls is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments of candy resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell the same to the purchasing public in accordance with the aforesaid sales plans. 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 plans hereinabove set forth. Such sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said candy in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) another article of merchandise; or (b) additional chocolate-covered malted-milk balls.

The use by respondent of said methods in the sale of candy, and the sale of candy by and through the use thereof and by the aid of

Complaint

said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said methods has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme.

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 candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and in 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 methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said methods, acts, and practices 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 April 30, 1930, issued and served its complaint in this proceeding upon the respondent, National Candy Company, Inc., a corporation, in its own name and right and trading as Pan Confection Factory, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, on April 22, 1937, the Commission issued and served its amended and supplemental complaint on the respondent, charging it with the use of unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint on April 30, 1930, as aforesaid. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of the amended and supplemental complaint to be true and waiving the taking of further evidence and all other intervening procedure, which amended answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint and amended answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New Jersey, with its principal office and place of business located at 208 North Broadway, in the city of St. Louis, State of Missouri, and with a place of business located at 341 West Erie Street, in the city of Chicago, State of Illinois. Respondent conducts its business from its principal office and place of business in St. Louis, Mo., as the National Candy Company, Inc., and it does business at its Chicago office and place of business as the Pan Confection Factory, National Candy Company, Inc.

Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States. It causes said

Findings

products when sold to be transported from its principal place of business in the city of St. Louis, State of Missouri, and from its place of business in the city of Chicago, State of Illinois, to the purchasers thereof in the State of Missouri and in the State of Illinois and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce 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 sells and has sold to wholesale dealers and jobbers and to retail dealers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of a number of pieces of chocolate-covered candies of uniform size and shape, together with certain other articles of merchandise, which other articles of merchandise are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of said chocolate-covered candies of uniform size and shape have centers of the same color, but a small number thereof have centers of a different color. The said pieces of candy of uniform size and shape retail at the price of 2 for 1 cent, but the purchaser who procures one of said candies having a center of a color different from the majority of said candies is entitled to receive, and is to be given free of charge, one of the said other articles of merchandise hereinbefore referred to. The purchaser of the last piece of chocolate-covered candies of uniform size and shape is entitled to receive, and is to be given free of charge, one of the other articles of merchandise. The color of the center of said pieces of chocolate-covered candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a piece of candy having a center colored differently from the majority in said assortment are thus to procure one of the other articles of merchandise wholly by chance.

Respondent furnishes to said wholesale dealers and jobbers and to retail dealers with each of said assortments a display card to be used by the retail dealer in offering said candies for sale to the public, which display card bears a legend or statement informing

the prospective purchaser that the candy contained in said assortment is being distributed in accordance with the above described sales plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of chocolate-covered candy malted-milk balls, together with a device commonly called a "push card." The candy contained in said assortment is distributed to the consuming public by means of the said push card in the following manner:

The push card has a number of partially perforated disks, and the said disks are arranged on said card in four sections. Concealed within each of said disks is a legend. Sales are 1 cent each, and the card has statements or legends at the top thereof stating that certain specified legends entitle the purchaser to 1 of said chocolate-covered malted-milk balls; that certain other specified legends entitle the purchaser to 2 of said candy balls; others to 3 candy balls; others to 5 candy balls; others to 6 candy balls; others to 8 candy balls; others to 10 candy balls; and others to 20 candy balls. The card also bears statements or legends stating that the last play in each of the first three sections completed receives 5 balls. The last play on the card receives 15 balls. The statements or legends in said partially perforated disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives 1, 2, 3, 5, 6, 8, 10, 15, or 20 of said chocolate-covered malted-milk balls is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, 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.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a number of pieces of candy, or other articles of merchandise.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the

United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit; that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, National Candy Company, Inc., a corporation, in its own name and right and trading as Pan Confection Factory, 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 amended and supplemental complaint of the Commission and the amended answer of respondent, National Candy Company, Inc., a corporation, trading in its own name and right and trading as Pan Confection Factory, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, National Candy Company, Inc., a corporation, trading in its own name and right and trading as Pan Confection Factory, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy contained in said assortments 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 and shape having centers of different colors together with larger pieces of candy or other articles of merchandise which said larger pieces of candy or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

4. Supplying to or placing in the hands of dealers assortments of candy together with a device commonly called a push card, or a device commonly called a punchboard, for use or which may be used in distributing or selling the said candy to the public at retail;

5. Furnishing to dealers a device commonly called a push card, or a device commonly called a punchboard, either with packages or assortments of candy or separately, which push card or punchboard is to be used or may be used in distributing or selling said candy to the public.

Order

It is further ordered, That the respondent, National Candy Company, Inc., a corporation, in its own name, and right and trading as Pan Confection Factory, shall within 30 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
ABRAHAM & STRAUS, INC.

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

Docket 3159. Complaint, June 23, 1937—Decision, Jan. 22, 1938

Where a corporation engaged in operation of department store and in sale and distribution therefrom of women's wearing apparel, pillows, and other allied products, to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in similar sale and distribution of such products; in advertising its said merchandise in newspapers having interstate circulation—

- (a) Made use of such words as "silk," "heavy silk," "pure silk prints," "imported silks," "muffler silks," and "silk jerseys," in representing, designating, and referring to certain pillows and items of women's wearing apparel; and
- (b) Made use of words "crepe" or "taffeta" in designating, describing or referring to pillows, dress goods, and other items as aforesaid, without other modifying word as descriptive of fiber of which made;

Notwithstanding fact said various products, thus advertised and offered, were *not composed of silk, product of cocoon of silkworm*, as long definitely understood in mind of retail dealers and consuming public from word "silk," products of which have long held and still hold great public esteem and confidence for their preeminent qualities, and as understood from words "taffeta" or "crepe" without descriptive qualification, as meaning one of terms applied to fabrics resulting from different types of weaving silk fiber and fabric made from cocoon of silkworm, and, as commonly known and understood by public generally, silk;

With capacity and tendency to mislead and deceive portion of purchasing public into erroneous belief that such articles were made of silk, and to cause them to purchase said articles by reason thereof, and to unfairly divert trade to it from competitors aforesaid; to the substantial injury of competition in commerce:

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

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

Mr. Astor Hogg for the Commission.

Proskauer, Rose & Paskus, 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 Abraham and Straus, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competi-

tion 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, Abraham and Straus, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at Fulton and Hoyt Streets in the city of Brooklyn in said State. It is now, and for many years last past has been, engaged in the business of operating a department store from which it sells and distributes women's wearing apparel, pillows, and other allied products. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in the various States of the United States and in the District of Columbia. It causes, and during the time herein mentioned has caused, its said articles of merchandise, when sold, to be shipped from its place of business in Brooklyn, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondent in said merchandise so sold by it between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of pillows, women's wearing apparel, and other allied products in commerce 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, as described in paragraph 1 herein, respondent, in soliciting the sale of and selling said merchandise, caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation. In said advertising matter certain pillows were, and are, represented, designated, and referred to as "silk" and as "heavy silk." In such advertising matter certain items of women's wearing apparel were advertised, designated, and referred to as "seraceta taffeta," "pure dye, pure silk prints * * * many copies of imported silks * * * washable crepes * * * muffler silks * * * and silk jerseys."

Such statements and representations on the part of respondent serve as representations to members of the public that such products so advertised and offered for sale were silk products. The representations hereinabove set forth are, and were, grossly false and misleading in that said pillows and items of wearing apparel so represented, designated, and referred to are not, and were not, composed

of silk, the product of the cocoon of the silkworm, but were composed of materials other than silk.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the consuming public, a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fiber. Pillows, dress goods, and other items of women's wearing apparel, designated, described, or referred to as "silk," "heavy silks," "seraceta taffeta," "pure dye," "pure silk," "imported silks," "washable crepes," "muffler silks," and "silk jerseys" have been for a long time, and at the present time still are, associated in the public mind with a fabric made from the cocoon of the silkworm, commonly known and understood by the public as "silk."

PAR. 4. The use by respondent of the representations set forth herein have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are, and were, true and to cause them to purchase such items of wearing apparel on account of such erroneous beliefs engendered as above set forth. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the sale of pillows and women's wearing apparel who do not misrepresent the kind of wearing apparel offered for sale. By use of the representations aforesaid, trade has been, and is, unfairly diverted to respondent from said competitors and thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 5. The above alleged acts and practices of 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 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.

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 23d day of June 1937, issued and

subsequently served its complaint in this proceeding upon respondent, Abraham & Straus, 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, W. T. Kelley, chief counsel for the Federal Trade Commission, and Proskauer, Rose & Paskus, counsel for the respondent, executed a stipulation as to the facts wherein it was agreed that the statement of facts therein recited might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts was subsequently approved by the Commission and 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 and said stipulation as to the facts; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Abraham & Straus, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Fulton and Hoyt Streets in the Borough of Brooklyn, city of New York, in said State. It is now, and for many years last past has been, engaged in the business of operating a department store from which it sells and distributes women's wearing apparel, pillows, and other allied products. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in various States of the United States and in the District of Columbia. It causes, and during the time herein mentioned has caused, its said articles of merchandise, when sold, to be shipped from its place of business in Brooklyn, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with persons, firms and partnerships engaged in the sale and distribution of pillows, women's wearing apparel and other allied products, in the

Findings

26 F. T. C.

various States of the United States and in the District of Columbia, some of which said competitors sell and distribute their merchandise in commerce among and between 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 selling its said merchandise, caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation. In said advertising matter, certain pillows were represented, designated, and referred to as "silk" and "heavy silk." In such advertising matter, certain items of women's wearing apparel were advertised, designated, and referred to as "pure dye, pure silk prints * * * many copies of imported silks * * * muffler silks * * * and silk jerseys," and were advertised, designated, and referred to as "taffeta" and "crepe" without a modifying word to indicate the fiber of which the fabric was made.

PAR. 3. In the manner and through the means above stated, respondent represented, and represents, to members of the purchasing public that such products so advertised and offered for sale were silk products. The representations hereinabove set forth are, and were, misleading in that said pillows and items of wearing apparel so represented, designated, and referred to were not, and are not, composed of silk, the product of the cocoon of the silkworm, but were composed of materials other than silk.

PAR. 4. The word "silk" for many years last past has had, and still has, in the mind of the consuming public, a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fiber. Pillows, dress goods, and other items of women's wearing apparel designated, described or referred to as "pure dye," "silk," "heavy silks," "pure silk," "imported silks," "muffler silks," and "silk jerseys" have been for a long time, and at the present time still are, associated in the public mind with a fabric made from the cocoon of the silkworm, commonly known and understood by the public as "silk." Pillows, dress goods, and other items of women's wearing apparel designated, described, or referred to as "taffeta" and "crepe" when used alone, without a modifying word descriptive of the fiber from which they are made, have been for a long time, and at the present time still are, associated in the public mind with a fabric made from the cocoon of the silkworm, commonly known and understood by the public as "silk."

PAR. 5. The use by the respondent of the representations set forth herein have had and now have the capacity and tendency to mislead and deceive a portion of the purchasing public into the erroneous belief that such articles were made of silk, and to cause them to purchase such articles on account of such erroneous beliefs. The representations made by respondent as aforesaid are deceptive and misleading and have the capacity and tendency to unfairly divert trade to respondent from said competitors. Thereby substantial injury is being done and has been done by the respondent to competition in commerce as herein set out.

CONCLUSION

The aforesaid acts and practices of respondent, Abraham & Straus, 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, and a stipulation as to the facts executed by W. T. Kelley, chief counsel for the Federal Trade Commission, and Proskauer, Rose & Paskus, counsel for the respondent, the filing of briefs having been waived, and the Commission having made its finding as to the facts and its conclusion that the 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, Abraham & Straus, Inc., its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of its merchandise, dress goods, and garments in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word or words "silk," "heavy silk," "pure silk prints," "imported silks," "muffler silks," or "silk jerseys," or any word or words of similar import or meaning, to describe products which are not composed wholly of silk, the product of the cocoon of the silkworm, but which are composed of a material or materials other than silk.

2. Using the words "crepe" or "taffeta" to describe, advertise, brand, or label any product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless there is used in immediate connection and conjunction with said words "taffeta" or "crepe," in letters of equal size and conspicuousness, a word or words accurately describing the material or materials from which said products are actually made.

3. Using the words "pure dye" as descriptive of products which are not composed wholly of silk, the product of the cocoon of the silkworm.

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 this order.

Syllabus

IN THE MATTER OF
PEARSON CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2702. Complaint, Jan. 31, 1936—Decision, Jan. 24, 1938*

Where a corporation engaged in manufacture and sale of candy including various packages or assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included assortments composed of—

(1) Number of small pieces of candy, number of larger pieces, and small box of candy, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of small pieces, or one of larger pieces, in accordance with number pushed by chance, and purchaser of last push received the small box of candy;

(2) Number of candy bars, together with small boxes of candy and push card, for sale under plan, and in accordance with card's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one, two or three bars of candy, and purchasers of last push in each of the two sections into which card was divided received box of candy; and

(3) Number of boxes of candy of varying size and article of merchandise, together with punch board, for sale under a plan, and in accordance with board's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one of aforesaid boxes (value of which, and of aforesaid article, exceeded said amount), or nothing other than punch, in accordance with number secured, and last punch received aforesaid article—

Sold to wholesalers and to retailers, for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with said plan, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, so as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method because unlawful, lessen competition therein and tend to create monopoly thereof in it and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competi-

Complaint

26 F. T. C.

tion in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. P. C. Kolinski and *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 Pearson Candy 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 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 is a corporation, organized under the laws of Minnesota with its principal place of business in the city of Minneapolis, State of Minnesota. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to wholesale and retail dealers, various 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. Certain of said packages

are hereinafter described for the purpose of showing the methods used by respondent but this list is not inclusive of the various packages nor does it include all the details of the sales plan which respondent has been or is using in the distribution of candy by lot or chance.

(a) One of said assortments is composed of a number of small pieces of candy, a number of larger pieces of candy and a small box of candy together with a device commonly called a push card. The candy contained in said assortments is distributed to purchasers in the following manner:

The push card has a number of partially perforated disks and when a push is made and the disk separated from the card a number is disclosed. Sales are 1 cent each and the card bears statements informing customers and prospective customers which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy and that the purchaser of the last push from said card receives the small box of candy. The numbers on said card are effectively concealed from customers and prospective customers until a push or selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, or the small box of candy is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of candy bars, two small boxes of candy, and a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card is divided into two sections and each section has a number of partially perforated disks. When a push is made a number is disclosed. Sales are 5 cents each and the card bears statements informing customers and prospective customers that certain specified numbers receive one bar of candy, that certain other specified numbers receive two bars of candy, that certain other specified numbers receive three bars of candy, that the last push in one section receives one of the boxes of candy, and the last push on the board receives the other box of candy. The numbers on the disks or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. That fact as to whether a purchaser receives one candy bar, two candy bars, three candy bars or one of the small boxes of candy for the price of 5 cents is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by the respondent includes a number of boxes of candy of varying size and another article of merchandise together with a device commonly called a punchboard. The box of candy and the other article of merchandise are distributed to the purchasing public by means of said punchboard in the following manner:

The board has a number of holes therein and secreted in each hole is a slip of paper bearing a number. When a punch is made from said board one of these slips is disclosed. The board bears legends or statements informing the customers and prospective customers as to which numbers receive particular pieces of candy and that the last punch of said board receives the other article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by purchasing the last punch on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy and other article of merchandise are worth more than 5 cents each. The numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch has been made and the slip of paper separated from the board. The fact as to whether a purchaser receives nothing for his money, one of the boxes of candy or the other article of merchandise for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, 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 products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) and (b) larger pieces of candy or small box of candy, (c) boxes of candy or another article of merchandise.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency

unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

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.

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 31, 1936 issued, and on February 3, 1936 served, its complaint in this proceeding upon the respondent, Pearson Candy 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, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an amended answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which amended answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and amended answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized under the laws of Minnesota with its principal place of business in the city of Minneapolis, State of Minnesota. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof in various other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to wholesale and

retail dealers, various 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.

(a) One of said assortments is composed of a number of small pieces of candy, a number of larger pieces of candy, and a small box of candy together with a device commonly called a push card. The candy contained in said assortments is distributed to purchasers in the following manner:

The push card has a number of partially perforated disks and when a push is made and the disk separated from the card a number is disclosed. Sales are 1 cent each and the card bears statements informing customers and prospective customers which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy and that the purchaser of the last push from said card receives the small box of candy. The numbers on said card are effectively concealed from customers and prospective customers until a push or selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy or one of the larger pieces of candy is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of candy bars, two small boxes of candy, and a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card is divided into two sections and each section has a number of partially perforated disks. When a push is made a number is disclosed. Sales are 5 cents each and the card bears statements informing customers and prospective customers that certain specified numbers receive one bar of candy, that certain other specified numbers receive two bars of candy, that certain other specified numbers receive three bars of candy, that the last push in one section receives one of the boxes of candy and the last push on the board receives the other box of candy. The numbers on the disks or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one candy bar, two candy bars or three candy bars for the price of 5 cents is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by the respondent includes a number of boxes of candy of varying size and another article of merchandise together with a device commonly called a punchboard. The box of candy and the other article of merchan-

dise are distributed to the purchasing public by means of said punch-board in the following manner:

The board has a number of holes therein and secreted in each hole is a slip of paper bearing a number. When a punch is made from said board one of these slips is disclosed. The board bears legends or statements informing the customers and prospective customers as to which numbers receive particular boxes of candy and that the last punch of said board receives the other article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by purchasing the last punch on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy and other article of merchandise are worth more than 5 cents each. The numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch has been made and the slip of paper separated from the board. The fact as to whether a purchaser receives nothing for his money or one of the boxes of candy for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, 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.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure larger pieces of candy, additional bars of candy, or boxes of candy.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Pearson Candy Company, 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."

CEASE AND DESIST ORDER

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of respondent, Pearson Candy Company, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commis-

sion 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, Pearson Candy Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy contained in said assortments to the public;

3. Supplying to or placing in the hands of dealers assortments of candy together with a device commonly called a push card, or a device commonly called a punchboard, for use or which may be used in distributing or selling the said candy to the public at retail;

4. Furnishing to dealers a device commonly called a push card, or a device commonly called a punchboard, either with packages or assortments of candy or separately, which push card or punchboard is to be used or may be used in distributing or selling said candy to the public.

It is further ordered, That the respondent, Pearson Candy Company, a corporation, shall within 30 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 the order to cease and desist hereinabove set forth.

Syllabus

**WALTER T. HALL AND MINNIE M. HALL, INDIVIDUALLY,
AND TRADING AS WALTER T. HALL & COMPANY**

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

Docket 2696. Complaint, Jan. 31, 1936—Decision, Jan. 25, 1938

Where a firm engaged in manufacture and sale of packages or assortments of candy, so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, or so-called "draw" or "deal" assortments, sale, and distribution of which type candy, affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who constitute substantial number of purchasers and consumers of such type of candy where prize in form of larger pieces is to them attractive, and appearance of which "draw" or "deal" assortments in the markets of manufacturers of "straight" merchandise has been followed by marked decrease in sale of such "straight" goods, due to gambling or lottery feature connected with other—

Sold to wholesalers and retailers lottery assortments as aforesaid, including those composed of number of small pieces of candy, together with number of larger pieces and push card for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one of the smaller or one of the larger pieces, in accordance with number secured by chance from aforesaid card, and others involving same principle and type of merchandise in which sales were 1 cent instead of 5 cents each, so packed and assembled that they were and might be displayed and used by numerous retail dealer purchasers thereof for distribution and resale to purchasing public by lot or chance, as packed as aforesaid and without alteration or rearrangement, with knowledge and intent that such candy should and would thus be resold to purchasing public by lot or chance by said retail dealers;

Contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retail merchants with a means of violating the laws of the several States, and who refuse to adopt such method of selling as contrary to public policy, and some of whom, for such reasons, refuse to sell candy so packed that it can be resold to public by lot or chance;

With result that such competitors were put to a competitive disadvantage and retailers, finding that they could dispose of more candy by "draw" or "deal" method, bought from it and others employing same methods of sale, and trade was thereby diverted from said competitors to it and others using similar methods, and with effect of excluding from trade in question all competitors who are unwilling to and do not use such or equivalent method, and of lessening competition therein, and with tendency to

Complaint

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create monopoly thereof in it and in such other distributors as do use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

Mr. Walter C. Hughes, of Chicago, Ill., 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 Walter T. Hall and Minnie M. Hall, individually, and as copartners doing business under the name and style of Walter T. Hall & Company, hereinafter referred to as respondents, have been and are 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. Respondents are copartners doing business under the name and style of Walter T. Hall & Company with their principal office and place of business located in the city of Ottumwa, State of Iowa. They are now and for several years last past have been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and cause the said products, when so sold, to be transported from their principal place of business in the city of Ottumwa, Iowa, to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondents in such candy between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and individuals, and with corporations 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. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale and retail dealers 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. One of said packages is hereinafter described for the purpose of showing the methods used by respondent, but this particular package is not all-inclusive of the various packages nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance. Certain of said assortments manufactured and distributed by the respondents are composed of a number of small pieces of candy, a number of larger pieces of candy, and a device commonly called a push card. The candy contained in said assortments is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a number is disclosed. Sales are 5 cents each and the card bears a statement or legend informing the customer and prospective customer which numbers receive the larger pieces of candy. All other numbers receive one of the small pieces of candy. The numbers on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or disc separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy or one of the larger pieces of candy for the price of 5 cents is thus determined wholly by lot or chance.

The respondents manufacture and distribute several assortments involving the same principle and the same type of merchandise as described in the assortment above where sales are 5 cents each, and also manufacture and distribute assortments involving the same principle where the sales are 1 cent each instead of 5 cents.

PAR. 3. The wholesale dealers to whom respondents sell their assortments resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondents sell direct, expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth, as a means of inducing purchasers thereof to purchase respondents' said products in preference to candy offered for sale and sold by their competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger or additional items of candy.

The use by respondents of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and

criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' 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 respondents, in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondents and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondents has the tendency and capacity 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 an equivalent method.

PAR. 6. Many of said competitors of respondents 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 or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Said methods, acts, and prac-

tices 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 31, 1936, issued and served its complaint upon the respondents, Walter T. Hall and Minnie M. Hall, individually, and as copartners doing business under the name and style of Walter T. Hall & 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, testimony, and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. Respondents appeared by Attorney Walter C. Hughes, but offered no testimony in opposition to the allegations of the complaint. The said testimony and other evidence 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 other evidence, and brief in support of the complaint; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Walter T. Hall and Minnie M. Hall, are individuals doing business as a copartnership under the firm name and style of Walter T. Hall & Company with their principal office and place of business located in the city of Ottumwa, State of Iowa. Respondents are now and for several years last past have been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and cause the said products, when so sold, to be transported from their principal place of business in the city of Ottumwa, Iowa, to purchasers thereof in other States of the United States at their respective places of business. There is now and has been for several

years last past a course of trade and commerce by said respondents in such candy between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and individuals, and with corporations 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. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale and retail dealers 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. One of said assortment was described by one of the respondents called as a witness on behalf of the Commission and was offered as an exhibit. This assortment is composed of a number of small pieces of candy, a number of larger pieces of candy and a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs, and when a push is made and the disc separated from the card, a number is disclosed. Sales are 5 cents each and the card bears a statement or legend informing the customer and prospective customer which numbers receive the larger pieces of candy. All other numbers receive one of the small pieces of candy. The numbers on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or disc separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy or one of the larger pieces of candy for the price of 5 cents is thus determined wholly by lot or chance.

The respondents manufacture and distribute several assortments involving the same principle and the same type of merchandise as described in the assortment above where sales are 5 cents each, and they also manufacture and distribute assortments involving the same principle where the sales are 1 cent each instead of 5 cents each.

PAR. 3. Candy assortments involving the lot or chance feature as described in paragraph 2 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without any lot or chance feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" merchandise. These terms will be used hereafter in these findings to distinguish the various types of assortments.

PAR. 4. The wholesale dealers and jobbers to whom respondents sell their assortments, resell the same to retail dealers. Numerous retail dealers purchase the said assortments from said wholesale dealers and jobbers, and such retail dealers, and the retail dealers to whom respondents sell direct, display said assortments for sale to the public as packed by the respondents, and the candy contained in the majority of said assortments is sold and distributed to the consuming public by means of said push cards or punch boards in the manner hereinbefore described.

PAR. 5. All sales made by respondents to wholesale dealers and jobbers are absolute sales and respondents retain no control over said assortments after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such manner that they are, and have been, used, and may be used, by retail dealers for distribution to the purchasing public by lot or chance without alteration or rearrangement.

In the sale and distribution to wholesale dealers, jobbers, and retail dealers of the assortments of candy hereinbefore described, respondents have knowledge that the said candy is to be resold to the purchasing public by retail dealers by lot or chance, and they pack such candy in the way and manner described so that, without alteration, addition, or rearrangement thereof, it will be, and may be, resold to the public by lot or chance by said retail dealers. Such packing and distribution of candies is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States.

PAR. 6. There are in the United States many manufacturers of candy who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" merchandise in interstate commerce in competition with the "draw" or "deal" candy, and manufacturers of "straight" merchandise have noted a marked decrease in the sales of their products whenever or wherever the "draw" or "deal" assortments have appeared in their market. This decrease in the sale of "straight" merchandise is due to the gambling or lottery feature connected with the "draw" or "deal" candy.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "draw" or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "draw" or "deal" 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. This is true where the prize is made attractive to children in the form of larger pieces of candy.

PAR. 7. The sale and distribution of candy by the methods described herein is the sale and distribution of candy by lot or chance, and constitutes a lottery, gaming device, or gift enterprise. Competitors of respondents appeared as witnesses in this proceeding and testified, and the Commission finds that many competitors regard such sale and distribution as morally bad and as encouraging gambling, especially among children, and as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy and has provided retail merchandise with a means of violating the laws of the several states. Such competitors also refuse to adopt such method of selling because it is contrary to public policy. Because of these reasons, some competitors of respondents refuse to sell candy so packed that it can be resold to the public by lot or chance. These competitors are thereby put to a competitive disadvantage. The retailers, finding that they can dispose of more candy by the "draw" or "deal" method, buy from respondents and others employing the same methods of sale, and thereby trade is diverted from said competitors to respondents and others using similar methods.

Such methods exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method, lessen competition in said candy trade, and tend to create a monopoly of said candy trade in respondents and such other distributors who use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondents, Walter T. Hall, and Minnie M. Hall, individually, and as copartners doing business under the name and style of Walter T. Hall & Company, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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 other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of

said complaint and brief in support of the complaint filed herein, 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, Walter T. Hall and Minnie M. Hall, individually, and as copartners doing business under the name and style of Walter T. Hall & Company, or trading under any other name, their agents, representatives, and employees, in the offering for sale, sale and distribution of candy and candy products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing 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 dealers 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 contained in the said assortment to the public;

3. Supplying to or placing in the hands of dealers assortments of candy together with a device commonly called a push card for use or which may be used in distributing or selling the said candy to the public at retail;

4. Furnishing to dealers a device commonly called a push card, either with packages or assortments of candy or separately, which push card is to be used or may be used in distributing or selling said candy to the public.

It is further ordered, That the respondents, Walter T. Hall and Minnie M. Hall, individually, and as copartners doing business under the name and style of Walter T. Hall & Company, shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
THE GREAT ATLANTIC & PACIFIC TEA COMPANY

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

Docket 3031. Complaint, Jan. 13, 1937—Decision, Jan. 25, 1938

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BUYER "BROKERAGE" PAYMENTS—NET PRICES THROUGH DEDUCTION EQUIVALENT FORMER "BUYER", AND CURRENT SELLER, BROKERAGE, AS INVOLVING "ALLOWANCE OR DISCOUNT IN LIEU" OF.

The supposed distinction between a discount or allowance equivalent to brokerage made as a part of the price of goods and a discount or allowance in lieu of brokerage reflected by the price of goods, is too tenuous for approval, and, in view of plain and simple meaning of words "in lieu of," "discount," and "allowance," it is impossible to say that net price arrived at by deducting from regular price amount equal to brokerage formerly, but no longer to be, paid by sellers to buyer through latter's agents and employees, and to that by sellers' currently paid own brokers, is price which does not involve discount or allowance in lieu of brokerage.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (a) AND (c), (d), AND (e)—BUYER "BROKERAGE" PAYMENTS—BUYER AGENTS' SELLER "SERVICES" RE MARKETING CONDITIONS, ETC., INCIDENT SUCH AGENTS PURCHASING ACTIVITIES AND EMPLOYER DUTY—"EXCEPT FOR SERVICES RENDERED IN CONNECTION WITH THE SALE OF GOODS"—ACT'S SCOPE, AS AMENDED.

The Clayton Act, as amended by the Robinson-Patman Act, has a dual purpose apparent both from the act itself and from the Congressional committee reports, and was directed not only at price discriminations, but also at certain practices involving both such discriminations and unfair methods of competition, as there prohibited, and Congress intended to prescribe absolutely and unconditionally as an undesirable and unfair trade practice and method of competition payment of brokerage and granting of any allowance or discount in lieu thereof by sellers to buyers on latter's own purchases of goods, involving no savings to seller other than brokerage otherwise payable to independent broker as result of dealing direct through buyer's agent; said "services rendered" clause not being intended to set up a condition upon which such brokerage could be paid or such allowance or discount granted, but having relation to genuine seller brokerage services, and not, in any event, embracing activities of incidental benefit to seller, by buyer's employee agents in buyer's interest.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c) AND (a)—BUYER "BROKERAGE" PAYMENTS—FORMER'S INHIBITIONS AS NOT PERMITTING SELLERS' BROKERAGE SAVING PAYMENTS TO BUYER UNDER LATTER'S "DUE ALLOWANCE" PROVISIO.

While paragraph (a), prohibiting both direct and indirect discrimination in price, and paragraph (c), containing certain inhibitions with respect to

payment or receipt of brokerage under certain conditions, as therein specified, have in common the purpose of eliminating unfair price discriminations, they were intended by Congress to be separately and independently applied, and it was not meant that paragraph (a), with its saving proviso that nothing therein contained should "prevent differentials which make only due allowance for differences in cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered," should limit or qualify the prohibition or application of the other, which is complete on its face and deals specifically with particular trade practice regarded by Congress as unfair method of competition and, *per se*, injurious to commerce, and therefore to be prohibited.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BUYER "BROKERAGE" PAYMENTS—ADVERSE COMPETITIVE EFFECT SHOWING AS NOT PREREQUISITE IN PROCEEDINGS UNDER.

While acceptance of discounts in lieu of brokerage by corporation respondent in proceeding under aforesaid paragraph was found to tend to injure competition between such corporation and its competitors and to injure competition between sellers who granted such discounts and allowances to it and those who did not, such fact was not considered by Commission in arriving at its conclusion of violation of said paragraph, for the reason that, as matter of law, it is unnecessary for injurious effect upon competition, in proceedings instituted thereunder, to be shown.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BUYER "BROKERAGE" PAYMENTS—NET PRICES AND "QUANTITY" DISCOUNTS IN LIEU OF—BENEFITS TO SELLERS INCIDENT TO BUYER-AGENTS' PURCHASING ACTIVITIES AND DUTIES, AND DIFFERENTIALS OR DISCOUNTS ASSERTEDLY REFLECTING COST DIFFERENCES UNDER PAR. (a), AS NOT SAVING.

Where corporation engaged, with affiliates, in ownership and operation of nearly 15,000 retail grocery stores in 38 States and in District of Columbia, in competition with many retail grocery concerns in every city in which it operated, and in purchasing for resale at its said stores through various, exclusively controlled, employee field buying agents, charged with finding it sources of supply, furnishing it market information, and purchasing, and

Who, (1) as incident to discharge of their said purchasing duties, and acting in its sole interest, advised, as customary, sellers as to market conditions, and as to improvement and quality of their products, containers, and routing, and relieved same, at times, and when not contrary to its interest, and with its authorization, of carry-overs or surpluses threatening markets' stability, or of large quantities of commodities to avoid acute financial embarrassment; and

Whom (2) it instructed, following said law's enactment, and fearing "brokerage" loss theretofore enjoyed, to purchase for it on either net price basis reflecting brokerage discounts theretofore paid it monthly through its said employee buying agents by sellers, and equivalent to brokerage paid by such sellers to brokers for bona fide selling services rendered, or on basis and pretext of "quantity discount agreements" reflecting aforesaid brokerage discounts, and, in case of those unwilling so to sell on either, to arrange for

payment in escrow, or treatment as "abeyance accounts" on sellers' books, of such brokerage theretofore paid;

And neither intending to, nor rendering, directly or by or through any of its said field buying agents or employees, any true brokerage or selling services whatsoever, or any other form of services in connection with purchase of commodities by, or sale thereof to, it, and following aforesaid enactment—

- (a) Made purchases and received and accepted, from many competitively selling in interstate commerce through brokers, allowances, and discounts in lieu of brokerage, through purchase, as aforesaid, of commodities in interstate commerce, for resale in its aforesaid retail grocery stores, on aforesaid net price basis, reflecting reduction from sellers' current prices to other customers or from general market prices at which commodities were being sold by said sellers, of amount of brokerage paid by sellers to its said field buying agents prior to law's enactment, and currently paid by sellers to own brokers, and concession not accorded, with negligible and immaterial exceptions, to sellers' other customer purchasers; and
- (b) Made purchases and received and accepted, from many competitively selling in interstate commerce through brokers, allowances, and discounts in lieu of brokerage, through purchases, as aforesaid, of commodities in interstate commerce, for resale in its aforesaid retail grocery stores, on basis and pretext of so-called and pretended quantity discount agreements, providing for monthly payment to it, as so-called quantity discount, of amount equal to and reflecting brokerage paid monthly by sellers in question to its said field buying agents prior to aforesaid law, and currently paid by sellers to own brokers, and concession not accorded, with negligible and immaterial exceptions, to sellers' other customer purchasers;

With result that effect of receipt by it of such allowances and discounts in lieu of said "brokerage" was and would continue to be to cause substantial injury to competition between those sellers who had granted and paid such allowances and discounts to it and those who had refused to do so, by reason of diversion of its business from latter to former, and there was a direct and immediate tendency substantially to injure, destroy, and prevent competition between it and its competitors in resale of commodities, upon purchase of which it received aforesaid allowances and discounts, through enabling it thereby to purchase commodities at prices substantially lower than those at which its competitors could and did purchase same from sellers, and thereby to resell such commodities at prices substantially lower than those at which competitors could so resell:

Held, That such acceptance of such net prices and quantity discounts, as aforesaid, constituted acceptance of discounts and allowances in lieu of brokerage, in violation of provisions of section 2 of an Act of Congress approved October 15, 1914, as amended by an Act of Congress approved June 19, 1936.

Before *Mr. William C. Reeves*, trial examiner.

Mr. J. J. Smith, Jr. and *Mr. W. N. Baughman* for the Commission.
Watson, King & Brode and *Feldman & Kittelle*, of Washington, D. C. and *Mr. Caruthers Ewing*, of New York City, for respondent.

Complaint

COMPLAINT

The Federal Trade Commission having reason to believe that the Great Atlantic and Pacific Tea Company, hereinafter called respondent, since June 19, 1936, has violated and is now violating the provisions of Section 2 (c) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of New Jersey and has its principal office and place of business at number 420 Lexington Avenue in the city of New York, N. Y.

PAR. 2. For many years prior to and on June 19, 1936, and ever since that date, the respondent was, has been, and now is engaged in the retail grocery business as the owner and operator of 14,000, more or less, retail grocery stores located in about 30 of the States of the United States and in the District of Columbia, and in the course and conduct of its business the respondent has been and is now purchasing, shipping, and distributing and causing to be sold, shipped, and distributed in commerce from various States of the United States through, across, and into other States of the United States and the District of Columbia, goods, wares, and merchandise manufactured and packed and sold, shipped, and distributed in commerce from various States of the United States through, across, and into other States of the United States and the District of Columbia by divers corporations, partnerships, firms, and individuals unknown to the Federal Trade Commission and by the following-named persons and corporations, all of which said divers corporations, partnerships, firms, and individuals unknown to the Federal Trade Commission and the following-named persons and corporations will hereinafter be referred to as said Sellers, to wit:

Alton Canning Company, Inc., of Alton, N. Y. (a New York corporation); Fred B. Huxley, trading as F. B. Huxley & Son, of Alton, N. Y.; The H. J. McGrath Company, of Baltimore, Md. (a Maryland corporation); H. C. Roberts, trading as W. II. Roberts & Company, of Baltimore, Md.; R. J. Peacock Canning Com-

pany, of Lubeck, Maine (a Maine corporation); Phillips Packing Company, Inc., of Cambridge, Md. (a Maryland corporation); Phillips Sales Company, Inc., of Cambridge, Md. (a Maryland corporation); and Phillips Commission Company of Maryland, Inc., of Baltimore, Md. (a Maryland corporation).

All of said sellers prior to, on, and since June 19, 1936, were, have been, and are now engaging in the business of manufacturing and packing and in selling, shipping, and distributing in commerce from various States of the United States through, across, and into other States of the United States and the District of Columbia, goods, wares, and merchandise to the respondent and to divers other corporations, partnerships, firms, and individuals unknown to the Federal Trade Commission.

PAR. 3. In the course and conduct of its business as aforesaid, since June 19, 1936, respondent has been and is now making purchases in commerce of goods, wares, and merchandise from said sellers, which said goods, wares, and merchandise the respondent has been and is now purchasing from said sellers, shipping, distributing, and causing to be sold, shipped, and distributed to it by said sellers in commerce from various States of the United States through, across, and into other States of the United States and the District of Columbia, and since June 19, 1936, in the course of making said purchases in commerce of said goods, wares, and merchandise from said sellers, purchased, shipped, and distributed and caused to be sold, shipped, and distributed in commerce by respondent from various States of the United States through, across, and into other States of the United States and the District of Columbia as aforesaid, the respondent has been and is now receiving and accepting from said sellers allowances or discounts in lieu of brokerage upon respondent's said purchases in commerce of said goods, wares, and merchandise from said sellers, for which said allowances and discounts upon respondent's said purchases in commerce of said goods, wares, and merchandise from said sellers no services whatsoever have at any time been rendered or are now being rendered by respondent or by any agent, representative, or intermediary subject to the direct or indirect control of respondent to, for, or on behalf of said sellers in connection with respondent's said purchases in commerce of said goods, wares, and merchandise from said sellers.

PAR. 4. The aforesaid acts of respondent constitute a violation of the provisions of Section 2 (c) of the above mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An

Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (The Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on January 13, 1937, issued and served its complaint in this proceeding upon The Great Atlantic & Pacific Tea Company, respondent herein, charging it with violating the provisions of paragraph (c) of Section 2 of the said Act as amended. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by J. J. Smith, Jr., and W. N. Baughman, attorneys for the Commission, before William C. Reeves, an examiner for the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Caruthers Ewing, Watson, King & Brode and George J. Feldman, attorneys for the said respondent, and said testimony and other 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, answer, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of the said J. J. Smith, Jr., for the Commission, and the said Caruthers Ewing for the respondent, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Great Atlantic & Pacific Tea Company, is a corporation organized and existing under the laws of the State of New Jersey, and maintains its principal office and place of business at 420 Lexington Avenue, in the city of New York, N. Y.

PAR. 2. The respondent is engaged in the retail grocery business, and, together with its affiliates, owns and operates more than 14,800

retail grocery stores located in 38 States and in the District of Columbia.

PAR. 3. In the course and conduct of its business the respondent is engaged in competition with many retail grocery concerns in every city in which it operates a store or stores; and the respondent purchases for resale at its said stores commodities which it causes to be shipped in interstate commerce from the State in which said commodities are located at the time they are purchased by the respondent across State lines through and into States other than the State in which said commodities are located at the time they are purchased by the respondent, and the respondent ships commodities from its warehouses across State lines to its stores located in States other than the States in which its said warehouses are located.

PAR. 4. The respondent's organization is divided along geographical lines into a number of divisions, each division being composed of several units, a unit being the territory serviced by a central warehouse operated by the respondent and from which respondent's various retail stores in that territory obtain most of the commodities sold to the public by the respondent at its said stores. The purchasing operations of each division are under the general supervision and control of a purchasing director for that division. Each warehouse or unit, however, has a warehouse buyer, or unit buyer, hereinafter referred to as warehouse buyer, who is authorized to, and does, purchase commodities for distribution from that warehouse to the respondent's stores located in the territory serviced by it.

PAR. 5. Several years prior to the filing of the complaint herein, the respondent established, and has since continuously maintained and now maintains, geographically convenient to important sources of supply, a number of central buying offices, located in Rochester, N. Y.; Baltimore, Md.; New Orleans, La.; San Francisco, Calif.; Milwaukee, Wis., and other cities. These central buying offices continuously have been and now are in charge of and operated by agents employed by the respondent. The duties of said agents continuously have been and now are to find sources of supply for the respondent, to furnish the respondent with market information, and to purchase commodities for the respondent.

PAR. 6. Both before and after June 19, 1936, the agents in charge of said central buying offices were, and now are, employed by the respondent on a salary basis, and all of their office expenses were and now are paid by the respondent. Prior to June 19, 1936, respondent called said agents "brokers," thereafter, "purchasing agents," "field buying agents," or "buyers," but this change in name involved no

change in said agents' aforesaid duties to the respondent or in their methods of operating in performing those duties. Said agents are hereinafter referred to as field buying agents.

PAR. 7. At all times during the period in which said field buying agents have been employed by respondent said field buying agents have been, and are now, employed solely by respondent, and by no individual, partnership, or corporation whatsoever other than respondent, and in all matters and transactions participated in by said field buying agents relative to or in connection with the business of respondent or the purchase of commodities by, or the sale thereof to, the respondent, said field buying agents acted, and now act, in fact for and in behalf, and as the agents and representatives of respondent only, and in such matters and transactions said field buying agents did not, and do not now, act in fact for or in behalf, or as the agents or representatives, of any individual, partnership, or corporation whatsoever other than respondent.

PAR. 8. At all times during the period in which said field buying agents have been employed by respondent said field buying agents were, and are now, subject to and under the sole control of respondent in all matters and transactions participated in by said field buying agents relative to or in connection with the business of respondent or the purchase of commodities by, or the sale thereof to, the respondent, and in such matters and transactions said field buying agents were not, and are not now, subject to or under the control of, or controlled by, any individual, partnership, or corporation whatsoever other than the respondent.

PAR. 9. The loyalty and allegiance of respondent's field buying agents are due solely to the respondent, and in all matters and transactions participated in by said field buying agents relative to or in connection with the business of respondent or the purchase of commodities by or the sale thereof to the respondent, said field buying agents devote their loyalty and allegiance solely to the respondent.

PAR. 10. The respondent is the sole direct and intended beneficiary of all activities of said field buying agents in connection with negotiations for the purchase and the purchase of commodities by, or the sale thereof to, the respondent, and the benefits to sellers from such activities are incidental to the services rendered by said field buying agents to the respondent.

PAR. 11. The field buying agents of the respondent operate as follows, to wit: From persons engaged in the business of manufacturing and selling commodities in the respective territories in which said field buying agents are located, such persons being hereinafter referred to as sellers, the field buying agents obtain prices on com-

modities being offered for sale by said sellers. If the price and quality of the commodities offered for sale by said sellers meet the approval of said field buying agents they communicate their information to the respondent's divisional purchasing directors, warehouse buyers, and others in the respondent's employ. If a field buying agent thinks that commodities offered for sale by sellers are not of proper quality or are not offered at a satisfactory price or that it would not be to the interest of the respondent to purchase said commodities, he either so informs the respondent's purchasing directors and warehouse buyers or he does not communicate those sellers' offerings to them. When a purchasing director or warehouse buyer desires any commodities concerning which he has received information from a field buying agent, or which he knows a field buying agent can purchase for him, he communicates that fact to the field buying agent whom he instructs to purchase the desired commodities. The field buying agent then negotiates with various sellers of said commodities for price and terms satisfactory to the respondent, and, if able to come to an agreement with a seller on such price and terms, purchases the desired commodities for the respondent. Having purchased commodities from a seller, the field buying agent usually confirms his purchase by executing a purchase order or contract which he signs for and on behalf of the respondent and as its agent and forwards to the seller.

PAR. 12. In the course of performing their duties to the respondent its field buying agents exchange with sellers, as is customary in the trade, information of all kinds affecting market conditions. At times said field buying agents visit the manufacturing establishments of sellers and advise sellers how to improve the quality of sellers' commodities and in what size containers said commodities should be packed. Said field buying agents also furnish sellers with traffic information concerning the routing of commodities purchased by the respondent. At times when sellers have made special drives to dispose of carry-overs or surplus commodities which have threatened to unstabilize markets, and at times when some sellers have needed immediately to dispose of large quantities of their commodities to avoid incipient bankruptcy or other acute financial embarrassment, the respondent's field buying agents, when not contrary to the interests of the respondent, have brought such matters to the attention of respondent's divisional purchasing directors and warehouse buyers, requesting them to cooperate with sellers in sellers' efforts to sell said commodities, and on instructions from said divisional purchasing directors and warehouse buyers have purchased for the respondent large quantities of commodities from such sellers. While

sellers benefit from the information and advice of respondent's field buying agents with respect to market conditions, routing of shipments, improving the quality of commodities, and size of containers, and the activities of said field buying agents in cases of carry-overs, surpluses, and financial distress, it is the duty of respondent's field buying agents, and it is to the interest of the respondent, to develop and maintain adequate sources of supply of commodities of good quality packed in popular size containers and to have shipments of commodities routed as desired by the respondent; it is also to the interest of the respondent to avoid carry-overs and surpluses which threaten to destabilize markets. [In] The activities of respondent's field buying agents in connection with furnishing information and advice to sellers, and in bringing to the attention of respondent's divisional purchasing directors and warehouse buyers sellers' desires or necessities in connection with disposing of large quantities of their commodities and requesting their cooperation with such sellers, said field buying agents are rendering services to, and promoting the interest of, the respondent and are not performing or rendering to sellers any selling or brokerage service or any services whatsoever in connection with the sale of goods by said sellers to the respondent or the purchase thereof by the respondent from said sellers.

PAR. 13. On said field buying agents' purchases of commodities for respondent prior to June 19, 1936, the sellers of such commodities paid monthly to said field buying agents brokerage in the same amount paid by said sellers to brokers who sold commodities as agents of and for said sellers, which brokerage the said field buying agents received for and on behalf of respondent, and as the property of respondent, and paid over to the respondent, said field buying agents neither having nor claiming any right, title, or interest therein whatsoever.

PAR. 14. Shortly after June 19, 1936, the respondent instructed its field buying agents to accept no more brokerage on their purchases of commodities for respondent, and to make all future purchases of commodities for respondent on one of the following bases, to which instructions said field buying agents conformed, to wit:

(a) To purchase commodities for respondent on a net basis reflecting a reduction from sellers' current prices to other customers, or from the general market prices at which commodities were being sold by said sellers, of the amount of brokerage paid by said sellers to said field buying agents prior to June 19, 1936, as aforesaid in paragraph 13, *supra*, and currently being paid by said sellers to their brokers.

(b) To execute so-called "quantity discount agreements" with sellers upon the form appearing in the record herein as Respondent's Exhibit 18-C. Said agreement forms were filled in to provide for the payment to the respondent monthly, as a so-called "quantity discount," of an amount equal to the brokerage paid monthly by said sellers to said field buying agents prior to June 19, 1936, as aforesaid in paragraph 13, *supra*, and currently being paid by said sellers to their brokers. In some instances said agreements were made retroactive from the date of execution to June 19, 1936, and in some instances where said agreements purported to require the respondent to purchase a stipulated quantity of commodities during the existence of the agreement in order to earn the "discount" for which provision was therein made, it was understood and agreed between the respondent's said field buying agents and the sellers that the respondent was to receive said "discount" regardless of the provisions of said agreements with respect to the quantity of commodities to be purchased by the respondent thereunder.

(c) To make with sellers unwilling to sell on either of the two preceding bases an agreement providing that said sellers were to keep a record of all brokerage which but for the Robinson-Patman Act said sellers would have paid to said field buying agents as aforesaid in paragraph 13, *supra*, and to pay said brokerage in escrow, or set it up as an "abeyance account" on the sellers' books, said brokerage to be paid to the respondent when, as, and if, the legality of the payment thereof should be determined.

Since June 19, 1936, the respondent has purchased commodities in interstate commerce on each of said bases.

PAR. 15. Subsequent to the effective date of the Robinson-Patman Act the said field buying agents of the respondent knew the current prices at which sellers from whom they were purchasing commodities for the respondent, were selling those commodities to their customers other than respondent, and were at all times well posted and informed of the general market prices at which commodities being purchased by them for the respondent were being sold. In computing the net prices at which the said field buying agents purchased commodities for the respondent subsequent to the effective date of the Robinson-Patman Act, said field buying agents deducted from sellers' current prices to their customers other than respondent, or from the general market prices at which commodities were being sold, as the case might be, an amount equal to the brokerage which but for the Robinson-Patman Act said sellers would have paid to said agents as aforesaid in paragraph 13, *supra*.

PAR. 16. The respondent feared the loss of brokerage upon purchases of commodities made other than on the net basis, or on the quantity discount basis, as described respectively in sub-paragraphs (a) and (b) of paragraph 14, *supra*, and instructed its field buying agents to make all purchases possible on said net basis or on said quantity discount basis. On purchases of commodities made on said net basis or on said quantity discount basis the respondent did not request that brokerage be paid in escrow or set up as an "abeyance account" on sellers' books as aforesaid in sub-paragraph (c) of paragraph 14, *supra*, but on all purchases not made on one of said bases the respondent did request sellers to pay brokerage in escrow, or set brokerages up on their books as an "abeyance account" as aforesaid in sub-paragraph (c) of paragraph 14, *supra*.

PAR. 17. Not all of the net prices at which the said field buying agents purchased commodities for the respondent subsequent to June 19, 1936, reflected a reduction of the exact amount of brokerage which but for the Robinson-Patman Act said sellers would have paid to said field buying agents as aforesaid in paragraph 13, *supra*, because an exact reduction frequently resulted in a sale price involving fractions which were not used in the trade, and the respondent instructed its said field buying agents to avoid the use of such fractions wherever possible in agreeing upon the net price to be paid for commodities by the respondent so that said net prices would not appear to involve any allowance in lieu of brokerage.

PAR. 18. Other customers of sellers who sold commodities to the respondent on the bases outlined in paragraph 14, *supra*, purchased from those sellers in individual quantities as large as those in which the respondent purchased, but with extremely few exceptions, in no wise affecting the facts in this matter, the respondent was the only customer of said sellers to whom said sellers sold commodities on said bases, and the respondent's purchases from said sellers were made on one of said bases regardless of the quantity of commodities purchased by it.

PAR. 19. When the respondent's field buying agents purchase from sellers commodities for the respondent the services of no brokers are used or invoked by sellers or by the respondent, and said sellers do not receive or have the benefit of any selling or brokerage services rendered by any broker or by the respondent or by any agent or employee of the respondent, but in purchasing commodities on the net price and quantity discount bases above referred to in paragraph 14 the respondent obtains, receives, and accepts the equivalent of brokerage currently paid by sellers to their brokers for brokerage

services actually rendered to said sellers by their said brokers in selling commodities for said sellers.

PAR. 20. Some sellers effect savings other than brokerage on purchases made for the respondent by the respondent's field buying agents, but the only savings represented by the net prices and quantity discounts above referred to in paragraph 14 were brokerage savings accruing to sellers as a result of having themselves made sales to the respondent without invoking or using the selling or brokerage services of another, and no savings other than brokerage savings were intended to be, or were, passed on by sellers to the respondent or received by the respondent from sellers.

PAR. 21. The function of, and the services performed by, brokers representing sellers in connection with the sale of commodities is to find customers for sellers and, acting under and subject to the control of sellers, to sell commodities to those customers for and on behalf of sellers and as the agents of said sellers; the brokers' function in such cases is a selling function, and the service rendered by them is a selling service rendered to sellers.

PAR. 22. In all matters and transactions wherein the respondent's field buying agents purchase commodities for respondent or negotiate or deal with sellers in connection with the purchase of commodities by or the sale thereof to the respondent all of the services of said field buying agents are intended to be and in fact are rendered to the respondent solely, and in said matters and transactions said field buying agents intend to and in fact do represent the respondent solely as its purchasing agents and intend to and in fact do act for and in behalf of the respondent only and under its sole control, and in said matters and transactions said field buying agents do not intend to and in fact do not represent sellers as their agents or act for or in behalf or under the control of sellers and do not intend to and in fact do not render to sellers any brokerage or selling services whatsoever or any other form of services in connection with the sale of commodities to or the purchase thereof by the respondent.

PAR. 23. No brokerage or selling services whatsoever, or any other form of services in connection with the purchase of commodities by, or the sale thereof to, the respondent are intended to be or are rendered to sellers by the respondent or by any agents or employees of the respondent.

PAR. 24. Subsequent to June 19, 1936, for resale in its above-mentioned retail grocery stores, the respondent has purchased commodities in interstate commerce on the basis referred to in subparagraph (a) of paragraph 14, *supra*, from many sellers who are engaged in selling commodities through brokers in interstate com-

merce in competition with other sellers of similar commodities, and in so doing the respondent has received and accepted allowances and discounts in lieu of brokerage.

PAR. 25. Subsequent to June 19, 1936, for resale in its above-mentioned retail grocery stores, the respondent has made purchases of commodities in interstate commerce on the basis referred to in subparagraph (b) of paragraph 14, *supra*, from many sellers who are engaged in selling commodities through brokers in interstate commerce in competition with other sellers of similar commodities and has received and accepted on said purchases payment of the so-called "quantity discount" referred to in said subparagraph (b) of paragraph 14, *supra*, and in receiving and accepting payment of said so-called "quantity discounts" the respondent has received and accepted allowances and discounts in lieu of brokerage.

PAR. 26. The effect of the receipt of allowances and discounts in lieu of brokerage by the respondent has been, and will continue to be, to cause substantial injury to competition between those sellers who have granted and paid such allowances and discounts to the respondent and those sellers who have refused to do so, in that there has been and there will continue to be a diversion of respondent's business from the latter to the former, and the effect of the receipt of allowances and discounts in lieu of brokerage by the respondent has a direct and immediate tendency substantially to injure, destroy and prevent competition between respondent and respondent's competitors in the resale of commodities upon the purchase of which the respondent receives discounts and allowances in lieu of brokerage in that the respondent, by the receipt of such discounts and allowances in lieu of brokerage, is enabled to and does purchase commodities at prices substantially lower than the prices at which its competitors can and do purchase the same commodities from the same sellers and the respondent is thereby enabled to resell said commodities at prices substantially lower than the prices at which its competitors can resell said commodities.

CONCLUSION

The respondent takes the position: First—That it has accepted no discounts or allowances in lieu of brokerage. Second—That if it be held to have accepted allowances or discounts in lieu of brokerage it rendered to sellers services therefor within the meaning of paragraph (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. Third—That the provisions of Section 2 (c) of said act, as amended, must be held to be limited by the cost

proviso or differentials provisions of paragraph (a) thereof, which should be construed to permit the passing on of brokerage savings by way of a net price differential or quantity discount.

The Commission is unable to adopt this reasoning, and concludes and finds that the respondent has received discounts and allowances in lieu of brokerage in violation of said paragraph (c) of Section 2 of the Clayton Act, as amended.

The respondent contends that there is a vast difference and valid distinction between a differential which merely reflects or is the equivalent of brokerage savings and a discount or allowance in lieu of brokerage; that a discount or allowance made as a part of the price of goods can not come within the scope of paragraph (c), although equivalent to brokerage and intended to reflect it. .

We cannot accept this argument. The supposed distinction between a discount or allowance equivalent to brokerage, made as a part of the price of goods, and a discount or allowance in lieu of brokerage reflected by the price of goods appears to us as too tenuous for approval.

The argument assumes one of the fundamental issues in this case, namely, whether or not brokerage may be passed on to buyers as a savings in cost under the cost proviso or differentials provisions of paragraph (a) of Section 2 of the act.

If that may not be done, it cannot successfully be contended that there is any difference between a price reflecting an allowance in lieu of brokerage and a price reflecting brokerage savings—in each instance the price is mathematically the same, and the lower price is lower, by an amount wholly or partly equivalent to brokerage, for no other reason than that that price is given instead of brokerage being paid on the basis of a higher price.

The words “in lieu of,” “discount,” and “allowance,” are well understood and there can be no dispute as to their respective definitions.

“In lieu of” means instead of, in place of, or in substitution for.

“Allowance” means abatement, deduction, or concession.

“Discount” means deduction, allowance from a price asked, or deduction from the usual price made for some special reason.

Taking the plain and simple meaning of these words, it seems impossible to say that a net price arrived at by deducting from a regular price an amount equal to brokerage formerly paid, and now currently paid to brokers, because that brokerage is no longer to be paid, is a price which does not involve a discount or allowance in lieu of brokerage.

If and insofar as intent is an element of an allowance or discount in lieu of brokerage, the intent necessary to characterize as such the respondent's net prices and quantity discounts, referred to in paragraph 14, *supra*, existed here. The net price differentials and the quantity discounts in question were generally equal in amount to brokerage paid to the respondent's field buying agents prior to June 19, 1936, and currently being paid by sellers to independent brokers and were passed on by the sellers and accepted by the respondent to take the place of, and in substitution for, brokerage paid to the respondent's field buying agents prior to that date. Counsel for the respondent conceded in their brief that the net prices and quantity discounts allowed respondent did not represent any form of savings to sellers whatsoever other than the brokerage savings accruing to sellers as a result of having themselves made sales to the respondent without incurring any obligation to pay brokerage thereon to an independent broker. The Commission concludes that such net price differentials and quantity discounts were allowances and discounts in lieu of brokerage and were affirmatively intended as such by both sellers and the respondent.

The Clayton Act, as amended by the Robinson-Patman Act, has a dual purpose which is apparent both from the form of the Act itself and from the reports of the several Congressional Committees which considered and commented upon it. The Act was directed not only at price discriminations but also at certain practices which involved both price discriminations and unfair methods of competition.

Paragraph (a) generally prohibits both direct and indirect discriminations in price. If discriminations in price were the only evils sought to be terminated by the Act there was no necessity for including in it paragraphs (c), (d), or (e), because the practices thereby condemned, themselves involving indirect price discriminations, could have been terminated under paragraph (a) insofar as they could be shown injuriously to affect competition in particular cases. By directing those particular paragraphs at those particular practices, it is believed that Congress manifested a purpose and intent to condemn and proscribe such practices, not merely and simply because they involved price discriminations, but because they were considered by Congress to be inherently unfair methods of competition which were *per se* injurious to commerce.

As stated by the report of the House Committee on the Judiciary in reporting the Robinson-Patman Act, its purpose was

* * * to restore, so far as possible, equality of opportunity in business
* * * by protecting trade and commerce against unfair trade practices and unlawful price discrimination, and also against restraint and monopoly for the

better protection of consumers, workers, and independent producers, manufacturers, merchants, and other businessmen.

To accomplish its purpose, the bill amends and strengthens the Clayton Act
* * *

More than 20 years' experience and observation with respect to the operation of the Clayton Act, together with new methods of trade and industrial organization that have since developed, have convinced your committee of the shortcomings of existing legislation, and of the need for strengthening existing laws and of fitting them more perfectly to the methods and needs of today. This your committee has striven to do with a careful regard to the preservation of full freedom and sound and honest business methods * * * but with a firm resolve not to permit the desire of privilege to masquerade under the claim of right. (Report of House Committee on the Judiciary 74th Congress, 2nd Session, House of Representatives Report Number 2287, Pages 3, 6.)

It is thus apparent that the act is directed at a multiplicity of evils which may be classified generally as price discriminations and unfair trade practices.

The Commission concludes that it was the intention of Congress to proscribe absolutely and unconditionally as an undesirable and unfair trade practice and method of competition, the payment of brokerage and the granting of any allowance or discount in lieu thereof by sellers to buyers on the latter's own purchases of goods, and that the inclusion in paragraph (c) of the clause "except for services rendered in connection with the sale of goods" was not intended to set up a condition upon which such brokerage could be paid or such an allowance or discount be granted. This conclusion is sustained and, indeed, required by the reports of the various committees which dealt with the Act.

As originally introduced in the House and Senate, paragraph (c) (paragraph (b) at that time) unqualifiedly prohibited the payment of brokerage by a seller to any intermediary acting for the buyer or subject to the buyer's control. It did not prohibit the payment of brokerage directly to a buyer, however, or make any reference to "services rendered." The paragraph then read:

(b) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation to an agent, representative, or other intermediary in connection with the sale or purchase of goods, wares, or merchandise, where such intermediary is acting therein for or in behalf or is subject to the direct or indirect control, of any party to such purchase and sale transaction other than the person by whom such compensation is so granted or paid.

Upon being referred to the Committee on the Judiciary of the respective houses the paragraph was amended to read exactly as it now reads, except that the "services rendered" clause was not inserted by the Senate Committee.

The Senate amendment merely added to the existing prohibition of paragraph (c) an additional prohibition against the payment of brokerage direct to the buyer, reinforcing the paragraph with a provision that no discount or allowance in lieu of brokerage should be permitted. The paragraph as thus amended was reported to the Senate on February 3, 1936, as follows:

In section (b) the phrases "or any allowance or discount in lieu thereof," and "either to the other party to such transaction" are added by your committee's recommendation. As so revised, this section forbids the payment or allowance of brokerage, either to the other principal party, or to an intermediary acting in fact for or under the control of the other principal party, to the purchase and sale transaction.

Among the prevalent modes of discrimination at which this bill is directed, is the practice of certain large buyers to demand the allowance of brokerage direct to them upon their purchases, or its payment to an employee, agent, or corporate subsidiary whom they set up in the guise of a broker, and through whom they demand that sales to them be made. Whether employed by the buyer in good faith to find a source of supply, or by the seller to find a market, the broker so employed discharges a sound economic function and is entitled to appropriate compensation by the one in whose interest he so serves. But to permit its payment or allowance where no such service is rendered, where in fact, if a "broker," so labeled, enters the picture at all, it is one whom the buyer points out to the seller, rather than one who brings the buyer to the seller, is but to permit the corruption of this function to the purposes of competitive discrimination. The relation of the broker to his client is a fiduciary one. To collect from a client for services rendered in the interest of a party adverse to him, is a violation of that relationship; and to protect those who deal in the streams of commerce against breaches of faith in its relations of trust, is to foster confidence in its processes and promote its wholesomeness and volume. (74th Congress, 2nd Session, Senate Report Number 1502, Page 7.)

It is clear that paragraph (c), as it then stood, prohibited the payment of brokerage by a seller to a buyer, and the grant of any discount or allowance in lieu thereof, under all circumstances and without regard to any question of services rendered, and that the Senate so construed it.

On March 31, 1936, the House Committee on the Judiciary, having amended paragraph (c) to conform to the Senate amendment and added the services rendered clause thereto, reported the bill to the House with the following comments, the underscored parts of which were adopted word for word from the Senate report quoted above:

Section (b) deals with the abuse of the brokerage function for purposes of oppressive discrimination. The true broker serves either as representative of the seller to find him market outlets, or as representative of the buyer to find him sources of supply. In either case he discharges functions which must otherwise be performed by the parties themselves through their own selling or buying departments, with their respective attendant costs. Which method is chosen depends presumptively upon which is found more economical in the particular

case; but whichever method is chosen, its cost is the necessary and natural cost of a business function which cannot be escaped. It is for this reason that, when free of the coercive influence of mass buying power, discounts in lieu of brokerage are not usually accorded to buyers who deal with the seller direct since such sales must bear instead their appropriate share of the seller's own selling cost.

Among the prevalent modes of discrimination at which this bill is directed is the practice of certain large buyers to demand the allowance of brokerage direct to them upon their purchases, or its payment to an employee, agent, or corporate subsidiary whom they set up in the guise of a broker, and through whom they demand that sales to them be made. But the positions of buyer and seller are by nature adverse, and it is a contradiction in terms incompatible with his natural function for an intermediary to claim to be rendering services for the seller when he is acting in fact for or under the control of the buyer, and no seller can be expected to pay such an intermediary so controlled for such services unless compelled to do so by coercive influences in compromise of his natural interest. Whether employed by the buyer in good faith to find a source of supply, or by the seller to find a market, the broker so employed discharges a sound economic function and is entitled to appropriate compensation by the one in whose interest he so serves. But to permit its payment or allowance where no such service is rendered, where in fact, if a "broker," so labeled, enters the picture at all, it is one whom the buyer points out to the seller, rather than one who brings the buyer to the seller, would render the section a nullity. The relation of the broker to his client is a fiduciary one. To collect from a client for services rendered in the interest of a party adverse to him, is a violation of that relationship; and to protect those who deal in the streams of commerce against breaches of faith in its relations of trust, is to foster confidence in its processes and promote its wholesomeness and volume.

Section (b) permits the payment of compensation by a seller to his broker or agent for services actually rendered in his behalf; likewise by a buyer to his broker or agent for services in connection with the purchase of goods actually rendered in his behalf; but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance by the buyer direct to the seller, or by the seller direct to the buyer; and it prohibits its payment by either to an agent or intermediary acting in fact for or in behalf, or subject to the direct or indirect control, of the other. (74th Congress, 2nd Session, House of Representatives Report Number 2287, Pages 14, 15.) [Italics supplied.]

This report shows on its face that paragraph (c) as it now stands, containing the "services rendered" clause, was given the same construction by the House Committee as it had theretofore been given by the Senate Committee before that clause was inserted. This in itself seems sufficient to require the conclusion that the House did not intend the "services rendered" clause to be construed as a condition upon which brokerage could be paid by sellers to buyers. Definite support for this conclusion is found in the Conference Report of the Committee of Conference of the House and Senate which considered

the bills passed by each and reported out the Robinson-Patman Act in the form in which it was enacted. That report states:

Subsection (c) deals with brokerage. It is the same as subsection (b) in the House bill, which in turn is the same as subsection (c) in the Senate amendment, except that the words "except for services rendered," as contained in the House bill, do not appear in the Senate amendment. In the conference report these words are retained * * * With the words of the House bill thus retained, this subsection permits the payment of compensation by a seller to his broker * * * for services actually rendered in his behalf; * * * but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance * * * by the seller direct to the buyer * * * (74th Congress, 2nd Session, House of Representatives Report Number 2951, Page 7).

In line with this report Representative Utterback, one of the House managers of the Conference Committee, said of paragraph (c) in reporting the act from that Committee to the House:

* * * it prohibits the payment or allowance of * * * brokerage on the purchase * * * of goods * * * to the other party to the transaction * * * that is, the party other than the one who pays the * * * brokerage * * * (74th Congress, 2nd Session, 80 Congressional Record, Part 9, Page 9418).

He further stated:

* * * where sales are made from buyer to seller, in the nature of the case no brokerage services are rendered by either, and no payment or allowance on account thereof can be made * * * (*Id.*)

It thus seems entirely clear that paragraph (c) was intended by Congress to prohibit without qualification the payment of brokerage, and the granting of any allowance or discount in lieu thereof, by a seller to a buyer on the latter's purchases, and that the "services rendered" clause was not meant to limit that prohibition in any manner or to any degree whatsoever.

Legislative intent notwithstanding, however, it is urged that this clause must be construed to permit the payment of brokerage to a buyer in return for services rendered to a seller. The arguments are that since paragraph (c) as originally drawn, without the words "except for services rendered," prohibited only the payment of brokerage by sellers to buyers' agents, the exception to that limited prohibition must be held not to extend the prohibition but to relax it within its original limitations; and, as urged by the respondent, by writing the exception into paragraph (c) Congress in fact asserted a belief that a buyer could render services to a seller because the exception of a particular thing from general words proves that, in the opinion of the legislature, the thing excepted would be within the general clause had the exception not been made.

In the light of clear congressional intent to the contrary, the Commission cannot accept these arguments. Moreover, they ignore the well-established rule of statutory construction that exceptions are to be strictly construed, all doubts being resolved in favor of general provisions rather than exceptions, and the premise of the argument first stated is not entirely accurate.

It will be recalled that paragraph (c) as originally drawn, without the "services rendered" exception, prohibited the payment of brokerage not simply to anyone acting for the buyer but to any "intermediary * * * acting * * * for or in behalf of * * * subject to the direct or indirect control" of the buyer.

The Commission, in the exercise of its knowledge of the manner in which ordinary business affairs are transacted, knows that the language quoted was susceptible of a construction which might have prohibited in many cases the payment of brokerage by a seller to an independent broker for brokerage services actually rendered. A broker (and the reference is to selling brokers, as distinguished from buying brokers, so to speak) occupies an anomalous position in commerce and in law. He is an independent businessman in the sense that he is engaged in business for himself. But the business in which he is engaged is that of acting as a local sales representative for manufacturers. A broker pays the expenses of operating his business and is dependent for his income upon a commission, called "brokerage," paid to him on and measured by sales which he makes for the manufacturers whom he represents. The essential service which he performs for manufacturers, and the only service for which he is paid, is a selling service, although he renders many other services.

In the course of conducting his business a broker must and does also render services to buyers—but those services, unlike the services rendered to the respondent by its field buying agents, are not buying services. A broker is not employed by buyers. He is employed and paid by sellers as their selling agent and he represents his seller-principals only. His activities in connection with his representation of his seller-principals are controlled by them, but, paradoxically, because of the broker's anomalous position as an independent sales agent in business for himself, he does act for buyers in a sense and he is subject to a degree of control on their part.

This results from requests by buyers that brokers report complaints to their seller-principals, that brokers communicate cancellations of orders to their seller-principals, that brokers submit to their seller-principals offers of buyers to purchase commodities at prices

stipulated by buyers, that brokers endeavor to make up "pool" cars of merchandise among several buyers so that the buyers may obtain the advantage of quantity prices and carload rates of freight, that brokers obtain quotations of prices from their seller-principals for the consideration of buyers, and, perhaps, in other ways. Naturally it is to the mutual interest and advantage of brokers and sellers to maintain the good will of their common customers, and brokers generally endeavor to comply with the reasonable requests of buyers along the lines indicated. In the course of negotiating sales from seller to buyer and bringing them into agreement brokers are necessarily guided somewhat by instructions from each, but in the essential particular of selling commodities and consummating sales they act for and are controlled by the latter alone, who in the absence of a contract may discharge them and substitute new brokers in their places at any time.

It is therefore apparent that paragraph (c) of the Robinson-Patman Act, as originally drawn, broadly prohibiting the payment of brokerage to anyone "acting * * * for or in behalf or * * * subject to the direct or indirect control" of buyers, without qualification as to the manner of acting or the degree or importance of control, and irrespective of services rendered to the seller, might possibly have been given a construction prohibiting the payment of brokerage to *bona fide* independent brokers—a construction which Congress manifestly did not intend it to be given.

Thus it is seen that paragraph (c) was susceptible of a construction extending its prohibitions to others than persons acting for and as agents of buyers. The insertion of the "except for services rendered" clause therein, it is believed, was intended by Congress not to permit the payment of brokerage to a buyer, but to make it clear that payment of brokerage to a *bona fide* broker in return for selling services rendered was not proscribed, thereby performing a legitimate function of a proviso "to exclude some possible ground of misinterpretation."

This view finds affirmative and authoritative support in the above-cited Conference Committee report on the Robinson-Patman Act and in the remarks of Representative Utterback in reporting the act to the House.

The Conference report, after referring to the retention of the words "except for services rendered," stated:

With (these) words of the House bill thus retained, this subsection permits the payment of compensation by a seller to his broker * * * for services actually rendered in his behalf * * *

Mr. Utterback said:

The bill prohibits payment or allowance of brokerage * * * except for services rendered * * * this refers to true brokerage services rendered in fact for the party who pays for them * * * (74th Congress, 2nd Session, 80 Congressional Record, Part 9, Page 9418).

It does not appear that Congress thought a buyer capable of rendering "services" to a seller in connection with the buyer's own purchases of goods. In writing the "services rendered" clause into paragraph (c) Congress clearly had in mind true brokerage services rendered by bona fide independent brokers employed by sellers as their selling agents. In the opinion of the Commission that clause was inserted not by way of relaxing the limitations of paragraph (c) insofar as they applied to buyers or buyers' agents, but by way of excluding a possible misinterpretation that the paragraph might be held to prohibit the payment of brokerage for true brokerage services rendered by bona fide independent brokers.

Even if it were possible to hold that the payment of brokerage to buyers or the granting of any discount or allowance in lieu thereof is permissible under the "services rendered" clause, the services referred to therein, as plainly appears from the Committee reports heretofore quoted, are brokerage or selling services rendered to the seller, and the Commission finds and concludes that no such services were rendered to sellers by the respondent or by any agent or employee of the respondent. Whatever character may be ascribed to the various activities of the respondent's agents from which benefits were derived by sellers, those activities were not selling services nor were any services in connection with the sale of goods to the respondent rendered to sellers. The respondent's field buying agents and other employees acted in every case as agents of the respondent, having in mind and intending to serve and promote its interests, and not acting except when, and as they felt those interests could be served and promoted. The services thus rendered by the respondent's field buying agents and other employees were not selling services in character, nor were they rendered to sellers; their services were rendered to the respondent and to no one other than the respondent, and the benefits derived by sellers from such services were purely incidental.

Passing now to the third point made by the respondent, the Commission does not believe that Congress intended to permit brokerage savings to be passed on by sellers to buyers under that part of para-

graph (a) of Section 2 of the Clayton Act, as amended, which provides as follows:

Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

While paragraphs (a) and (c) have in common the purpose of eliminating unfair price discriminations, the Commission is of the opinion that the paragraphs were intended by Congress to be separately and independently applied, and that the former was not meant to limit or qualify the prohibitions or application of the latter.

Paragraph (c) is complete on its face. It contains no ambiguous language necessitating reference to paragraph (a) for the purpose of determining its meaning. It deals specifically with a particular trade practice which was regarded by Congress as an unfair method of competition, *per se* injurious to commerce, and therefore to be prohibited. The intention of Congress to treat paragraph (c) as independent of paragraph (a) is apparent from both the form of the Robinson-Patman Act and from its legislative history.

As heretofore mentioned, since paragraph (a) prohibits both direct and indirect discrimination in price, if discrimination in price as such, were the only evils at which the act was directed there was no necessity for Congress to have enacted paragraphs (c), (d), or (e). Looking at the act as a whole it seems evident that the purpose of Congress was not merely to terminate the price discriminations effected by the practice of paying brokerage to buyers, but to terminate the practice itself because it was an undesirable practice and constituted an inherently unfair method of competition. Paragraph (c) is expressly limited in its application solely to transactions occurring in the course of interstate commerce, while paragraph (a) is not so limited. In addition to this, paragraph (b), relating to the burden of proof applies to proceedings instituted under paragraphs (a), (d), and (e) but, significantly, does not apply to proceedings under paragraph (c).

There is more than mere form, however, to indicate the independence of paragraph (c).

Upon reference to the Senate Committee on the Judiciary, the act was amended in Committee by the addition to paragraph (a) of the words "other than brokerage" following the above-quoted language therein permitting differentials based on differences in cost. In reporting the bill the Senate Committee stated that the quoted words

had been added to "harmonize this subsection (paragraph (a)) with (the) subsection * * * which deals directly with the question of brokerage" (74th Congress, 2nd Session, Senate Report Number 1052, page 5). It is noted that it was paragraph (a) which was amended to harmonize it with the provisions of paragraph (c), and that the latter was referred to as the subsection which dealt directly with brokerage. By thus adding to paragraph (a) an amendment having no other purpose whatsoever than expressly to exclude the cost proviso or differentials provision thereof from application to paragraph (c), the Committee evidenced an unmistakable intention to subordinate the former to the latter, leaving paragraph (c) to deal with the question of brokerage irrespective of and unaffected by the contents of paragraph (a).

Additional affirmative evidence of this legislative intent is found in the action taken by the Committee of Conference of the House and Senate. That Committee struck from the bill as passed by the Senate the words "other than brokerage" inserted in paragraph (a) as just mentioned. Its reason for doing so was that "the matter of brokerage is dealt with in a subsequent subsection of the bill" (74th Congress, 2nd Session, House of Representatives Report Number 2951, page 6).

The words "other than brokerage" had never been inserted in paragraph (a) of the House bill. Paragraph (c) standing alone clearly was not open to a construction permitting brokerage to be passed on to buyers by way of an allowance or discount based on savings in cost. By striking from paragraph (a) of the Senate bill the words "other than brokerage" for the reason stated in the Conference report, it appears to the Commission that Congress thereby exhibited not only a plain intention that paragraph (c) exclusively should govern questions of brokerage without regard to the contents of paragraph (a) but also the view that the words of paragraph (c) were, in themselves alone, sufficiently broad without the aid of the Senate amendment of paragraph (a) to prevent brokerage from being transmitted to buyers in the form of allowances based on savings in cost. Thus the Senate amendment was struck, in the opinion of the Commission, not for the purpose of changing the meaning of either paragraph (a) or paragraph (c), but because it was tautological. This legislative construction of paragraphs (a) and (c) as mutually independent is binding upon the Commission as a clear manifestation of legislative intent.

The Commission has not overlooked the fact that in reporting the Robinson-Patman Act to the Senate, after the Senate Committee on

the Judiciary had amended paragraph (a) by the insertion of the words "other than brokerage," Senator Logan said:

In the second section of the Committee amendment there is a provision that in making discriminations or differentials, or whatever we may choose to call them, all costs other than brokerage shall be allowed; and it has been said that the words "other than brokerage" in that section ought to go out.

I have thought a good deal about that suggestion. I think perhaps legitimate brokerage ought to be allowed as a part of the costs; and I think when the bill was drafted * * * perhaps in the amendment which was inserted by the Judiciary Committee of the Senate we had in mind dummy brokerage, sham brokerage (74th Congress, 2nd Session, 80 Congressional Record, part 6, page 6285).

This statement, however, appears to support rather than to oppose the view that paragraph (c) is not susceptible of a construction permitting the passing on of brokerage savings as differentials in cost. It demonstrates effectively that the obvious intention and only purpose of the Senate Committee on the Judiciary in adding the words "other than brokerage" to paragraph (a) was to refute any possible contention that the differentials provisions of that paragraph could be read into paragraph (c). That action was thus affirmatively taken by the Committee is clearly indicative of the fact that it was not ever intended that the differentials provisions of paragraph (a) should be construed as qualifying the scope and application of paragraph (c). Recognizing an ambiguity inherent in the incompatibility of those paragraphs, the Committee acted to resolve that ambiguity in favor of their incompatibility. Had it been intended originally that paragraphs (a) and (c) were to be construed as interdependent, it seems clear that the Committee would have left the former unaltered or would have taken action to confirm, rather than to refute, their mutuality.

In addition to this primary evidence that Congress intended paragraph (c) as absolute, a further, and perhaps in itself sufficient and controlling, reason why that paragraph must be so construed lies in the duty of the Commission to apply a simple and fundamental rule of statutory construction. That rule is that as between general and specific provisions, in apparent contradiction, whether in the same or different statutes, the specific qualifies and overrules the general, that special provisions prevail over general ones which, in the absence of the special provisions, would control.

As heretofore stated, paragraph (a) is the general paragraph of the Robinson-Patman Act. Paragraph (c) is a special paragraph dealing with the matter of brokerage only. Unquestionably the provisions of paragraph (c) prohibit without qualification, and without reference to competition or differentials based on savings in cost,

every form of concession whatsoever based on brokerage. To the extent that paragraph (a) requires a showing of injury to competition and permits all differentials based on savings in cost it obviously conflicts, and is inconsistent, with paragraph (c). That being true, under the rule just stated, paragraph (a) must be held to be subordinate to paragraph (c), and the conflicts and inconsistencies between them must be resolved in favor of the enforcement of the special provisions of the latter unqualified by the general provisions of the former.

If this construction of paragraphs (a) and (c) as mutually independent and absolute were not adopted, paragraph (c) would be deprived of all substance. Manifestly there is no difference between paying brokerage to a buyer and giving him credit for it, by way of a net price, on the purchase price of the commodities which he buys. Sellers ordinarily selling through brokers who do their own selling in particular cases always save brokerage in such cases, because no one else having performed a selling service which entitles him to receive brokerage the sellers incur no obligation to pay it. If they are permitted to pass that saving on to buyers paragraph (c) will be completely eviscerated, and the efforts of Congress to protect commerce against a practice by which it found that price concessions were being transmitted to buyers by way of an inherently unfair method of competition will be rendered vain and useless.

While the Commission finds as a fact in this proceeding that the acceptance of discounts in lieu of brokerage by the respondent tends to injure competition between the respondent and its competitors and does injure competition between sellers who grant such discounts and allowances to the respondent and those who do not, that fact has not been considered by the Commission in arriving at its conclusion herein, for the reason that the Commission concludes as a matter of law that it is unnecessary for an injurious effect upon competition to be shown in proceedings instituted under paragraph (c).

The Commission concludes that in accepting net prices and quantity discounts, as heretofore referred to in paragraph 14. *supra*, the respondent The Great Atlantic & Pacific Tea Company, has been and is now accepting discounts and allowances in lieu of brokerage in violation of paragraph (c) of Section 2 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", as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies,

and for other purposes', approved October 15, 1914, as amended (U. S. C., Title 15, Sec. 13), 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 Great Atlantic & Pacific Tea Company, respondent, testimony and other evidence, taken before William C. Reeves, an examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed in support of said complaint and in opposition thereto and the oral arguments of J. J. Smith, Jr., counsel for the Commission, and Caruthers Ewing, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated, and is now violating, 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" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C., Title 15, Sec. 13), and for other purposes."

It is ordered, That in purchasing commodities in interstate commerce from sellers who are engaged in selling commodities in interstate commerce to the respondent, The Great Atlantic & Pacific Tea Company, and to purchasers thereof other than the respondent, the said respondent, The Great Atlantic & Pacific Tea Company, do forthwith cease and desist from:

1. Making purchases of commodities, and the policy and practice of making purchases of commodities, at a so-called net price, and every other price, which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling said commodities to other purchasers thereof any amount representing, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of said commodities made for said sellers by, or by said sellers through, their said brokers, and:

2. Accepting, and the policy and practice of accepting, on its purchases of commodities from sellers any so-called quantity discounts and payments of all kinds representing, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of said

Order

26 F. T. C.

commodities made for said sellers by, or by said sellers through, their said brokers, and:

3. Accepting, and the policy and practice of accepting, on its purchases of commodities from sellers prices reflecting, and all allowances and discounts representing, brokerage savings effected by sellers on their sales of commodities to the respondent.

4. Accepting, and the policy and practice of accepting, on its purchases of commodities all allowances and discounts in lieu of brokerage, in whatever form said allowances and discounts may be allowed, granted, paid or transmitted to the respondent.

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

IN THE MATTER OF

NATIONAL MANUFACTURERS 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 3053. Complaint, Feb. 10, 1937—Decision, Jan. 25, 1938

Where a corporation engaged in sale and distribution of rotary clocks, automatic vibro shavers, cameras, and various other articles of merchandise—Furnished and distributed to members of the general public in practically all States and in the District of Columbia, push cards, order blanks, and advertisements depicting particular items of its said merchandise and instructions for sale thereof under plans by which chance purchaser paid for chance varying amount, dependent upon number disclosed within various disks of aforesaid cards, and received article of merchandise or nothing other than push, dependent upon success or failure in selecting girl's name corresponding to that concealed under card's master seal, and it compensated by merchandise its operator or representative, and thereby placed in hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of its said merchandise, with knowledge and intent that said cards had been, were, and would be, used in sale and distribution of its said products to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;

With result that sale of similar or like merchandise by aforesaid competitors was thereby injuriously affected and trade was diverted from them to it by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of sale and legitimate competition; to the prejudice and injury of the public and competitors:
Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that National Manufacturers Distributing 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 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, National Manufacturers Distributing Company, is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 1420 South Halsted Street, in the city of Chicago, State of Illinois. It is now, and for more than 1 year last past has been, engaged in the sale and distribution of rotary clocks and other merchandise in commerce between and among the various States of the United States and in 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 in the District of Columbia.

In the course and conduct of its business, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of clocks and other merchandise in commerce 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, as described above, respondent, in soliciting the sale of and selling its products in interstate commerce, has adopted and pursued and still continues 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 push cards, order blanks, and advertisements containing illustrations of rotary clocks 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 push card.

Respondent's push card bears 24 feminine names with ruled columns on reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 24 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names printed alphabetically on reverse side of card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has one large red seal, and concealed under this seal is one

515

Complaint

of the feminine names appearing on reverse side of the said card. The push card bears printed legends or instructions, as follows:

Name under seal receives
FAMOUS ROTARY CLOCK
 The world's newest time teller
UNIQUE UNUSUAL DEPENDABLE
\$5.00 VALUE
 Nos. 1 to 29 pay what you draw
 Over 29 pay only 20¢
NO HIGHER

Write your name opposite name you select on reverse side

Sales of rotary clocks by means of said push card are made in accordance with the above-described legends or instructions. Said prize or premium is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer pays a sum of money from 1 cent to 29 cents for a rotary clock, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

Respondent furnishes one rotary clock and additional merchandise to its representative making sales by means of said push card. Respondent also furnishes its representative with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

WHAT TO DO. There is nothing complicated—you merely show the clock-illustration to your friends, neighbors, co-workers in the office, shop, etc.—explain to them how they may obtain a beautiful modern Rotary Clock for the small sum of 1¢ to 29¢. The enclosed sales card contains 24 girls' names and under each is a concealed number. Persons selecting numbers 1 to 29 pay what they draw. All numbers over 29 pay only 29¢—no higher. When the sales card is completed the amount taken in will be \$6.52. For your cooperation in completing the sales card you will receive absolutely free a Rotary Clock and the person selecting the correct name corresponding with the one under the large seal will also receive a Rotary Clock.

PAR. 3. Respondent, in selling its said merchandise in connection with the aforesaid push card, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth.

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 United States and contrary to criminal statutes of many of the States of the United States. By reason of said facts, many competitors 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 clocks are attracted by the element of chance involved in respondent's sales method, as 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. 4. The use of said method by respondent has the tendency and capacity unfairly to divert to respondent, because of said game of chance, trade, and custom from its competitors who do not use the same or equivalent methods; to exclude from said clock trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said clock trade and to tend to create a monopoly of said clock trade in respondent and such other competitors as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said clock trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said clock 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 clocks 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 clocks, or because of any or all of such reasons.

PAR. 5. The aforesaid acts and practices of 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, 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 10, 1937, issued and served its complaint in this proceeding upon respondent, National Manufacturers Distributing 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 other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondent, before Miles J. Furnas,

an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent National Manufacturers Distributing Company is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 1420 South Halsted Street in the city of Chicago, State of Illinois. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of rotary clocks, automatic vibro shavers, cameras, and various other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. It causes said merchandise, when sold, to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in the State of Illinois and in practically all the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. In so carrying on said business, respondent is, and has been, engaged in active competition with other corporations, and with partnerships and individuals engaged in the manufacture of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 above, respondent in soliciting the sale of, and selling, its products, has adopted and pursued, and still continues the following methods and practices:

Respondent distributes to the members of the general public in practically all States of the United States and in the District of Columbia, through the United States mail, certain literature, instruc-

tions, and sales outfits, including paper push cards, order blanks and advertisements containing illustrations of particular items of merchandise which it is offering for sale, 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 said push card.

All of the said push cards involve the same principle or sales plan or method, but vary to some extent in detail. One of said push cards bears 24 feminine names with ruled columns on reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 24 small round partially perforated disks marked "PUSH", below each of which is printed one of the feminine names printed alphabetically on reverse side of card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has one large red seal, and concealed under this seal is one of the feminine names appearing on reverse side of the said card. The push card bears printed legends or instructions, as follows:

Name under seal receives
FAMOUS ROTARY CLOCK
 The world's newest time teller
UNIQUE UNUSUAL DEPENDABLE
\$5.00 VALUE
 Nos. 1 to 29 pay what you draw
 Over 29 pay only 29¢
NO HIGHER

Write your name opposite name you select on reverse side

Sales of rotary clocks by means of said push card are made in accordance with the above-described legends or instructions. Said prize or premium is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer pays a sum of money from 1 cent to 29 cents for a rotary clock, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

Respondent furnishes one rotary clock and additional merchandise to its representative making sales by means of said push card. Respondent also furnishes its representative with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

WHAT TO DO. There is nothing complicated—you merely show the clock-illustration to your friends, neighbors, co-workers in the office, shop, etc.—explain to them how they may obtain a beautiful modern Rotary Clock for the small sum of 1¢ to 29¢. The enclosed salescard contains 24 girls' names and under each is a concealed number. Persons selecting numbers 1 to 29

pay what they draw. All numbers over 29 pay only 29¢—no higher. When the sales card is completed the amount taken in will be \$6.52. For your cooperation in completing the sales card you will receive absolutely free a Rotary Clock and the person selecting the correct name corresponding with the one under the large seal will also receive a Rotary Clock.

As stated above, the other push cards which respondent furnishes are identical in principle but vary in detail. Some of said push cards are furnished by respondent and are used by the public in purchasing and distributing automatic vibro shavers, cameras, and other merchandise sold and distributed by respondent. The members of the public to whom respondent furnishes its push cards and other literature use the same in the manner suggested by respondent, thereby distributing respondent's merchandise to others and procuring respondent's merchandise for themselves. The sale and distribution of respondent's merchandise through the use of or by means of the said push cards constitutes the operation of lotteries, games of chance, or gift enterprises, and the respondent, in furnishing said push cards, puts in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of its merchandise.

PAR. 3. The respondent, in furnishing said push cards, has knowledge that said push cards are, and have been used, in distributing its merchandise, and furnishes said push cards so that its merchandise may be sold or distributed to the public by lot or chance.

PAR. 4. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondent, who do not furnish push cards similar to those furnished by respondent, and who do not furnish any device by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondent who are opposed to use of push cards in the sale and distribution of their merchandise, and such competitors refrain from furnishing such devices. Competitors of respondent were called as witnesses and testified in this proceeding, and the Commission finds that the sale of merchandise by means of said push cards injuriously affects the sale of similar or like merchandise by such competitors, and that trade is diverted to respondent from its said competitors by reason of the furnishing of said push cards or like devices. The use of such methods by the respondent in the sale and distribution of its merchandise is prejudicial and injurious to the public and to respondent's 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 sale and legitimate competition.

Order

26 F. T. C.

PAR. 5. As stated previously in these findings, the respondent sells its merchandise in practically all of the States of the United States and in the District of Columbia, and, while the annual volume of respondent's business was not shown exactly, an officer of the respondent testified, and the Commission finds, that the respondent's annual volume of business is, and has been, substantial.

PAR. 6. The Commission finds that the sale and distribution in interstate commerce of clocks, automatic shavers, cameras, and other merchandise, by means of lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent National Manufacturers Distributing Company 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 Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondent, and the Commission having made its findings as to the facts and 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 National Manufacturers Distributing Company, its officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of clocks, automatic shavers, cameras, and other merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise.

Order

2. Mailing, shipping, or transporting to members of the public push cards or other similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of merchandise by the use of push cards or other similar devices, or in any manner selling or otherwise disposing of such merchandise free of charge or at varying prices depending upon lot or chance.

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

IN THE MATTER OF
**W. A. LEITH, INDIVIDUALLY AND TRADING AS STYLE
SILK COMPANY**

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

Docket 3054. Complaint, Feb. 10, 1937—Decision, Jan. 25, 1938

Where as individual engaged in sale and distribution of silk hosiery and other merchandise—

Furnished and distributed to members of the general public in practically all States and in the District of Columbia, push cards, order blanks, and advertisements depicting his said merchandise thus being offered, and instructions, suggestions, and circulars describing his said plan of selling same, by which chance purchaser paid for chance varying amount, or nothing, dependent upon number disclosed within various disks of aforesaid cards, and received one or two pairs of hosiery, or nothing, depending upon success or failure in selecting feminine names corresponding to those concealed under cards' master seals, and he compensated by merchandise operator or representative, and thereby placed in hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of his said merchandise, with knowledge and intent that said cards had been, were and would be used in sale and distribution of his said products to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;

With result that sale of similar or like merchandise by aforesaid competitors was thereby injuriously affected and trade was diverted from them to him by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition; to the prejudice and injury of the public and competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that W. A. Leith, individually, and trading as Style Silk 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

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 doing business under the name and style of Style Silk Company, with his principal office and place of business located at 529 South Franklin Street, in the city of Chicago, State of Illinois. He is now, and for more than 1 year last past has been engaged in the sale and distribution of hosiery in commerce between and among the various States of the United States and in the District of Columbia, and causes and has caused said products when sold to be shipped from his 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 in the District of Columbia.

In the course and conduct of his business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of hosiery in commerce 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 above, respondent, in soliciting the sale of and selling his 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 push cards, order blanks, and advertisements containing illustrations of hosiery 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 push card. In order to obtain addresses of "prospects," respondent addresses a letter to a woman employee of some firm or organization offering her a pair of ladies' silk hosiery free on condition that she send to respondent the names and addresses of 10 other women in different offices. If the person addressed complies, the pair of hosiery promised of the size and color indicated is sent to her by respondent, and to each of the other "prospects" respondent sends said sales literature, including a paper push card with printed instructions for its operation.

Respondent's push card bears 60 feminine names with a blank space opposite each for writing in the name of the customer. Said push card has 60 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the card. Concealed within.

Complaint

26 F. T. C.

each disk is a number which is disclosed when the disk is pushed or separated from the card. The push board also has a large red partially perforated disk and a large blue partially perforated disk, and concealed within each of these two disks is one of the feminine names appearing elsewhere on the said card. The push card bears printed legends or instructions, as follows:

RED	14 Numbers	BLUE
SEAL	are FREE	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¢

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

Sales of hosiery by means of said push card are made in accordance with the above described legends or instructions. Each of said prizes or premiums is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer receives one or two pairs of hosiery free or pays a sum of money from 1 cent to 15 cents, and the fact as to whether a customer receives nothing for the amount paid or receives one or two pairs of ladies' silk hosiery or three or six pairs of men's hosiery, is thus determined wholly by lot or chance.

Respondent furnishes two pairs of ladies' hosiery or six pairs of men's hosiery to his representative making sales by means of said push card. Respondent also furnishes his representative with additional printed instructions or suggestions for using his said push cards.

PAR. 3. Respondent, in selling his said merchandise in connection with the aforesaid push card, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

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 United States and contrary to criminal statutes of many of the States of the United States. By reason of said facts many competitors 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 are attracted by the element of chance involved in respondent's sales method, as 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. 4. The use of said method by respondent has the tendency and capacity unfairly to divert to respondent, because of said game of chance, trade and custom from his competitors who do not use the same or equivalent methods; to exclude from said hosiery trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said hosiery trade and to tend to create a monopoly of said hosiery trade in respondent and such other competitors as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said hosiery trade. The use of said method by respondent has the tendency and capacity unfairly to eliminate from said hosiery 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 hosiery 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, or because of any or all of such reasons.

PAR. 5. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made upon advertising circulars accompanying sales outfits furnished to his representatives, as follows:

Full-Fashioned Guaranteed Ringless Pure Silk Hosiery

Value \$1.50

In truth and in fact, the hosiery sold and offered for sale by the respondent, under the above-stated representation, at a price of \$1.50 was not and is not of the type and brand of hosiery customarily sold at \$1.50. The retail price so advertised was not and is not the price at which such hosiery was or is intended to be sold, but was and is greatly in excess of the price at which such hosiery is sold or intended to be sold in the usual course of trade.

PAR. 6. The false and misleading representation hereinabove set out, together with the false and fictitious price marking, on the part of the respondent, in the sale and offering for sale of hosiery, has the tendency and effect to mislead and deceive and does mislead a substantial portion of the consuming public by inducing them to believe that the price so advertised was and is the usual or customary price at which said hosiery was or is sold or intended to be sold in the course of regular retail trade.

PAR. 7. There are among the competitors of respondent many who do not falsely represent the price of hosiery offered by them for sale, or who do in fact sell and offer for sale hosiery which is truthfully represented as to value and price.

Respondent's false representation has had and now has the tendency and capacity to mislead and deceive a substantial portion of the consuming public into the erroneous belief that such representation is true, causing them to purchase respondent's product in reliance on same. Said false representation has the tendency and capacity to, and does, divert trade to respondent from his competitors who truthfully advertise their products, thereby causing injury to substantial competition in commerce.

PAR. 8. 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.

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 10, 1937, issued and served its complaint in this proceeding upon the respondent, W. A. Leith, individually and trading as Style Silk Company, charging him with

Findings

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 other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter and now 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. Leith is an individual doing business under the trade name, Style Silk Company, with his principal office and place of business located at 529 South Franklin Street in the city of Chicago, State of Illinois. Respondent is now, and for several years last past has been, engaged in the sale and distribution of silk hosiery, ladies' lingerie, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. He causes such merchandise, when sold, to be shipped or transported from his principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in practically all of the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. In so carrying on said business respondent is, and has been, engaged in active competition with other individuals and with partnerships and corporations engaged in the manufacture of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 above, respondent in soliciting the sale of and selling

his merchandise has adopted and pursued, and still continues, the following methods and practices:

Respondent distributes to members of the general public in practically all States of the United States and in the District of Columbia through the United States mail certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of the merchandise which he is offering for sale and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards.

All the push cards used by respondent involve the same principle or sales plan or method but vary to some extent in detail. One of the said push cards bears 60 feminine names with ruled columns opposite each for writing in the name of the customer selecting such name. Said push card has 60 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names above referred to. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has one large red seal and one large blue seal, concealed within each of which is one of the feminine names above referred to. The numbers concealed within each of the partially perforated disks cannot be ascertained until a push or selection has been made and the names concealed within the large red seal and large blue seal cannot be ascertained until these seals have been removed. The push card bears printed legends or instructions as follows:

RED SEAL	10 Numbers are FREE	BLUE SEAL
	15—20—25	
	30—35—38—40	
	45—48—50	

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—1c to 15c

Any number over 15 pays only 15 cents

All numbers have Equal Chance

NO CREDIT

First write your name opposite name you
select, then push out with Pencil Point

The reverse of said card bears the following legend, among others:

Upon receipt of your order we will ship you, charges prepaid your choice of FIVE Pair of Ladies' Pure Silk Hosiery.

TWO pair are given you for disposing of the card. TWO pair given to the party drawing the lucky name found under the RED SEAL. ONE pair is given to the party drawing the lucky name found under the BLUE seal.

NOTICE: Regarding MEN'S HOSE. If Men's Hose are ordered we will send 3 Pair of Men's Pure Silk Sox in place of each pair of Ladies'.

If the order is sent us within ten days, we will include a SURPRISE GIFT for the person sending us the order.

All orders are shipped the same day received by Parcel Post or Express C. O. D. unless accompanied by POSTAL MONEY ORDER or CASHIER'S CHECK.

Do not credit for pushes; have them pay as they push. It is not necessary to return this card with the order blank.

Sales of silk hosiery by means of said push cards are made in accordance with the above-described legends or instructions. Each of said prizes or premiums is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer receives one or two pair of hosiery free or pays a sum of money from 1 cent to 15 cents therefor and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

Respondent furnishes two pair of ladies' hosiery or six pairs of men's hosiery to his representative making sales by means of said push card. Respondent also furnishes his representatives with additional printed instructions or suggestions for using said push cards.

As stated above, the other push cards which respondent furnishes are identical in principle but vary in detail. The members of the public, to whom respondent furnishes his push cards and other literature, use the same in the manner suggested by respondent, thereby distributing respondent's merchandise to others by lot or chance and procuring respondent's merchandise for themselves. The sale and distribution of respondent's merchandise through the use of or by means of the said push cards constitutes the operation of lotteries, games of chance, or gift enterprises, and the respondent in furnishing said push cards puts in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of his merchandise.

PAR. 3. The respondent, in furnishing said push cards, has knowledge that the same are, have been, and will be, used in distributing his merchandise, and furnishes said push cards so that his merchandise may be sold or distributed to the public by lot or chance.

PAR. 4. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondent, who do not furnish push cards similar to those furnished by respondent, and who do not furnish any device by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondent who are opposed to use of push cards in the sale and distribution of their merchandise, and such competitors refrain from furnishing such devices. Competitors of respondent were called as witnesses and testified in this proceeding, and the Commission finds that the sale of merchandise by means of said push cards injuriously affects the sale of similar or like merchandise by such competitors, and that trade is diverted to respondent from his said competitors by reason of the furnishing of said push cards or like devices. The use of such methods by the respondent in the sale and distribution of his merchandise is prejudicial and injurious to the public and to respondent's competitors, and has resulted in the diversion of trade to respondent from his said competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 5. As stated previously in these findings, the respondent sells his merchandise in practically all of the States of the United States and in the District of Columbia. While the annual volume of respondent's business was not shown exactly, the respondent testified and the Commission finds, that the respondent's annual volume of business is, and has been, substantial. The respondent testified that during 1936 he distributed between 10,000 and 20,000 push cards per month, having a total of approximately 150,000 push cards for that year, and that for the year 1935 his sales were in excess of \$100,000 and that for the year 1936 his gross sales were larger than for 1935.

PAR. 6. The Commission finds that the sale and distribution in interstate commerce of merchandise as described above, by means of lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, W. A. Leith, individually and trading as Style Silk Company, 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

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 other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondent, and the Commission having made its findings as to the facts and 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, W. A. Leith, individually and trading as Style Silk Company, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of hosiery, and other merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping, or transporting to members of the public push cards or other similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of merchandise by the use of push cards or other similar devices, or in any manner selling or otherwise disposing of such merchandise free of charge or at varying prices depending upon lot or chance.

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

IN THE MATTER OF

ALBERT J. TARRSON, INDIVIDUALLY AND TRADING AS
NATIONAL ADVERTISERS COMPANY, A. J. SALES &
MANUFACTURING COMPANY, THE TARRSON COMPANY,
AND PLA-PAL RADIO & TELEVISION COMPANY

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

Docket 3081. Complaint, Mar. 18, 1937—Decision, Jan. 25, 1938

Where an individual engaged in sale and distribution of clocks, cameras, radio receiving sets, pen and pencil sets, safety razors, and other merchandise—
Furnished and distributed, to members of the general public in practically all States and in the District of Columbia, push cards, order blanks, and advertisements depicting particular items of merchandise thus being offered, and instructions, suggestions, and circulars describing his said plan of selling said merchandise, by which chance purchaser paid for chance varying amount, dependent upon number disclosed within various disks of aforesaid cards, and received rotary clock (or camera, radio set, or other merchandise), or nothing, depending upon success or failure in selecting feminine name corresponding to that concealed under card's master seal, and he compensated by one or more items of merchandise operator or representative, and thereby placed in the hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of his said merchandise, with knowledge and intent that said cards had been, were, and would be used in sale and distribution of his said products to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;

With result that sale of similar or like merchandise by such competitors was thereby injuriously affected and trade was diverted from them to him by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition; to the prejudice and injury of the public and competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Albert J. Tarrson, individually and trading as the National Advertisers Company, the

Complaint

A. J. Sales & Manufacturing Company, The Tarrson Company, and the Pla-Pal Radio & Television 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 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 an individual doing business under the following trade names and styles: National Advertisers Company, A. J. Sales & Manufacturing Company, The Tarrson Company, and Pla-Pal Radio & Television Company, and has his principal office and place of business at 230 East Ohio Street, in the city of Chicago, State of Illinois. He is now, and for some time last past has been, engaged in the sale and distribution of cameras, pen and pencil sets, radio receiving sets, safety razors, clocks, and various other articles of merchandise, to wholesale dealers, jobbers, retail dealers, and to the purchasing public. Respondent's customers are located at points in the various States of the United States, and respondent causes his said products when sold to be transported from his principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said merchandise, has furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and a distribution of such merchandise to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards, the use of which, in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, was and is substantially as follows:

The said push cards bear a number of girls' names; concealed under each name is a number; also, under a master seal there is a name corresponding to one of the names on the card. Prospective purchasers select one of the names and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29

Complaint

26 F. T. C.

(occasionally 1 to 35) pay in cents the amount of such number, and persons selecting numbers over 29 pay 29 cents (occasionally where the number is over 35, the purchaser pays 35 cents) for the privilege of selecting one of the names. The push cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the merchandise described thereon is to be distributed. Certain push cards bear legends informing customers and prospective customers that a few of the numbers will be free to the person selecting such numbers. Illustrative of a few, but not descriptive of all of such legends, are the following:

Select your favorite girl's name and receive a New Modern Rotary Clock—the latest clock sensation—\$5.00 value—Numbers under 29 pay what you draw—Numbers over 29 pay only 29 cents—No higher—Write your name opposite name you select on reverse side.

Persons selecting name under seal receive choice of articles for 1 cent to 35 cents.

FREE numbers 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, pay nothing.

4—EXTRA WINNERS—4

Numbers 23—33—43—and last sale, each receives a genuine Tarco Vacuum Pen—Pencil Set—\$2.50 value

Numbers 1 to 35 pay what you draw

All numbers over 35 pay only 35 cents—No higher

Write purchaser's name on back of card opposite name selected

When all the names have been purchased the master seal is removed, and the person who has selected the name corresponding to the name under the master seal receives the article of merchandise described without further charge, and the salesman, agent, or representative or retail dealer, soliciting purchases of chances as above described, also receive an article of merchandise without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names, or whether the same will be obtained free of charge, until the selection has been made and the name removed. Also the name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected, and the customers or purchasers do not know what they will receive for their name, if anything, until after the master seal has been removed. Those qualifying to receive one of the other articles of merchandise by selecting a particular number do not know what they will receive, if anything, until after their selection has been made and the name removed. Those customers selecting names which do not correspond to the name under the master seal, or who do not qualify

for one of the other articles of merchandise by selecting a particular number, receive nothing but the privilege of making a selection for the money which they pay.

The purchasing public are thus induced and persuaded into purchasing pushes from said cards in the hope that they may select a prize-winning name, or one of the prize-winning numbers, and thus obtain an article of merchandise free of charge or for a sum not in excess of 29 cents (occasionally 35 cents). The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells his merchandise resell the same to retail dealers, together with the push cards furnished by respondent, and such retail dealers and the retail dealers to whom respondent sells direct offer for sale and sell said merchandise to the purchasing public by means of said push cards in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plans hereinabove set forth, and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said merchandise in preference to like or similar merchandise offered for sale and sold by his competitors.

PAR. 4. The sale and distribution of merchandise to the purchasing public, as above alleged, involves a game of chance or the sale of a chance to procure such articles of merchandise in the manner alleged.

The use by respondent of said methods in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said methods has the tendency unduly to hinder competition or to create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent, as above alleged are unwilling to offer for sale or sell merchandise by any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of merchandise as distributed by respondent are attracted by respondent's said methods or sales plans and by the element of chance involved in the sale or purchase thereof in the manner above described, and are thereby induced to purchase said merchandise of respondent in preference to merchandise offered for sale and sold by competitors of respondent who do not use the same or equivalent methods. The use of said methods or sales plans by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his said competitors who do not use the same or equivalent methods; to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said trade, and to tend to create a monopoly of said trade in respondent and such other distributors as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said methods or sales plans by respondent has the tendency and capacity to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. In the course and conduct of his business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to his customers and prospective customers, by means and by the use of the trade name "A. J. Sales & Manufacturing Company" and by the use of the words "Makers of Tarco products—Manufacturers" on his stationery, that he is the manufacturer of said articles of merchandise, or some of them, in which he deals. A substantial portion of the purchasing public, including wholesale dealers, jobbers, and retail dealers, have expressed and have a preference for dealing direct with the manufacturer of products being purchased, such purchasers believing that they secure closer prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman.

PAR. 7. The use by respondent of said representation, that he is a manufacturer of the merchandise in which he deals, 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, operates, or owns a factory in which said merchandise sold by respondent is manufactured, and that persons dealing with respondent are buying said merchandise directly from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages,

including advantages in price, 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 factory whatsoever, and does not manufacture any of the merchandise sold by him, but on the contrary purchases such merchandise from others.

PAR. 8. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who manufacture the merchandise which they sell, and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the merchandise in which they deal and resell the same at a profit to themselves, and who in no wise represent that they manufacture said merchandise. The above alleged acts and practices of respondent, as set out in paragraphs 6 and 7 hereof, tend to and do divert trade and business from and otherwise injure and prejudice said competitors.

PAR. 9. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said methods, acts, and practices 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 March 18, 1937, issued and served its complaint in this proceeding upon respondent, Albert J. Tarrson, individually and trading as the National Advertisers Company, the A. J. Sales & Manufacturing Company, The Tarrson Company, and the Pla-Pal Radio & Television 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, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter and now 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 Albert J. Tarrson is an individual doing business under the trade names and styles, National Advertisers Company, A. J. Sales & Manufacturing Company, The Tarrson Company and the Pla-Pal Radio & Television Company, with his principal office and place of business located at 230 East Ohio Street in the city of Chicago, State of Illinois. Respondent is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise including clocks, cameras, radio receiving sets, pen and pencil sets, safety razors, washing machines, food mixers, vacuum cleaners, roasters, toasters, automatic razors and electric dry shavers, in commerce between and among the various States of the United States and in the District of Columbia. He causes such merchandise, when sold, to be shipped or transported from his principal place of business in Chicago, Illinois, to purchasers thereof in the State of Illinois and in practically all of the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. In so carrying on said business respondent is, and has been, engaged in active competition with other individuals and with partnerships and corporations engaged in the manufacture of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 above, respondent, in soliciting the sale of and selling his merchandise, has adopted and pursued and still continues the following methods and practices:

Respondent distributes to members of the general public in practically all States of the United States and in the District of Columbia through the United States mail certain literature, instruc-

534

Findings

tions, and sales outfits including paper push cards, order blanks, and advertisements containing illustrations of particular items of merchandise which he is offering for sale, 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 said push cards.

All of the said push cards involve the same principle or sales plan or method, but vary to some extent in detail. One of the said push cards bears 24 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 24 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names above referred to. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has one large red seal and concealed within this seal is one of the feminine names above referred to. The numbers concealed within each of the partially perforated disks cannot be ascertained until a push or selection has been made, and the name concealed within the large red seal cannot be ascertained until the seal has been removed. The push cards contain printed legends or instructions as follows:

SELECT
YOUR
FAVORITE
GIRL'S NAME

Do not
remove seal
until entire
card is sold

And Receive

NEW MODERN
ROTARY CLOCK

(Picture of
Clock)

The
Latest
Clock
Sensation
\$5.00
Value

Numbers Under 29 Pay
What You Draw

Numbers over 29 Pay Only 29¢

— No Higher —

Write Your Name Opposite Name
You Select on Reverse Side

The reverse of said card bears the following legends, among others:

INSTRUCTIONS: There are 24 various mixed numbers in this card, printed from 1 upwards. Numbers under 29 pay what numbers call for. All numbers

over 29 only pay 29¢. When completed, open large seal at top and party who selected corresponding name receives a ROTARY CLOCK.

Sales of rotary clocks by means of said push cards are made in accordance with the above-described legends or instructions. Said prize or premium is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer pays a sum of money from 1 cent to 29 cents for a rotary clock and the fact as to whether a customer receives nothing for the amount paid, is determined wholly by lot or chance.

Respondent furnishes one rotary clock and generally an additional item of merchandise to his representative making sales by means of said push card. Respondent also furnishes his representatives with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legends, to wit:

HOW TO OBTAIN YOUR
MODERN ROTARY CLOCK AT NO COST
SUGGESTIONS FOR USING SALES CARD

The push card contains 24 girl's names—beneath each is a concealed number. These numbers range from one upwards. All numbers under 29 pay amount of number (one pays 1¢—19 pays 19¢, etc.). Any number over 29 only pays 29¢. NO HIGHER.

Your friends select any name they choose and push out the corresponding hole. You write down your friend's names opposite the names they select. When all have been pushed out, you will find that you have collected \$6.50. Then remove the large seal at the top. Under it is the fortunate name. The person who selected that name is entitled to a Modern Rotary Clock. NOW YOU CAN DESTROY THE CARD—THERE IS NO NEED TO RETURN IT TO US.

Fill out the order blank (see other side), specify the colors you wish—one for you and one for the person who selected the name under the seal. Send the order blank to us together with express money order or cashier's check for \$6.50. The two clocks will be shipped to you prepaid. Thus you will receive your clock at no cost to you and the fortunate person will receive his or her ROTARY CLOCK at hardly any cost.

You will have a lot of fun getting folks to push out names on the cards. Show it to your fellow employees, friends, relatives, and acquaintances. Whenever there is a party or gathering at your home or your friends' home, bring out your card. Everyone will find it as much fun as any other game or pastime. You will have the card pushed out in no time.

If you mail the order within ten days, we will include a Surprise Present for you FREE. It's worth getting.

As stated above, the other push cards which respondent furnishes are identical in principle but vary in detail. Some of said push cards are furnished by respondent and are used by the public in purchasing and distributing cameras, radio receiving sets, and other merchandise sold and distributed by respondent. The members of

the public to whom respondent furnishes his push cards and other literature use the same in the manner suggested by respondent, thereby distributing respondent's merchandise to others and procuring respondent's merchandise for themselves. The sale and distribution of respondent's merchandise through the use of or by means of the said push cards constitutes the operation of lotteries, games of chance, or gift enterprises, and the respondent, in furnishing said push cards, puts in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of his merchandise.

PAR. 3. The respondent, in furnishing said push cards, has knowledge that the same are, have been and will be, used in distributing his merchandise, and furnishes said push cards so that his merchandise may be sold or distributed to the public by lot or chance.

PAR. 4. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondent, who do not furnish push cards similar to those furnished by respondent, and who do not furnish any device by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondent who are opposed to use of push cards in the sale and distribution of their merchandise, and such competitors refrain from furnishing such devices. Competitors of respondent were called as witnesses and testified in this proceeding, and the Commission finds that the sale of merchandise by means of said push cards injuriously affects the sale of similar or like merchandise by such competitors, and that trade is diverted to respondent from his said competitors by reason of the furnishing of said push cards or like devices. The use of such methods by the respondent in the sale and distribution of his merchandise is prejudicial and injurious to the public and to respondent's competitors, and has resulted in the diversion of trade to respondent from his said competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 5. As stated previously in these findings, the respondent sells his merchandise in practically all of the States of the United States and in the District of Columbia, respondent having been called as a witness and having testified that he sells his merchandise throughout the entire United States. While the annual volume of respondent's business was not shown exactly, the respondent testified, and the Commission finds, that the respondent's annual volume of business is, and has been, substantial. The respondent testified that he distributed each week approximately 50,000 of his push cards offering rotary clocks for distribution, and that at the time of the

Order

26 F. T. C.

hearing, April 27, 1937, has sold between 3,000 and 4,000 of said clocks during 1937, and that his business for 1937 was considerably less than for a similar period during 1936. He also testified that prior to September 1936, he distributed between 100,000 and 150,000 push cards offering cameras, and that during 1936 he distributed approximately 100,000 push cards offering radio receiving sets and other articles of merchandise.

PAR. 6. The Commission finds that the sale and distribution in interstate commerce of merchandise as described above, by means of lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Albert J. Tarrson, individually and trading as the National Advertisers Company, A. J. Sales & Manufacturing Company, The Tarrson Company, and the Pla-Pal Radio & Television Company, 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 Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondent, and the Commission having made its findings as to the facts and 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, Albert J. Tarrson, individually and trading as the National Advertisers Company, A. J. Sales & Manufacturing Company, The Tarrson Company, and the Pla-Pal Radio & Television Company, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of various articles of merchandise, including among others, clocks, cameras, radio receiving sets, pen and pencil sets, safety razors, wash-

534

Order

ing machines, food mixers, vacuum cleaners, roasters, toasters, automatic razors, and electric dry shavers, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping, or transporting to members of the public push cards or other similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of merchandise by the use of push cards or other similar devices, or in any manner selling or otherwise disposing of such merchandise free of charge or at varying prices depending upon lot or chance.

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

IN THE MATTER OF
C. J. O'CROWLEY, TRADING AS EXCEL PRODUCTS, AND
AS C. J. O'CROWLEY

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

Docket 3094. Complaint, Apr. 1, 1937—Decision, Jan. 25, 1938

Where an individual engaged in transportation, sale, and distribution of his "Excel" and "Excel Special" medicinal or pharmaceutical preparations, as competent and effective gland treatments, in substantial competition with others likewise engaged in sale and distribution or in manufacture, sale, and distribution in commerce among the various States, of medicinal or pharmaceutical preparations designed, distributed, and sold for use in connection with treatment of glandular disturbances and deficiencies, and who make use in compounding their respective products of varying amounts, or some, or all, of same ingredients contained in products of said individual and do not misrepresent quality, efficacy, or therapeutic value thereof; in advertising his said preparations in newspapers and periodicals of general circulation, and also in certain advertising literature circulated through the mails and otherwise to customers and prospective customers—

Represented that use thereof enabled one to be young again, and that they consisted of gland medicines and were gland stimulants and assisted glands of men and women, and constituted competent and effective aphrodisiacs and remedies or treatments for sexual deficiencies, and would bring about sexual rejuvenation, facts being formulas thereof had no such effects, glandular deficiencies may be due to any one of a number of debilitating diseases or psychic, and no prescription or specific medicine will be applicable in all cases, and it is impossible to prescribe for such conditions without thorough diagnosis as to cause by a competent physician, and claims and representations made by him as to qualities, nature, and effect of his said preparations were grossly exaggerated, false, and misleading;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said preparations enabled one to be young again, and consisted of gland medicines and constituted competent aphrodisiacs, and had the effects and qualities claimed therefor as above set forth and indicated, and with result that a number of said public, as a consequence of such mistaken and erroneous beliefs, purchased his said preparations and trade was thereby unfairly diverted to him from competitors likewise engaged in distribution and sale, or manufacture and sale, of various medicinal or pharmaceutical preparations containing some of same ingredients and used and prescribed by physicians for same purpose for which his said preparations were advertised and sold, and who do not misrepresent character, efficacy, or therapeutic value of their respective products:

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. T. H. Kennedy and *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 C. J. O'Crowley, an individual trading as Excel Products and also as C. J. O'Crowley, 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, C. J. O'Crowley, is an individual trading as Excel Products and also as C. J. O'Crowley. The legal residence and address of the respondent is 4336 Sheridan Road, Chicago, Ill. Respondent is now, and has been for more than 3 years last past, engaged in the transportation, sale, and distribution in commerce among and between the various States of the United States of a medicinal preparation recommended as a gland treatment, and known as and designated "Excel Gland Tablets." The respondent causes said product, when sold, to be shipped and transported in interstate commerce from his place of business located in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State of Illinois. He now maintains, and has maintained at all times mentioned herein, a constant current of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his business as aforesaid, is now, and at all times herein referred to has been in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of other preparations prepared, compounded, advertised, and sold as gland treatments in commerce among and between the various States of the United States, and who in no way misrepresent the quality, efficacy, or therapeutic value of their product.

PAR. 3. Respondent, in the course and conduct of his business as aforesaid and for the purpose of inducing individuals to purchase said gland treatment, Excel Gland Tablets, has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and has printed and circulated throughout the several States of the United States, through the United States mail and otherwise, to customers and

prospective customers certain advertising literature in all of which respondent has caused his name and the name of the product to be prominently and conspicuously displayed, and in which the following statements are made:

Be young again.

Don't miss this—two gland medicines, each with imported ingredients.

Men and women, assist your glands with Excel Special.

If you want a "real article" try this and feel its stimulating effects.

Guaranteed relief on two or three treatments.

We recommend this medicine for use as a gland stimulant.

Men and women, assist your glands with "EXCEL" tablets. IMPORTED INGREDIENTS in this GLAND MEDICINE. If you want "STIMULATING EFFECTS" just try "EXCEL".

PAR. 4. All of said statements as above set out, together with many other similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product, Excel Gland Tablets. In all of the respondent's advertising matter and literature, the respondent represents, through the statements herein set out, and through other statements of like import and effect, that the use of Excel Gland Tablets enables one to be young again; that Excel Gland Tablets consist of gland medicines; that said product is a gland stimulant and assists the glands of either men or women; that said product constitutes a competent aphrodisiac; and that the results from the use of said product are sure.

PAR. 5. The claims and representations made by the respondent with respect to the therapeutic value and efficacy of the product Excel Gland Tablets are grossly exaggerated, false and misleading. In truth and in fact, respondent's product, Excel Gland Tablets, will not enable one to be young in the manner in which the respondent represents or in any manner whatever. The product Excel Gland Tablets does not contain gland medicines. The said product is not a gland stimulant, nor will it assist the glands of either men or women. The said product is not a competent aphrodisiac. The product is not in any sense a gland treatment, and is not a competent treatment for natural debility or for debility caused in any manner.

PAR. 6. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating and describing the product Excel Gland Tablets and its efficacy and therapeutic value as hereinabove set out, in offering for sale and selling said product, were and are calculated to, and had, and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence

of said mistaken and erroneous beliefs induced by the acts and representations of respondent as hereinabove set out, a number of the purchasing public have purchased respondent's product with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in manufacturing, compounding, selling, and distributing gland treatments and who do not misrepresent the quality, efficacy, or therapeutic value of their respective products. As a result of the unfair acts and false and misleading representations of the respondent, injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been, and are all to the prejudice and injury to the public and respondent's competitors, 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 April 1, 1937, issued and served its complaint in this proceeding upon respondent C. J. O'Crowley, an individual, trading as Excel Products, and as C. J. O'Crowley, 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 other evidence in support of the allegations of said complaint were introduced by Joe L. Evins and James McKeag, attorneys for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it; and said testimony and other 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 other evidence, and brief in support of the complaint; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent C. J. O'Crowley is an individual trading under his own name and also under the name Excel Products. His place of business has been variously located at 4308 Sheridan Road and 4336 Sheridan Road, both addresses being located in the city of Chicago, State of Illinois. For the last four years respondent has been engaged in the transportation, sale, and distribution of medicinal or pharmaceutical preparations designated as "Excel" and "Excel Special." These products are recommended by respondent as competent and effective gland treatments. At the date the hearings were held, on September 11, 1937, respondent was still engaged in the sale and distribution of his said products. When the respondent receives orders for said preparations, he ships them from his aforesaid place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State of Illinois. Usually such shipments are made by parcel-post. For the past 4 years respondent has maintained a course of trade in said medicinal or pharmaceutical preparations, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, respondent has been, and is now, in competition with other individuals, and with firms, partnerships, and corporations, likewise engaged in the sale and distribution, or in the manufacture, sale, and distribution, of medicinal or pharmaceutical preparations designed, distributed, and sold, for use in connection with the treatment of glandular disturbances or deficiencies, in commerce among and between the various States of the United States. In compounding their respective products, said competitors make use of varying amounts or some or all of the same ingredients contained in respondent's products and do not misrepresent the quality, efficacy, or therapeutic value, of their respective products.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of the preparations which he distributes and sells, the respondent has made use of advertisements inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States such as, Startling Detective, Hunter Trader Trapper, Illustrated Mechanics, and Screen Fun. In furtherance of the sale of said preparations, the respondent has also circulated throughout the several States of the United States, through the United States mail and otherwise, to customers and prospective customers, certain advertising literature. In the advertisements and advertising literature, above referred to, the respondent has caused his name, together with the names of his preparations, to wit: "Excel" and "Excel

Special" to be prominently and conspicuously displayed together with such statements as the following:

Be Young Again.

Don't miss this—two gland medicines, each with imported ingredients.

Men and women, assist your glands with Excel Special.

If you want a "real article" try this and feel its stimulating effects.

Guaranteed relief on two or three treatments.

We recommend this medicine for use as a gland stimulant.

Men and women, assist your glands with "EXCEL" tablets. IMPORTED INGREDIENTS in this GLAND MEDICINE. If you want "STIMULATING EFFECTS" just try "EXCEL."

PAR. 4. The aforesaid statements, together with other similar statements appearing in respondent's advertisements and advertising literature which are not set out herein, purport to be descriptive of respondent's preparations. Through such advertising matter and literature, the respondent represents that the use of said preparations enables one to be young again, that said preparations consist of gland medicines, that said preparations are a gland stimulant and assist the glands of either men or women, that said preparations constitute a competent aphrodisiac, and that the results of the use of said products are sure. While the preparations are loosely referred to by the respondent as gland medicines in general and indefinite terms, members of the purchasing public reading the aforesaid advertisements would form the mistaken and erroneous impression and belief that such preparations bring about sexual rejuvenation and are intended to overcome sexual deficiencies and allied conditions in men or women.

PAR. 5. Respondent's preparation designated as "Excel" is made up under a formula consisting of:

$\frac{1}{24}$ Gr. Yohimbine HCl

$\frac{1}{8}$ Gr. Lecithin

$\frac{1}{4}$ Gr. Po. Ext. Cascara

$\frac{1}{8}$ Gr. Po. Ext. Nux Vomica

The preparation designated as "Excel Special" consists of:

$\frac{1}{2}$ Gr. Yohimbine HCl

$\frac{1}{4}$ Gr. Lecithin

$\frac{1}{16}$ Gr. Po. Ext. Cascara

$\frac{1}{16}$ Gr. Po. Ext. Nux Vomica

$\frac{1}{2}$ Gr. Po. Yeast

From the expert testimony adduced at the hearings, it is found that the ingredients of respondent's preparations are present in such small quantities as to be considered homeopathic doses and thereby totally ineffective. It is further found that neither of said prepara-

tions constitutes a competent and effective gland stimulant. Yohimbine was at one time frequently prescribed in doses of one to three grains as a sexual rejuvenator, but present-day medical opinion is that said drug is absolutely ineffective and has no medicinal value whatever. Cascara is laxative in its properties. Nux Vomica is claimed to have a tonic effect upon the circulatory system and is often prescribed as a tonic in combination with iron for loss of appetite. Its active principal is strychnine. Lecithin is one of the active organic compounds found in the brain and is infrequently prescribed. It is not known to possess any therapeutic value. From the medical testimony, it is found that neither of the formulas above set out assists or stimulates the glands of either men or women or has any effect thereon. Neither of the aforesaid formulas constitutes a competent or effective aphrodisiac. Impotency or glandular deficiencies may be due to any one of a number of debilitating diseases such as syphilis, tuberculosis, diabetes, or severe grades of anemia. Such conditions may also be psychic, resulting from mental shock or trauma. No prescription or specific medicine will be applicable in all cases, and it is impossible to prescribe for such conditions without a thorough diagnosis as to the cause thereof by a competent physician.

The claims and representations made by the respondent to the effect that said preparations consist of gland medicines, are competent and effective gland treatments, and constitute competent treatments for glandular debilities, are grossly exaggerated, false, and misleading.

PAR. 6. The false and misleading statements and representations made by the respondent in advertising and describing his preparations designated as "Excel" and "Excel Special" have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparations do enable one to be young again, that said preparations consist of gland medicines, that said preparations are gland stimulants and assist the glands of either men or women, that said preparations constitute competent aphrodisiacs, and that said preparations bring about sexual rejuvenation and are competent and effective treatment for sexual deficiencies. As a consequence of such mistaken and erroneous beliefs, a number of the purchasing public have purchased respondent's preparations with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in distributing and selling, or manufacturing and selling, various medicinal or pharmaceutical preparations containing some of the same ingredients as respondent's preparations and used

and prescribed by physicians for the same purpose for which respondent's preparations are advertised and sold, who do not misrepresent the character, efficacy, or therapeutic value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, C. J. O'Crowley, an individual, trading as Excel Products, and as C. J. O'Crowley, 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 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 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 C. J. O'Crowley individually and trading under the names Excel Products and C. J. O'Crowley, or under any other names, his agents, representatives, and employees, in connection with the sale of medicinal or pharmaceutical preparations now designated as "Excel" and "Excel Special," or any other preparations containing the same or substantially the same ingredients and possessing the same properties, sold under those names or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. That the use of said preparations enables one to be young again;
2. That said preparations consist of gland medicines;
3. That said preparations are gland stimulants or assist the glands of either men or women;
4. That said preparations constitute competent and effective aphrodisiacs;

Order

26 F. T. C.

5. That said preparations constitute competent and effective remedies or treatments for sexual deficiencies, or will bring about sexual rejuvenation.

It is further ordered, That the respondent 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 has complied with the order herein set forth.

Syllabus

IN THE MATTER OF
CONSOLIDATED CANDY COMPANY

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

Docket 2969. Complaint, Nov. 6, 1936—Decision, Jan. 27, 1938

Where a corporation engaged in manufacture and sale of candy, including various packages or assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of (1) number of penny pieces of candy of uniform size and shape, together with number of larger pieces, to be given as prizes to purchasers of relatively few of said pieces, enclosed centers of which were pink, and together with two articles of merchandise, to be given as prizes, respectively, to purchaser procuring by chance yellow center penny piece and purchaser of last of said penny pieces in assortment; (2) number of small pieces of candy, together with number of larger pieces or bars, and push cards, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received for penny paid one of said smaller, or one of said larger, pieces of candy, in accordance with number pushed by chance from aforesaid card, and purchaser of last push or sale was similarly entitled to one of said larger pieces; and (3) number of bars of candy, together with number of boxes of candy and push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received for 5 cents paid one of said bars or boxes of candy, in accordance with number pushed by chance, and purchaser of last piece was entitled to one of said boxes—

Sold to wholesalers and retailers for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its said product in accordance with said sales plan, involving game of chance or sale of a chance to procure large pieces or other articles, contrary to public policy long recognized by the common law and criminal statutes, and contrary to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, so as to involve game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, so packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors, as aforesaid, who do not use any such method, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein, and tend to create monopoly thereof in it and such other distributors as do, deprive purchasing public of benefit of free competition

Complaint

26 F. T. C.

in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Hugo Swan, of Dallas, Tex., 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 Candy 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 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 is a corporation, organized under the laws of the State of Texas, with its principal office and place of business located at 826 Exposition Avenue, Dallas, Tex. Respondent is now, and for 1 year last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers 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 Dallas, Tex., to purchasers thereof in the State of Texas and in other States of the United States at their respective places of business; and there is now, and has been for 1 year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to wholesale and retail dealers, various 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.

(a) One of said assortments of candy is composed of a number of pieces of candy of uniform size and shape, together with a number of

Complaint

larger pieces of candy and two other articles of merchandise, which larger pieces of candy and other articles of merchandise are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner:

The majority of said pieces of candy of uniform size and shape have white centers, but a small number of the said pieces of candy have pink centers and one piece of the said candy has a yellow center. The said pieces of candy of uniform size and shape retail at the price of 1 cent each, but the purchaser who procures one of the said candies having a pink center is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser who procures one of the said candies having a yellow center is entitled to receive, and is to be given free of charge, one of the other articles of merchandise heretofore referred to; and the purchaser of the last piece of candy is to be given free of charge the other article of merchandise contained in said assortment heretofore referred to. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candy obtaining a piece of candy having a pink or yellow center, or purchasing the last piece of candy in said assortment, thus procure one of the said larger pieces of candy or one of the other articles of merchandise wholly by lot or by chance. The respondent manufactures and distributes several assortments involving the above described sales plan in which there is some variation as to the details.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small pieces of candy, a number of larger pieces or bars of candy, together with a device commonly called a "push card." The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. Sales are 1 cent each, and the card bears statements informing purchasers and prospective purchasers that certain specified numbers entitle the customers to one of the larger pieces or bars of candy, and that the last sale from said assortment entitled the purchaser to one of the larger pieces or bars of candy, and that all other numbers entitled the purchaser to one of the small pieces of candy. The numbers on the disks or pushes are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the larger pieces or bars of candy

or one of the small pieces of candy for the price of 1 cent is thus determined wholly by lot or chance.

The respondent manufactures and distributes several assortments involving the above described sales plan, some of which vary in detail; namely, with some assortments articles of merchandise other than candy are included and the purchaser obtaining certain specified numbers are entitled to one of these articles.

(c) Another assortment manufactured and distributed by the respondent is composed of a number of bars of candy, a number of boxes of candy, and a device commonly called a "push card." The candy bars and the boxes of candy contained in said assortments are distributed to purchasers in the following manner:

The push card has a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. Sales are 5 cents each, and the card bears statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser to one of the boxes of candy, and that all other numbers receive one of the bars of candy, and that the last purchase from said assortment entitles the purchaser thereof to one of the boxes of candy. The numbers on the disks are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the boxes of candy or one of the bars of candy for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. 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 plans hereinabove set forth, and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger pieces of candy, or other articles of merchandise, larger pieces of candy, and a box of candy.

The use by respondent of said methods in the sale of candy, and the sale of candy by and through the use thereof, and by the aid of said methods is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and

is contrary to an established public policy of the Government of the United States. The use by respondent of said methods has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; 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 methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said methods or equivalent methods.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

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 6, 1936 issued, and on November 9, 1936 served, its complaint in this proceeding upon the respondent, Consolidated Candy 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, respondent filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized under the laws of the State of Texas, with its principal office and place of business located at 826 Exposition Avenue, Dallas, Tex. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers 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 Dallas, Tex., to purchasers thereof in the State of Texas and in various other States of the United States at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce 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 sells and has sold to wholesale and retail dealers, various 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.

(a) One of said assortments of candy is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy and two other articles of merchandise, which larger pieces of candy and other articles of merchandise are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner:

The majority of said pieces of candy of uniform size and shape have white centers, but a small number of the said pieces of candy have pink centers and one piece of the said candy has a yellow center. The said pieces of candy of uniform size and shape retail at the price of 1 cent each, but the purchaser who procures one of the said candies having a pink center is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser who procures one of the said candies having a yellow center is entitled to receive, and is to be given free of charge, one of the other articles of merchandise heretofore referred to; and the purchaser of the last piece of candy is to be given free of charge the other article of merchandise contained in said assortment heretofore referred to. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candy obtaining a piece of candy having a pink or yellow center thus procure one of the said larger pieces of candy or one of the other articles of merchandise wholly by lot or by chance. The respondent manufactures and distributes several assortments involving the above described sales plan in which there is some variation as to the details.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small pieces of candy, a number of larger pieces or bars of candy, together with a device commonly called a "push card." The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. Sales are 1 cent each, and the card bears statements informing purchasers and prospective purchasers that certain specified numbers entitle the customer to one of the larger pieces or bars

of candy, and that the last sale from said assortment entitles the purchaser to one of the larger pieces or bars of candy, and that all other numbers entitle the purchaser to one of the small pieces of candy. The numbers on the disks or pushes are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the larger pieces or bars of candy or one of the small pieces of candy for the price of 1 cent is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by the respondent is composed of a number of bars of candy, a number of boxes of candy, and a device commonly called a "push card." The candy bars and the boxes of candy contained in said assortments are distributed to purchasers in the following manner:

The push card has a number of partially perforated disks, and when a push is made and the disk separated from the card a number is disclosed. Sales are 5 cents each, and the card bears statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser to one of the boxes of candy, and that all other numbers receive one of the bars of candy and that the last purchase from said assortment entitles the purchaser thereof to one of the boxes of candy. The numbers on the disks are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The fact as to whether a purchaser receives one of the boxes of candy or one of the bars of candy for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, 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.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure larger pieces of candy or other articles of merchandise.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and

is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Consolidated Candy Company, 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

26 F. T. C.

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 respondent, Consolidated Candy Company, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, Consolidated Candy Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments 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 and shape having centers of different colors together with larger pieces of candy or other articles of merchandise which said larger pieces of candy or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color;

4. Supplying to or placing in the hands of dealers assortments of candy together with a device commonly called a push card, or a device commonly called a punchboard, for use or which may be used in distributing or selling the said candy to the public at retail;

5. Furnishing to dealers a device commonly called a push card, or a device commonly called a punchboard, either with packages or assortments of candy or separately, which push card or punchboard is to be used or may be used in distributing or selling said candy to the public.

It is further ordered, That the respondent, Consolidated Candy Company, shall within 30 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 the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

JOSEPH H. ROBINSON AND S. J. ROBINSON, TRADING AS
J. ARTHUR WARREN COMPANY

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

Docket 3044. Complaint, Jan. 29, 1937—Decision, Jan. 27, 1938

Where two partners engaged in sale and distribution of clocks, radios, vacuum cleaners, razors, and fountain pen sets, and other merchandise—

Furnished and distributed to members of the general public in practically all States and in the District of Columbia, push cards, order blanks, and advertisements depicting merchandise thus being offered, and instructions, suggestions, and circulars describing their said plan of selling such merchandise, by which chance purchaser paid for chance varying amount, dependent upon number disclosed within various disks of aforesaid cards, and received rotary clock (or other articles or merchandise as aforesaid), or nothing, depending upon success or failure in selecting feminine names corresponding to those concealed under card's two master seals, and they compensated by one or more items of merchandise operator or representative, and thereby placed in the hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of their said merchandise, with knowledge and intent that said cards had been, were, and would be used in sale and distribution of their said products to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;

With result that sale of similar or like merchandise by such competitors was thereby injuriously affected, and trade was diverted from them to said partners by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition; to the prejudice and injury of the public and competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren 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 are individuals doing business as co-partners under the name and style of J. Arthur Warren Company, with their principal office and place of business located at 318 West Washington Street, in the city of Chicago, State of Illinois. They are now, and for more than 1 year last past have been, engaged in the sale and distribution of rotary clocks and other merchandise in commerce between and among the various States of the United States and in the District of Columbia, and cause and have caused said products when sold to be shipped from their 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 in the District of Columbia.

In the course and conduct of their business, respondents are now, and for more than 1 year last past have been in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of clocks and other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described above, respondents in soliciting the sale of and selling their products in interstate commerce have adopted and pursued and still maintain the following methods and practices:

Respondents distribute to the public through the United States mails in interstate commerce, certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of rotary clocks and circulars explaining respondents' plan of selling said merchandise and of allotting it and other articles as premiums or prizes to the operators of the push card.

Respondents' push card bears 32 feminine names with a blank space opposite each for writing in the name of the customer. Said push card has 32 small round partially perforated disks marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has two large red partially perforated disks, and concealed within each of these two disks is one of the feminine names appearing elsewhere on the said

565

Complaint

card. The push card bears printed legends or instructions as follows:

2 WINNERS 2
RECEIVE
\$5.00 ROTARY CLOCKS
FOR 1¢ to 29¢

numbers from 1 to 29 pay what you draw, numbers over 29 pay only 29¢
write purchaser's name on back opposite name selected

INSTRUCTIONS: There are 32 mixed numbers in this card, printed from 1 upwards. Numbers under 29 pay what numbers call for. All numbers over 29 only pay 29¢. When card is completely sold, open large seals at top and Parties who selected the names which correspond with names under seals receive the **ROTARY CLOCKS**.

Sales of rotary clocks by means of said push cards are made in accordance with the above described legends or instructions. Each of said prizes or premiums is allotted to the customer or purchaser in accordance with the above legends. The fact as to whether a customer pays a sum of money from 1 cent to 29 cents for a rotary clock, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

Respondents furnish one rotary clock and additional merchandise to their representative making sales by means of said push card. Respondents also furnish their representative with additional printed instructions or suggestions for using said push cards.

PAR. 3. Respondents in selling their said merchandise in connection with the aforesaid push card, conduct lotteries or place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth.

The sale of respondents' said merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondents' merchandise contrary to the established public policy of the United States and contrary to criminal statutes of many of the States of the United States. By reason of said facts, many competitors of respondents 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 clocks are attracted by the element of chance involved in respondents' sales method, as above described, and are thereby induced to purchase respondents' merchandise in preference to the same or similar merchandise of respondents' competitors who do not use the same or equivalent methods.

PAR. 4. The use of said method by respondents has the tendency and capacity unfairly to divert to respondents, because of said game of chance, trade, and custom from their competitors who do not use

the same or equivalent methods; to exclude from said clock trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said clock trade and to tend to create a monopoly of said clock trade in respondents and such other competitors as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said clock trade. The use of said method by respondents has the tendency and capacity unfairly to eliminate from said clock 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 clocks 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 clocks, or because of any or all of such reasons.

PAR. 5. The aforesaid acts and practices of respondents are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 29, 1937, issued and served its complaint in this proceeding upon the respondents, Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondents, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony

and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter and now 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, Joseph H. Robinson and S. J. Robinson, are individuals doing business as copartners under the name and style of J. Arthur Warren Company, with their principal office and place of business located at 318 Washington Street in the city of Chicago, State of Illinois. Respondents are now, and for some time last past have been, engaged in the sale and distribution of clocks and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. They cause such merchandise, when sold, to be shipped or transported from their principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in practically all of the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade in commerce by said respondents in such merchandise between and among the various States of the United States and in the District of Columbia. In so carrying on said business, respondents are, and have been, engaged in active competition with other partnerships and with individuals and corporations engaged in the manufacture of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 above, respondents in soliciting the sale of and selling their merchandise have adopted and pursued, and still continue, the following methods and practices:

Respondents distribute to members of the general public in practically all States of the United States and in the District of Columbia through the United States mail certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of the merchandise which they are offering for sale and circulars explaining respondents' plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards.

All of the push cards used by respondents involve the same principle or sales plan or method but vary to some extent in detail. One of the said push cards bears 32 feminine names with rule columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 32 small round partially perforated disks marked "PUSH," above each of which is printed one of the feminine names heretofore referred to. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has two large red seals, concealed within each of which is one of the feminine names above referred to. The numbers concealed within each of the partially perforated disks cannot be ascertained until a push or selection has been made and the names concealed within the large red seals cannot be ascertained until the seals have been removed. The push card contains printed legends or instructions as follows:

2—WINNERS—2
 Receive
 \$5.00 Rotary Clocks
 For 1c to 29c
 Numbers from 1 to 29
 Pay What You Draw,
 Numbers Over 29 Pay
 Only 29c
 Write Purchaser's Name
 on Back Opposite Name
 Selected

The reverse of the said card bears the following legend, among others:

INSTRUCTIONS: There are 32 mixed numbers in this card, printed from 1 upwards. Numbers under 29 pay what numbers call for. All numbers over 29 only pay 29c. When card is completely sold, open large seals at top and Parties who selected the names which correspond with names under seals receive the ROTARY CLOCKS.

Sales of rotary clocks by means of said push cards are made in accordance with the above described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The fact as to whether a customer pays a sum of money from 1 cent to 29 cents for a rotary clock, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

In addition to the two clocks distributed to purchasers from the said push card, the respondents furnish one rotary clock and generally an additional item of merchandise to their representative making sales by means of said push card. Respondents also furnish their

representatives with additional printed instructions or suggestions for using said push cards. One of the said printed instructions bears the following legends, to wit:

HOW TO OBTAIN YOUR MODERNE ROTARY CLOCK FREE

This card consists of 32 girls' names—beneath each name is a concealed number which shows the amount the person selecting that particular name is to pay for participating in this opportunity

These concealed numbers range from No. 1 to No. 52, but your customers pay only 1c to 29c, according to the number disclosed under the disc punched. For instance, if customer punches 1 he pays 1c. If 10 is punched, he donates 10c, or if 50 is punched, he pays only 29c. **NOTHING HIGHER THAN 29c—29c is maximum cost.** (Total \$8.60.)

When all names have been punched and collections made, you then remove the large seals and disclose the winners—the persons who punched the corresponding name is awarded One (1) Moderne Rotary Clock, valued at \$5.00.

And, for your efforts, you also receive one Moderne ROTARY CLOCK.

Upon receipt of your order (see other side) with the \$8.60 remittance, (or we will ship C. O. D., F. O. B. Chicago) we immediately ship you Three (3) Moderne Rotary Clocks, Two (2) of which may be given the holders of the names under the large seals—the other may be retained by you.

Isn't this an easy way to obtain a clock valued at \$5.00? Nothing hard about this—nothing complicated—you merely show the clock or illustration to your friends, neighbors, co-workers in the office, shop, etc. They will all want it.

This material is sent you absolutely free for your use if you wish. It can be used with any merchandise. If you desire to purchase from us, you can do so at any time.

NOTE—Write purchaser's name opposite the girl's name he selects and then remove disc by pushing with pencil or any pointed object.

Don't forget the surprise gift—send your order and remittance within 15 days and the FREE gift will certainly surprise you.

As stated above, the other push cards which respondents furnish are identical in principle but vary in detail. Some of said push cards are furnished by respondents and used by the public in purchasing and distributing radios, vacuum cleaners, razors, and fountain pen sets, and other merchandise sold and distributed by respondents. The members of the public, to whom respondents furnish their push cards and other literature, use the same in the manner suggested by respondents, thereby distributing respondents' merchandise to others by lot or chance and procuring respondents' merchandise for themselves. The sale and distribution of respondents' merchandise through the use of or by means of the said push cards constitutes the operation of lotteries, games of chance, or gift enterprises, and the respondents in furnishing said push cards put in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of their merchandise.

PAR. 3. The respondents, in furnishing said push cards, have knowledge that the same are, have been and will be, used in distributing their merchandise, and furnish said push cards so that their merchandise may be sold or distributed to the public by lot or chance.

PAR. 4. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondents, who do not furnish push cards similar to those furnished by respondents, and who do not furnish any device by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondents who are opposed to use of push cards in the sale and distribution of their merchandise, and such competitors refrain from furnishing such devices. Competitors of respondents were called as witnesses and testified in this proceeding, and the Commission finds that the sale of merchandise by means of said push cards injuriously affects the sale of similar or like merchandise by such competitors, and that trade is diverted to respondents from their said competitors by reason of the furnishing of said push cards or like devices. The use of such methods by the respondents in the sale and distribution of their merchandise is prejudicial and injurious to the public and to respondents' competitors, and has resulted in the diversion of trade to respondents from their said competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 5. As stated previously in these findings, the respondents sell their merchandise in practically all of the States of the United States and in the District of Columbia. While the annual volume of respondents' business was not shown exactly, one of respondents testified, and the Commission finds, that the respondents' annual volume of business is, and has been, substantial. One of the respondents testified that from August 1936 to December 31, 1936, they distributed approximately 250,000 push cards and that their sales for the same period were approximately \$20,000.

PAR. 6. The Commission finds that the sale and distribution in interstate commerce of merchandise as described above, by means of lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondents, Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren Company, are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and

constitutes a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondents, and the Commission having made its findings as to the facts and 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, Joseph H. Robinson and S. J. Robinson, copartners, trading as J. Arthur Warren Company, their agents, representatives, and employees, in connection with the offering for sale, sale and distribution of clocks, radios, vacuum cleaners, razors, fountain pen sets, and other merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping, or transporting to members of the public push cards or other similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of merchandise by the use of push cards or other similar devices, or in any manner selling or otherwise disposing of such merchandise free of charge or at varying prices depending upon lot or chance.

It is further ordered, That the respondents shall, within 30 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 forth.

Complaint

26 F. T. C.

IN THE MATTER OF

THE BALL COMPANY, INCORPORATED

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

Docket 3293. Complaint, Jan. 4, 1938—Decision, Jan. 27, 1938

Where a corporation engaged as wholesale jeweler in sale of diamonds and diamond rings to purchasers at points in various other States, in substantial competition with others engaged in offer and sale of such products to dealers and members of the general public in commerce among the various States and in the District of Columbia, and including many competitors who do not misrepresent, as below set forth, their said products and basis of their guarantees—

Represented and implied, through certificates and guarantees given by it on sheets similar to those commonly used for security certificates, and featuring, in arrangement and type, words "Federal Trade Commission" as part of statement certifying that "diamond ring sold this day to ----- of ----- is set with selected blue-white diamonds and that they have been found to be PERFECT in accordance with the required standard of the FEDERAL TRADE COMMISSION" (together with picture of dome of Capitol above an eagle), that diamonds thus sold by it were in fact perfect in accordance with required Commission standard and had been inspected, found and certified as such by aforesaid Government agency, facts being Commission had neither fixed nor promulgated any standard for perfect or other diamonds, or inspected, found, or certified said or any other as perfect diamonds, and said statements, representations, and implications were deceptive, misleading, and false;

With effect of misleading and deceiving dealers and substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of its said diamonds and diamond rings by reason of erroneous and mistaken beliefs thus induced, and with result that substantial trade, as consequence thereof, was unfairly diverted to it from those of its said competitors who do not misrepresent their guarantees or aforesaid products; to the injury of competitors in commerce:

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.

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 Ball Company, Incorporated, 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 Commis-

sion 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. Respondent, The Ball Company, Incorporated, is a corporation organized and doing business under the laws of the State of Ohio, with its office and principal business at 58 East Washington Street, Chicago, Ill., and with branches at Cleveland, Ohio; Birmingham, Ala.; Denver, Colo.; San Francisco, Calif.; and St. Paul, Minn. Respondent is now and for some time past has been engaged in business as a wholesale jeweler selling among other items diamonds and diamond rings. Respondent in the course and conduct of its business sells and distributes its diamonds and diamond rings to dealers and members of the public and causes said wares, when sold, to be transported from the State of Illinois and the other States of origin of its shipments, to purchasers thereof located at points in the various States of the United States other than the State of origin of such shipments. There is now, and has been during all the times herein mentioned, a course of trade in commerce in diamonds and diamond rings between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent is now, and has been during all the times herein mentioned, engaged in substantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling diamonds and diamond rings to dealers and members of the general public 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 of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of certain of its said diamonds and diamond rings, respondent distributes among and issues to the purchasers of said rings, a "Diamond Ring Guarantee" and certificates printed on fancy bordered lithographed sheets similar in size, form, and general characteristics to some of those commonly used for stock and security certificates, with blank spaces for numbers, amounts, signatures, and text, on each of which appears as part of the guarantee the following: "This is to certify that the Garland diamond ring sold this day to _____ of _____ is set with selected blue-white diamonds and that they have been found to be PERFECT in accordance with the required standard of the FEDERAL TRADE COMMISSION." The words "Federal Trade Commission" are in prominent black block capital letters in a separate line near the center of each certificate.

The said certificates and guarantees constitute and are representations by respondent that the diamonds sold by it, when accompa-

nied by such certificates and guarantees, are in fact perfect in accordance with a standard required by the Federal Trade Commission. The intent of respondent in so representing and guaranteeing its said diamond rings, and the effect thereof, is to mislead and deceive dealers and other purchasers of such diamond rings into the erroneous belief that the Federal Trade Commission has in fact fixed and promulgated a required standard for perfect diamonds, and that these diamonds of respondent meet that requirement.

In truth and in fact the Federal Trade Commission has neither fixed nor promulgated any standard for perfect or other diamonds.

The general form, arrangement and text of said guarantee certificate is also intended by respondent to imply, and it does imply, that the diamonds sold with such certificates and guarantees have been inspected, found, and certified by a United States Government agency, to wit: The Federal Trade Commission, to be perfect diamonds. To aid in such implication, the certificate has on its face a picture of the dome of the United States Capitol at Washington, D. C., above an eagle, the United States emblem bird. In truth and in fact the Federal Trade Commission has neither inspected nor found nor certified said diamonds to be perfect diamonds.

All of said statements, representations, and implications are deceptive, misleading, and false, and tend to and do deceive and mislead dealers and other purchasers into the purchase of said diamonds and diamond rings in the erroneous belief that said representations and implications are true.

PAR. 4. There are among the competitors of respondent many who do not so misrepresent their diamonds and diamond rings, and the basis of their guarantees.

PAR. 5. The acts and practices of the respondent as above alleged in the course of selling and offering for sale its diamonds and diamond rings in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, substantial trade has been unfairly diverted to the respondent from those of its competitors referred to in paragraph 4 hereof who do not misrepresent their guarantees or their diamonds and diamond rings. In consequence thereof, injury has been, and is being, done to respondent's competitors in commerce among and between the various States of the United States.

PAR. 6. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondent's competitors

and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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, 1938 issued, and on January 6, 1938 served, its complaint in this proceeding upon respondent, The Ball Company, Incorporated, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, the respondent filed an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, no briefs having been filed or oral arguments heard, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Ball Company, Incorporated, is a corporation organized and doing business under the laws of the State of Ohio, with its office and principal business at 58 East Washington Street, Chicago, Ill., and with branches at Cleveland, Ohio; Birmingham, Ala.; Denver, Colo.; San Francisco, Calif.; and St. Paul, Minn. Respondent is now and for some time past has been engaged in business as a wholesale jeweler selling among other items diamonds and diamond rings. Respondent in the course and conduct of its business sells and distributes its diamond rings to dealers and members of the public and causes said wares, when sold, to be transported from the State of Illinois and the other States of origin of its shipments, to purchasers thereof located at points in the various States of the United States other than the State of origin of such shipments. There is now, and has been during all the times herein mentioned, a course of trade in commerce in diamonds and diamond rings between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent is now, and has been during all the times herein mentioned, engaged in sub-

stantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling diamonds and diamond rings to dealers and members of the general public 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 of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of certain of its said diamonds and diamond rings, respondent distributes among and issues to the purchasers of said rings, a "Diamond Ring Guarantee" and certificates printed on fancy bordered lithographed sheets similar in size, form, and general characteristics to some of those commonly used for stock and security certificates, with blank spaces for numbers, amounts, signatures, and text, on each of which appears as part of the guarantee the following: "This is to certify that the Garland diamond ring sold this day to ----- of ---- is set with selected blue-white diamonds and that they have been found to be PERFECT in accordance with the required standard of the FEDERAL TRADE COMMISSION." The words "Federal Trade Commission" are in prominent black block capital letters in a separate line near the center of each certificate.

PAR. 4. The said certificates and guarantees constitute and are representations by respondent that the diamonds sold by it, when accompanied by such certificates and guarantees, are in fact perfect in accordance with a standard required by the Federal Trade Commission. The intent of respondent in so representing and guaranteeing its said diamond rings, and the effect thereof, is to mislead and deceive dealers and other purchasers of such diamond rings into the erroneous belief that the Federal Trade Commission has in fact fixed and promulgated a required standard for perfect diamonds, and that these diamonds of respondent meet that requirement. The general form, arrangement, and text of said guarantee certificate is also intended by respondent to imply, and it does imply, that the diamonds sold with such certificates and guarantees have been inspected, found, and certified by a United States Government agency, to wit, the Federal Trade Commission, to be perfect diamonds. To aid in such implication, the certificate has on its face a picture of the dome of the United States Capitol at Washington, D. C., above an eagle, the United States emblem bird.

PAR. 5. All of said statements, representations, and implications are deceptive, misleading, and false in that the Federal Trade Commission has neither fixed nor promulgated any standard for perfect or other diamonds or inspected or found or certified said or any other diamonds to be perfect diamonds.

PAR. 6. There are among the competitors of respondent many who do not so misrepresent their diamonds and diamond rings, and the basis of their guarantees.

PAR. 7. The acts and practices of the respondent as above alleged in the course of selling and offering for sale its diamonds and diamond rings in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, substantial trade has been unfairly diverted to the respondent from those of its competitors referred to in paragraph 6 hereof who do not misrepresent their guarantees or their diamonds and diamond rings. In consequence thereof, injury has been, and is being, done to respondent's competitors in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, The Ball Company, Incorporated, 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 and the answer of respondent whereby respondent admits all the material allegations of the complaint to be true, and waives all other intervening 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 ordered, That the respondent, The Ball Company, Incorporated, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of diamonds and diamond rings in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly, or in any form or manner by implication, representing:

Order

26 F. T. C.

1. That the Federal Trade Commission has fixed or promulgated any standard for perfect or other diamonds;

2. That the Federal Trade Commission has inspected said diamonds, or that it has found and certified them to be perfect diamonds;

3. That an agency of the United States Government has fixed or promulgated any standard for perfect or other diamonds, until and unless a standard has been fixed or promulgated by such an agency;

4. That an agency of the United States Government has inspected said diamonds, or that it has found and certified them to be perfect diamonds, until and unless such an agency has inspected said diamonds and found and certified them to be perfect.

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.

Order

IN THE MATTER OF
THE ELI LILLY & COMPANY
MODIFYING CEASE AND DESIST ORDER

Docket 155. Order, January 28, 1938

Order modifying Commission's prior cease and desist order in 1 F. T. C. 442, directed against respondent's resale price maintenance practices in connection with resale by its wholesale distributors of respondent's drugs, pharmaceuticals, and similar products, so as to permit, as in said below modifying order specified, resale price maintenance agreements covering resale of commodities where lawful for intrastate transactions under statute, law, or public policy of particular State or other jurisdiction concerned.

Mr. Simon Michelet, of Washington, D. C., for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The respondent herein, The Eli Lilly & Company, by its attorney, Simon Michelet, Esq., having filed with this Commission its motion to modify the order to cease and desist issued herein on May 27, 1919, in the light of the provisions of Title VIII of the Act of Congress, approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes," and the Commission having duly considered the said motion and being fully advised in the premises,

Now, therefore, it is hereby ordered, That the said motion be and the same is hereby granted, and that the said order to cease and desist be and the same is hereby modified so that as modified immediately following the proviso immediately after subparagraph numbered (6) of the said order the following be and the same is hereby added:

Provided, That nothing herein contained shall prohibit contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and *Provided*

Order

26 F. T. C.

further, That the immediately preceding proviso hereof shall not permit any contract or agreement providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between the respondent The Eli Lilly & Company and any other manufacturer or producer, or between wholesalers, or between brokers, or between factors, or between retailers of the products of The Eli Lilly & Company or between any persons, firms, or corporations in competition with each other in the products of The Eli Lilly & Company.

Syllabus

IN THE MATTER OF

BRADAS & GHEENS, INCORPORATED, AND C. E. GHEENS,
AN INDIVIDUAL TRADING AS BRADAS & GHEENSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2914. Complaint, Jan. 14, 1937¹—Decision, Jan. 29, 1938*

Where a corporation engaged in manufacture and sale of candy, including packages or assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included assortments composed of number of penny pieces of uniform size and shape, together with number of larger pieces, to be given as prizes to chance purchasers of relatively few of said uniform pieces, centers of which differed in color from those of the majority—
Sold, to wholesalers and retailers for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with said plan involving game of chance or sale of a chance to procure larger pieces, contrary to public policy, long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy, so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, so as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said product in preference to that offered and sold by competitors, and with the result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing such candy and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and tend to create a monopoly thereof in it and such other distributors as do, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Guesmer, Carson & MacGregor, of Minneapolis, Minn., for respondents.

¹ Amended and supplemental.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, 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 heretofore on the 28th day of August 1936, issued its complaint charging C. E. Gheens, an individual trading as Bradas & Gheens, with using certain unfair methods of competition in commerce, as "commerce" is defined in said act, and it since having appeared to the Commission that Bradas & Gheens, Incorporated, a body corporate, with the aforesaid C. E. Gheens as principal stockholder thereof, on January 1, 1935, became and was the successor to the business theretofore carried on by the aforesaid C. E. Gheens:

Now, therefore, Pursuant to the provisions of the aforesaid act, the Commission having reason to believe that Bradas & Gheens, Incorporated, a corporation, as well as C. E. Gheens, an individual trading as Bradas & Gheens, 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 this its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, C. E. Gheens, from December 31, 1920, to December 31, 1934, was the sole owner of and conducted the business known as Bradas & Gheens, with his principal office and place of business located at 817 South Floyd Street in the city of Louisville, State of Kentucky, and was engaged in the business of manufacturing, selling, and distributing candy to wholesale and retail dealers located at points in the various States of the United States, and caused said products, when so sold, to be transported from his place of business in the State of Kentucky to purchasers thereof in other States of the United States at their respective places of business, and there was a constant course of trade and commerce between and among the various States of the United States.

The respondent, Bradas & Gheens, Incorporated, is a corporation organized and doing business under the laws of the State of Kentucky, with its office and principal place of business located at 817 South Floyd Street in the city of Louisville, State of Kentucky, and on the said 1st day of January 1935, said corporation became and was the successor to the business theretofore carried on by the aforesaid C. E. Gheens and thereafter was and has been engaged in manufacturing candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the

United States, and causes said products, when so sold, to be transported from its place of business in the State of Kentucky to purchasers thereof in the State of Kentucky and in the other States of the United States at their respective places of business, and there is now and has been since January 1, 1935, a course of trade and commerce by said respondent in such candy between and among the States of the United States.

In the course and conduct of the said business, respondents have been in competition with other corporations and individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of the business as described in paragraph 1 hereof, respondents sell and have sold since on or about November 1935, to wholesale and retail dealers 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.

One of said assortments consists of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1 cent each, but the purchaser who procures one of said candies having a center colored differently from the majority is entitled to receive, and is to be given free of charge, one of the larger pieces of candy heretofore referred to. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies, who procure a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondents have sold said assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondents sell and have sold direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their product in accordance with the sales

plan hereinabove set forth, with the capacity and tendency of inducing purchasers thereof to purchase respondents' said product in preference to candy offered for sale and sold by their competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure packages of candy.

The use by respondents of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondents and such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondents has the tendency and capacity 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 an equivalent method.

PAR. 6. Many of said competitors of respondents 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, or any other method that is contrary to public policy.

PAR. 7. The aforementioned method, acts, and practices of the respondents are all to the prejudice of the public and of respondents' 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.

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 28, 1936, issued and served its complaint in this proceeding upon the respondents, Bradas & Gheens, Incorporated, a corporation, and C. E. Gheens, an individual trading as Bradas & Gheens, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, on January 14, 1937, the Commission issued and served its amended and supplemental complaint on the respondents, charging them with the use of unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint on August 28, 1936, as aforesaid. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted the request of respondent, Bradas & Gheens, Incorporated, for permission to withdraw its answer and to substitute therefor an amended answer admitting all the material allegations of the amended and supplemental complaint to be true and waiving the taking of further evidence and all other intervening procedure, which amended answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint and amended answer of respondent, Bradas & Gheens, Incorporated; and answer of respondent, C. E. Gheens; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, C. E. Gheens, from December 31, 1920, to December 31, 1934, was the sole owner of and conducted the business known as Bradas & Gheens, with his principal office and place of business located at 817 South Floyd Street in the city of Louisville, State of Kentucky, and was engaged in the business of manufacturing, selling, and distributing candy to wholesale and retail dealers located at points in the various States of the United States, and caused said products, when so sold, to be transported from his place of business in the State of Kentucky to purchasers thereof in other States of the United States at their respective places of business. On January 1, 1935, said respondent, C. E. Gheens, transferred and conveyed his said business known as Bradas & Gheens to the respondent, Bradas & Gheens, Incorporated. Respondent, C. E. Gheens, as an individual, has not engaged in the manufacture and sale of candy since January 1, 1935.

The respondent, Bradas & Gheens, Incorporated, is a corporation organized and doing business under the laws of the State of Kentucky, with its office and principal place of business located at 817 South Floyd Street in the city of Louisville, State of Kentucky, and on the said 1st day of January 1935, said corporation became and was the successor to the business theretofore carried on by the aforesaid C. E. Gheens and thereafter was and has been engaged in manufacturing candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the State of Kentucky to purchasers thereof in the State of Kentucky and in the various other States of the United States at their respective places of business. There is now and has been since January 1, 1935, a course of trade and commerce by said respondent in such candy between and among the States of the United States.

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

PAR. 2. In the course and conduct of the business as described in paragraph 1 hereof, respondent, Bradas & Gheens, Incorporated, sells and has sold since on or about November 1935, to wholesale and retail dealers 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.

One of said assortments consists of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner:

The majority of the said pieces of candy of uniform size and shape have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1 cent each, but the purchaser who procures one of said candies having a center colored differently from the majority is entitled to receive, and is to be given free of charge, one of the larger pieces of candy heretofore referred to. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies, who procure a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent has sold said assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells and has sold direct expose said assortments for sale 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 product in accordance with the sales plan hereinabove set forth, with the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a number of larger pieces of candy.

The use by respondent of said method in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding

competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the capacity and tendency 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Bradas & Gheens, Incorporated, 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answer of C. E. Gheens dated February 3, 1937, denying

the allegations of the said amended and supplemental complaint, and the amended answer of respondent, Bradas & Gheens, Incorporated, admitting all the material allegations of the amended and supplemental complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, Bradas & Gheens, Incorporated, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Selling and distributing 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 dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments 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 and shape having centers of different colors together with larger pieces of candy which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

It is further ordered, That the amended and supplemental complaint herein be, and the same hereby is, dismissed as to the individual respondent, C. E. Gheens.

It is further ordered, That the respondent, Bradas & Gheens, Incorporated, a corporation, shall within 30 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
JOSEPH WEIDENHOFF, INC.

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

Docket 2675. Complaint, Dec. 31, 1935—Decision, Jan. 31, 1938

Where a corporation engaged in manufacture of electrical devices and automobile motor-testing devices, together with accessories, and constituting largest manufacturer and distributor of such devices in the United States, and in selling and shipping its various products among the various States to customers consisting generally of wholesale automotive supply dealers, for resale to purchasing public; following purchase of patent on vacuum gauge which it included as one of numerous parts made use of in its manufacture of certain testing devices or motor analyzers, and which (1) was only part therein so patented, (2) constituted only a small and minor part thereof in cost, in relative value, and in functioning of the complete device, and (3) was unrelated to many of the other unpatented parts included therein as aforesaid; and in competition with others likewise engaged in manufacturing, assembling, and selling in commerce similar testing devices consisting of a large number of separate and unrelated parts and items assembled as aforesaid—

- (a) Entered into and carried out agreements and understandings between itself and other manufacturers or distributors of such devices to fix and maintain prices to be exacted from purchasers thereof through the medium of license agreements or contracts negotiated by it through threatened infringement suits based on said patented vacuum gauge; and
- (b) Coerced, intimidated, and induced competitor manufacturers and distributors of such devices to raise and change their quoted prices to uniform prices fixed by understanding and agreement between it and them through such threatened suits based on presence of such small and relatively unimportant patented item in its said devices, and without confining itself in its said agreements to the use of said gauge as described and covered by its said patent or confining same to gauge itself, but including complete device with all its separate and unrelated parts and items in no way covered by its said patent;

With result that it was enabled, through said unlawful plan and scheme to control and restrain interstate commerce in such devices extending far beyond limits of its rights as owner of patent on specified use of said gauge, to control and restrain, as aforesaid, competition in commerce in such devices, and particularly and to a substantial extent, prices paid and to be paid for such devices by purchasers thereof, and to bring about an enhancement of such prices over those prevailing prior to said unlawful acts, and which, but therefor, would have continued to prevail, competitors were coerced and compelled by such acts to enter involuntarily into agreements restricting and preventing sales of such devices as aforesaid in free and open competition with each other or otherwise than at stipulated and fixed minimum prices, and there was a tendency to restrain, suppress, and unduly hamper and restrict free flow of said motor-testing devices in commerce among the various States and in said District, and otherwise to prejudice and injure

Complaint

said competitors, purchasers of such devices, and public generally, caused thereby to pay price therefor higher than would have been price under conditions of free and open competition:

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

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

Mr. Joseph C. Fehr for the Commission.

Mr. C. C. Batz of Chritton, Wiles, Davies, Hirschl & Dawson, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions 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," the Federal Trade Commission, having reason to believe that Joseph Weidenhoff, 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 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 at Chicago in said State. Respondent is now and for a number of years last past has been engaged in the business of manufacturing, selling, and distributing certain devices used by garage owners and others in testing the functioning and efficiency of automobile motors, various parts thereof and accessories thereto. Respondent utilizes for this purpose wholesale automotive supply dealers and also employs a certain number of salesmen. About 5 percent of respondent's business is conducted direct with large garages. Respondent manufactures and sells approximately \$450,000 of these testing devices annually, being considerably the largest manufacturer and distributor of testing devices of that and similar character in the United States. Respondent manufactures said devices in the State of Illinois and sells them not only in said State but in other States of the United States and throughout the Nation and in the course of its said business, ships or causes its said products to be shipped from its place of business in the State of Illinois to the purchasers located in States of the United States other than the State of Illinois. The principal portion of said business of respondent is in commerce between and among the various States of the United States.

There are, in all, in the United States, five other manufacturers of the same or substantially similar and competing testing devices as those manufactured by respondent, three of said five manufacturers being licensees of respondent under formal written license agreements with respondent, which stipulate the terms and conditions of the sale of said testing devices by said three other manufacturers. Respondent has made several attempts to negotiate with the fourth competitor a similar price-fixing agreement providing for minimum price increases of more than 70 percent on the testing devices manufactured by it but no agreement has yet been consummated with this manufacturer. The remaining manufacturer in the United States has refused to enter into any agreement whatever with respondent regarding the manufacture of testing devices but has temporarily discontinued manufacturing such testing devices.

Respondent has been and is in competition in interstate commerce with each and all of said five manufacturers in all respects as regards the manufacture, sale, distribution, shipment, and servicing of their respective testing devices, except that respondent is not in competition in interstate commerce as to price with two of said manufacturers because they have entered into license agreements with respondent to sell their products at not less than certain stated prices stipulated and fixed in said license agreements.

PAR. 2. In connection with and in the conduct of its said business and in furtherance of a plan and scheme of respondent to control and restrain free and open competition in interstate commerce in automobile motor-testing devices of the same or of a substantially similar and competing kind as those manufactured by respondent, respondent has done and committed and does commit the following acts and things which form successive and integral parts of its said plan and scheme:

Respondent in 1932 purchased a certain patent issued by the United States on December 2, 1919, for the use of a vacuum gauge "in combination with an internal combustion engine * * * as an indicator of the load factor and relative fuel economy in the motor," together with all the rights of the owner under such a patent, which will expire in or about the year 1936.

Following such purchase respondent began to manufacture and has manufactured and does manufacture certain testing devices consisting of a large number of separate and unrelated parts and items which respondent assembles into a single, complete testing device of various types and kinds and models which respondent thereupon has sold and sells in interstate commerce at prices ranging from \$175 to \$1,000 per device. Such complete device is used not only for testing the

load factor and relative fuel economy in automobile motors, but also for testing other independent parts of automobiles, such as spark plugs, ignition, condensers, voltmeters, ammeters, etc., which were and are nonessential to the use of the said vacuum gauge. One alone of said large number of separate and unrelated parts and items so assembled into single, complete testing devices of said various types and kinds and models is the said vacuum gauge, which itself is not patented, only the use of which as above described being covered by said letters patent purchased and owned by respondent. Said vacuum gauge is only a small and minor part in cost, in relative value, and in functioning of each such complete testing device. None of the remaining large number of said separate and unrelated parts and items so assembled into single complete testing devices is protected by patent or otherwise, but each is an item which can be freely and without any restraint whatever purchased by respondent's said competitors in the ordinary course of trade and commerce in the United States. The complete assembled device is called a motor analyzer and is not itself patented.

Following such purchase of said patent covering the use of said vacuum gauge as above described and nothing else and in 1933, respondent, either directly or through one, National Patent Corporation, which for a consideration insured respondent's said patent rights and acted in respect of the matters and things herein alleged as the agent of respondent, has threatened in the case of three, and has actually commenced against one, of respondent's five competitors above-mentioned suits to recover damages for the alleged infringement of said patent so purchased by respondent, the basis of such suit being that said competitor had embodied and comprised said vacuum gauge in testing devices manufactured by said competitor, when in fact said devices contain many other and different parts and items of construction from those used by respondent in his said complete testing devices. One of the competitors of respondent so threatened with an infringement suit, rejected a proposition of respondent to accept a license agreement with a stipulated minimum price increase of more than 80 percent in the testing devices manufactured by it and, in order to avoid such litigation temporarily ceased to manufacture testing devices. In the suit actually commenced, and in each of the other two threatened suits, the competitor sued by respondent has claimed and claims that, in order to avoid the expense of such litigation, it was compelled to and did involuntarily and under such coercion and compulsion, compromise and settle such suit and negotiate and effect the withdrawal of such threatened suits by entering into an agreement with respondent under the terms of which respond-

Complaint

26 F. T. C.

ent purported to issue to said competitor a license for the manufacture, use, and sale of automobile motors testing devices embodying and comprising said vacuum gauge claimed by respondent to be covered by its said patent as one of its parts and features, but all on the distinct understanding and condition that said competitor and licensee would not sell testing devices or any one of them at less than the certain stated prices for each type and kind and model of testing devices stipulated and fixed in said agreement, and limiting the license strictly to testing devices sold by said competitor at not less than such minimum prices, on the penalty of an admitted violation of the license and infringement of said patent and termination of the license by the respondent. Each of said license agreements, in addition to containing the aforesaid price-fixing provisions, did not confine itself either to the use of the said vacuum gauge in the manner above described and covered by respondent's said patent or to the vacuum gauge itself, but included the complete testing devices with all of their separate and unrelated parts and items in no way covered by respondent's said patent.

Since respondent and its three competitors above mentioned entered into said license agreements the catalog prices of the testing devices of said three competitors have been substantially advanced over the prices quoted by said competitors on the same type and kind and model of testing devices manufactured and distributed by said competitors prior to the making of said license agreements, such increases being approximately 25 percent of the preagreement prices, which themselves carried a profit to said competitors.

Respondent purchased said patent covering the use of said vacuum gauge as above described for the purpose of unlawfully restraining interstate trade and commerce, and combined said vacuum gauge in single, complete testing devices as above stated for the same unlawful purpose, and did all of the acts and things above described among others as integral parts of its said plan and scheme unlawfully to control and restrain interstate commerce in said testing devices.

PAR. 3. By means of said unlawful plan and scheme to control and restrain interstate commerce in said testing devices, which extended far beyond the limits of respondent's rights as owner of the patent on the specified use of said vacuum gauge, respondent has been and is enabled to control and to restrain competition in interstate commerce in said testing devices and particularly to control, to a substantial extent, the prices paid and to be paid for said testing devices by the purchasers thereof and to bring about an enhancement of such prices over those that prevailed prior to said unlawful acts of respondent and that would have prevailed and would continue to prevail except

Findings

for said unlawful acts of respondent and if there had been a continuation of free and open competition in said testing devices, and by and from such unlawful acts of respondent injury has resulted to the purchasers of such devices and to the public.

The aforesaid unlawful acts of respondent have had the capacity and tendency to cause and have caused the purchasing public to pay a higher price for the testing devices purchased than would have been the price under conditions of free and open competition, and the public receiving services from such devices to pay a higher price for such services than would have been the price had the testing devices been purchased under conditions of free and open competition.

PAR. 4. There were and are, among the competitors of respondent as above stated in paragraph 1, other manufacturers of the same or substantially similar and competing automobile motor-testing devices, who have been coerced and compelled by said unlawful acts of respondent to enter involuntarily into agreements restricting and preventing sales of said testing devices in interstate commerce in free and open competition, or otherwise than at stipulated and fixed minimum prices; and one of said competitors has actually been driven temporarily by respondent's said unlawful acts out of the business of manufacturing said testing devices, thereby interfering with the free flow of interstate commerce in the shipment of testing devices which otherwise would have been manufactured by one of said competitors. Consequently, said unlawful acts of respondent have tended and do tend to restrain, prevent, and suppress the interstate commerce of respondent's said competitors in the testing devices which were and are or would otherwise be manufactured and shipped by said competitors in interstate commerce and have tended and do tend otherwise to prejudice and injure said competitors and the public.

PAR. 5. The above acts and practices of respondent are to the injury and prejudice of the public and of 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 an Act of 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 31, 1935, issued, and on January 2, 1936, served, its complaint in this proceeding upon respondent Joseph Weidenhoff, 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 (respondent having filed no answer), testimony and other evidence in support of the allegations of said complaint were introduced by Henry Junge, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by C. C. Batz, attorney for the respondent; and said testimony and other 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 other evidence, and brief in support of the complaint (brief on behalf of respondent not having been filed and oral argument not having been requested by counsel for respondent), and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Weidenhoff, Inc., is an Illinois corporation, having its principal office and manufacturing plant located at 4344 West Roosevelt Road, Chicago, Ill. Respondent is, and for a number of years has been, engaged in the business of manufacturing electrical devices and automobile motor-testing devices, together with all accessories.

PAR. 2. In the course and conduct of said business, respondent causes the products which it manufactures to be sold and shipped in commerce between and among the various States of the United States to customers, generally wholesale automotive supply dealers, located in various parts of the United States, who resell said products to members of the purchasing public. The volume of respondent's business in the manufacture, sale, and distribution of these automobile-testing devices amounts annually to approximately \$450,000. Respondent is the largest manufacturer and distributor of automobile testing devices in the United States. The principal portion of respondent's business is in commerce between and among the various States of the United States. For the purpose of effectuating sales, respondent utilizes wholesale automotive supply dealers and also employs a number of salesmen. In the conduct of its business, respondent has been, and is, in competition with each and all of five manufacturers as regards the manufacture, sale, distribution, shipment, and servicing of their respective automobile-testing devices.

PAR. 3. On or about December 19, 1932, the respondent purchased from one Edward R. Hewitt, an inventor and engineer of Washington, D. C., a patent (carrying patent No. 1,323,531) issued by the United States Patent Office on December 2, 1919, pertaining to a vacuum gauge used "in combination with an internal combustion engine * * * as an indicator of the load factor and relative fuel economy in the motor," together with all the rights of the owner under said patent. This said patent expired on December 2, 1936.

PAR. 4. Following the purchase of this patent, respondent began to manufacture, and continues to manufacture, certain testing devices consisting of a large number of separate and unrelated parts and items which are assembled into a single complete testing device in various types and models. Respondent has sold these assembled devices in interstate commerce at prices ranging from \$175 to \$1,000 per device. Such completely assembled device contains not only a vacuum gauge used to measure the suction in the manifold of internal combustion engines, but also devices used in testing other parts of the engine, such as spark plugs, igniters, condensers, and batteries. Such devices consist of coil heater, ammeter, condenser tester, voltmeter, comparative coil tester, time clock, compression gauge, spark gap, etc., each one of these testing devices being separate and unrelated to the vacuum gauge. The completed testing device consists of a steel bench mounted on rollers. The various testing devices and gadgets are attached to the bench. There are also various odds and ends of wires, lights, and other accessories fastened to the bench and in the drawers, but said vacuum gauge is only a small and minor part in cost, in relative value, and in functioning of each such complete testing device. Only the vacuum gauge was patented. None of the remaining large number of said separate and unrelated parts and items so assembled into single complete testing devices is protected by patent, or otherwise, but each is an item which can be freely and without any restraint whatever purchased by respondent's said competitors in the ordinary course of trade and commerce in the United States. The complete assembled device is called a motor analyzer and is not itself patented.

PAR. 5. Respondent had, and still has, several competitors, all of whom likewise manufacture, assemble, and sell in commerce among and between the various States of the United States and in the District of Columbia similar testing devices consisting of a larger number of separate and unrelated parts and items assembled into a single and complete testing device having different sizes of completed devices and different models.

PAR. 6. After purchasing the aforesaid patent, the respondent directly, or through one National Patent Corporation, which, for a consideration, insured respondent's said patent rights and from time to time acted as the agent of respondent, endeavored to induce respondent's competitors to enter into license agreements whereby, among other things, said competitors were to agree as to the selling price of their respective testing devices and to pay respondent royalties. The inducement was negotiated by threatening infringement suits. As a result of these negotiations an infringement suit was filed in the United States District Court for the Southern District of Michigan, against the Allen Electric and Equipment Company, of Kalamazoo, Mich., one of respondent's competitors. This suit was later withdrawn. Subsequently a license agreement was entered into between said Allen Electric and Equipment Company and respondent, which contained no mention of selling price.

PAR. 7. Respondent did succeed in inducing the Electric Heat Control Company of Cleveland, Ohio, a competing manufacturer of internal combustion engine testers, of which the vacuum gauge is one of the several testing devices assembled into the completed device, to enter into a license agreement, which set forth prices that were substantially 25 percent higher than said company's previously published prices. The largest testing machine made by said Electric Heat Control Company was sold at a price of \$340, and the vacuum gauge used in this device cost less than \$1.00 to manufacture. Respondent also entered into a similar license agreement with the Sun Manufacturing Company of Chicago, Ill., another competitor, whereby said company, a partnership, agreed to pay royalties to the respondent to cover the use of a vacuum gauge in connection with its testing apparatus, and agreed to maintain a certain price schedule on its testers in the sale of them to the trade. Among the conditions which were made a part of such license agreements was in each instance one relating to the price or prices at which the licensee's products should be sold. The following provision from respondent's said license agreement with the aforesaid Electric Heat Control Company is typical of these agreements:

The foregoing license is expressly limited to the sale by the licensee of machines, coming within the terms of this license agreement, for a price of not less than thirty dollars (\$30) each at retail on the 1st named machine in paragraph (2) one hundred dollars (\$100) each at retail on the 2nd named machine in paragraph (2); one hundred and seventy-five dollars (\$175) each at retail on the 3rd named machine in paragraph (2) and three hundred dollars (\$300) each at retail on the 4th named machine in paragraph (2), and any sale for less than said sum shall be a violation of this license and an infringement of said Letters Patent.

The Stromberg Motor Corporation of Chicago, Ill., also a competitor, refused to enter into any license agreement, and continued to operate its business as a manufacturer and vendor of engine-testing devices containing the vacuum gauge with other apparatus, regardless of respondent's threats of infringement suits.

PAR. 8. Each of said license agreements, in addition to containing price-fixing provisions, except for the license agreement which the Allen Electric and Equipment Company entered into with respondent, did not confine itself either to the use of the said vacuum gauge in the manner above described and covered by respondent's said patent or to the vacuum gauge itself, but included the complete testing devices with all of their separate and unrelated parts and items in no way covered by respondent's said patent.

PAR. 9. The aforesaid license agreements entered into between the respondent and its various competitors were kept in effect for some time, and the licensees sold their respective testing devices at the stipulated prices until on or about January 1, 1936. Said license contracts terminated on December 2, 1936, with the death of the aforesaid patent (patent No. 1,323,531). The record does not indicate that since that time respondent has entered into other or similar agreements with any of the said licensees, or other competitors for the purpose of stipulating the terms and conditions of the sale of automobile-testing devices by such competitors.

PAR. 10. By means of said unlawful plan and scheme to control and restrain interstate commerce in said testing devices, which extended far beyond the limits of respondent's rights as owner of the patent on the specified use of said vacuum gauge, respondent has been enabled to control and to restrain competition in interstate commerce in said testing devices, and particularly to control, to a substantial extent, the prices paid, and to be paid, for said testing devices by the purchasers thereof, and to bring about an enhancement of such prices over those that prevailed prior to said unlawful acts of respondent and that would have continued to prevail, except for said unlawful acts of respondent. By such unlawful acts of respondent injury has resulted to the purchasers of such devices and to the public. Further, said unlawful acts of respondent have caused the purchasing public to pay a higher price for the testing devices purchased by them than would have been the price under conditions of free and open competition.

PAR. 11. There were, and are, among the aforesaid competitors of respondent, other manufacturers of substantially similar and competing automobile motor-testing devices, who have been coerced and compelled by said unlawful acts of respondent to enter involuntarily

Order

26 F. T. C.

into agreements restricting and preventing sales of said testing devices in commerce among and between the various States of the United States and in the District of Columbia in free and open competition with each other or otherwise than at stipulated and fixed minimum prices. Said unlawful acts of respondent have tended to restrain, suppress, and unduly hamper and restrict the free flow of said motor-testing devices in commerce among and between the various States of the United States and in the District of Columbia, and have tended otherwise to prejudice and injure said competitors and the public generally.

CONCLUSION

The aforesaid acts and practices of the respondent, Joseph Weidenhoff, 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 (to which respondent filed no answer), testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief for the Commission filed herein (respondent having filed no brief and having not requested oral argument), 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, Joseph Weidenhoff, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the sale of electrical devices and automobile testing devices, together with accessories thereto, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Entering into and carrying out any agreement, combination, or understanding between itself and any other manufacturer or distributor of electrical devices and automobile testing devices, through the use of license agreements and contracts, or otherwise, to fix and maintain prices, whether enhanced or otherwise, to be exacted by

Order

them or by any of them from the purchasers of electrical devices and automobile testing devices;

2. Coercing, intimidating, and inducing any of its competitors who manufacture and distribute electrical devices and automobile testing devices to raise or change the prices quoted by them to uniform prices fixed by an understanding and agreement between the respondent and any of them.

It is further ordered, That the said respondent shall within 60 days from the date of 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
AMERICAN CRAYON 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 2967. Complaint, Nov. 4, 1936—Decision, Jan. 31, 1938

Where some 14 corporations engaged in manufacture of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, and in the sale and distribution thereof to the same trade and with the same customers or potential customers in the various States and in the District of Columbia, and representing practically the entire source of supply of such products in the United States, and, prior to the organization of their industry into an association in 1933 and subsequent activities of said association and its later successor institute, in competition with one another as to price—

- (a) Discussed and compared prices, terms, and discounts at which they were offering and selling their said products and prices at which they were suggesting resale thereof, at meetings held from time to time and at various places, and thereby came to an agreement and understanding to fix prices, terms, and discounts at which they would offer and sell their said products and, to a substantial extent, did thereafter so offer and sell same at prices substantially uniform as among themselves, and with substantially uniform resale price schedules therefor, and did thereafter, in pursuance of their said understanding, make substantially uniform changes in their said prices and resale price schedules; and
- (b) Reported to their said association and its successor institute information as to prices, suggested resale prices, and terms of sale and discounts subject to change without notice, at which they were selling their said various products; and

Where aforesaid association and its successor institute—

- (c) Cooperated with aforesaid corporations through holding meetings for them to enter into such agreements as aforesaid, and through acting as a clearing house for the exchange of information submitted by said corporations as to such prices, terms, and discounts fixed by such agreements, and duly disseminating such information to the members;

With result of causing them, and tending to cause them, to offer and sell their said competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices substantially uniform among themselves, fixing and maintaining substantially uniform resale price schedules thereof, and substantially restricting price competition among and between them, and keeping prices at an artificial level:

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

Mr. Reuben J. Martin for the Commission.

Wise, Whitney & Canfield, of New York City, for respondents; along with *Wall, Haight, Carey & Hartpence*, of Jersey City, N. J., for Joseph Dixon Crucible Co.;

Complaint

Johnson, Clapp, Ives & Knight, of Boston, Mass., for Standard Crayon Manufacturing Co.;

Amerling & Angell, of New York City, for Globe Crayon Co.; and

Wesselman & Kraus, of New York City, for Art Crayon Co.

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 Crayon Company; Binney & Smith Co.; Milton Bradley Co.; Talens School Products, Inc.; Joseph Dixon Crucible Company; Standard Crayon Manufacturing Co.; National Crayon Company; New Jersey Crayon Company; Pennart Crayon Co.; Creston Crayon Company; Weber Costello Co.; American Art Clay Co.; Globe Crayon Company, Art Crayon Company, hereinafter referred to as corporate respondents; and the Crayon, Water-Color and Craft Institute, hereinafter referred to as the respondent association, have been and now 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, American Crayon Company, is a corporation organized under the laws of the State of Ohio in 1890, with its principal office located in the city of Sandusky within the said State.

PAR. 2. Said corporate respondent, Binney & Smith Co., is a corporation organized under the laws of the State of New York in 1902, with its principal office located at 41 East Forty-second Street in the city of New York within said State.

PAR. 3. Said corporate respondent, Milton Bradley Co., is a corporation organized under the laws of the State of Massachusetts in 1884 with its principal office located in the city of Springfield within said State.

PAR. 4. Said corporate respondent, Talens School Products, Inc., is a corporation organized under the laws of the State of Delaware in 1931 with its principal office located at 36 West Twenty-fourth Street in the city of New York within the State of New York.

PAR. 5. Said corporate respondent, Joseph Dixon Crucible Company, is a corporation organized under the laws of the State of New Jersey in 1868, with its principal office located at Jersey City within the State of New Jersey.

PAR. 6. Said corporate respondent, Standard Crayon Manufacturing Co., is a corporation organized under the laws of the State of Massachusetts in 1910 with its principal office located at Danvers within the State of Massachusetts.

PAR. 7. Said corporate respondent, National Crayon Company, is a corporation organized under the laws of the State of Pennsylvania in 1855 with its principal office located in the city of West Chester within the State of Pennsylvania.

PAR. 8. Said corporate respondent, New Jersey Crayon Company, is a corporation organized under the laws of the State of New Jersey in 1921 with its principal office located in the city of Paterson within the State of New Jersey.

PAR. 9. Said corporate respondent, Pennart Crayon Company, is a corporation organized under the laws of the State of Pennsylvania in 1913 with its principal office located in Easton within the State of Pennsylvania.

PAR. 10. Said corporate respondent, Creston Crayon Company, is a corporation organized under the laws of the State of New York in 1933 with its principal office in the city of New York within the State of New York.

PAR. 11. Said corporate respondent, Weber Costello Co., is a corporation organized under the laws of the State of Illinois with its principal office located in the city of Chicago Heights within the State of Illinois.

PAR. 12. Said corporate respondent, American Art Clay Company, is a corporation organized under the laws of the State of Indiana with its principal office located at 4717 West Sixteenth Street in the city of Indianapolis within the State of Indiana.

PAR. 13. Said corporate respondent, Globe Crayon Company, is a corporation organized under the laws of the State of New York in 1936 with its principal office located in the city of Brooklyn within the State of New York.

PAR. 14. Said corporate respondent, Art Crayon Company, is a corporation organized under the laws of the State of New York in 1921, with its principal office at 253 Thirty-sixth Street in the city of Brooklyn within the State of New York.

PAR. 15. All of said corporate respondents for a long time, to wit, more than 1 year last past, have been and now are engaged in the manufacture and distribution of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, which the said respective corporate respondents sell to their respective customers located in the various States of the United States, causing said products, when sold, to be transported in interstate commerce from the State of their respective manufacture to the purchasers thereof located in

the various States of the United States. Except for the said practices engaged in by said corporate respondents as hereinafter set forth, said corporate respondents would be in free, open, and active competition with each other in the sale and distribution in interstate commerce of their respective products.

PAR. 16. Each of said corporate respondents, with the exception of Art Crayon Company, is now and has been since December 1934, a member of said respondent association, Crayon, Water-Color and Craft Institute, and has been represented at the meetings of said association.

Said corporate respondent, Art Crayon Company, was formerly a member of said respondent association, Crayon, Water-Color and Craft Institute, and during the time it was a member of said respondent association was represented at the meetings of said association. Said corporate respondent, since its resignation as a member of said respondent association, Crayon, Water-Color and Craft Institute, has continued to cooperate with said respondent association and with said other corporate respondents in their activities.

PAR. 17. Said corporate respondents, acting in cooperation with each other and through and in cooperation with said respondent association for more than 1 year last past, and particularly since December 1934, have entered into an understanding, agreement, combination, or conspiracy among themselves and with and through said respondent association to restrict, restrain, and suppress competition in the sale and distribution of chalk and wax crayons, water colors, tempera colors, and other items of school supplies to 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 chalk and wax crayons, water colors, tempera colors, and other items of school supplies 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 chalk and wax crayons, water colors, tempera colors, and other items of school supplies to said customers.

PAR. 18. Said corporate respondents, in furtherance of their aforesaid understanding, agreement, combination, or conspiracy, on December 15, 1934, organized a voluntary trade association known as the Paint and Crayon Industry. Subsequently, to wit, on May 14, 1936, said voluntary trade association was incorporated under the Non-Profit Corporation Statute of the State of New York and its name was changed to Crayon, Water-Color and Craft Institute. Said re-

spondent association the, aforesaid Crayon, Water-Color and Craft Institute, is composed of manufacturers of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, 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 a large majority of the total volume of chalk, wax crayons, water colors, tempera colors, and other items of school supplies used and sold in interstate commerce in the United States. Said respondent association, 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 chalk and wax crayons, water colors, tempera colors and other similar items of school supplies, together with prices, discounts and terms at which said chalk, wax crayons, water colors, tempera colors, and other similar items of school supplies are sold or offered to be sold. Headquarters of said respondent association, since its organization, have been and now are maintained at 386 Fourth Avenue in New York City within the State of New York, and regular meetings of the members of said respondent association have been and are held from time to time, at which meetings said corporate respondents discuss trade and competitive conditions in the chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies industry, and agree upon and establish trade policies to be followed and prices to be charged by said corporate respondents in the sale and distribution of their said products and resale prices at which said products are to be sold, and perform the acts and things hereinbefore alleged in paragraph 17.

PAR. 19. The result of the acts and conduct of the said corporate respondents and of the said respondent association, as hereinbefore set out in paragraphs 17 and 18 has been and now is to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies 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 chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies, above the prices which had theretofore prevailed and which would prevail in 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 chalk and wax crayons, water colors, tempera colors, and other similar items of school supplies in interstate commerce.

PAR. 20. The foregoing alleged acts and practices of the said corporate and association 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, 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 November 4, 1936, issued and served its complaint in this proceeding upon the respondents, American Crayon Company, Binney & Smith Company, Milton Bradley Company, Talens School Products, Inc., Joseph Dixon Crucible Company, Standard Crayon Manufacturing Co., National Crayon Company, New Jersey Crayon Company, Pennart Crayon Co., Creston Crayon Company, Weber Costello Co., American Art Clay Co., Globe Crayon Company, Art Crayon Company, and Crayon, Water-Color & Craft Institute, 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' answers thereto, the attorneys of record for all said respondents tendered and entered into a stipulation as to the facts with the Chief Counsel for this Commission subject to the approval of the Commission, by which it is agreed that the statement of facts therein contained may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint, and in opposition thereto; and that the Commission may proceed on said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceedings without presentation of argument or the filing of briefs; which said stipulation has been by the Commission approved. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto and the said stipulation and statement of facts, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. All of the respondents above named are now and were at all times hereinafter mentioned corporations duly organized under the laws of the States of Ohio, New Jersey, Massachusetts, Delaware, New Jersey, Massachusetts, Pennsylvania, New Jersey, Pennsylvania, New York, Illinois, Indiana, New York, New York, and New York, respectively.

PAR. 2. All of the respondents are now and for a number of years past have been engaged in the manufacture, sale, and distribution of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, except that the Standard Crayon Manufacturing Co. at the times herein material manufactured and sold only chalk and wax crayons, and the Weber Costello Co. and American Art Clay Co. manufactured and sold only chalk. Pursuant to such sales and as a part thereof, respondents have regularly made shipment of said products from their respective places of business through and into the District of Columbia and States of the United States other than the States of the point of origin of such shipments. The chalk and wax crayons, water colors, tempera colors, and other items of school supplies manufactured and sold by each respondent have been and are similar to and have the same or similar uses and purposes as the chalk and wax crayons, water colors, tempera colors, and other items of school supplies of all other respondents; they seek and have sought to sell the same to the same trade and all dealers in and users of chalk and wax crayons, water colors, tempera colors, and other items of school supplies in the various States and in the District of Columbia are and have been the customers of or the potential customers of each and all of the respondents. Respondents represent and have represented practically the entire source of supply of chalk and wax crayons, water colors, tempera colors, and other items of school supplies in the United States.

PAR. 3. Prior to the year 1933, these respondents had been offering for sale and selling competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices determined by competition among them and these prices in many instances varied as among said respondents. In the year 1933, the respondents organized their industry under the name of the Paint & Crayon Industry Association. In the years 1934, 1935, and 1936, these respondents held meetings from time to time at various places, at which meetings they discussed and compared prices, terms, and discounts at which they were offering for sale and selling competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies and prices at which they were suggesting that said

Findings

chalk and wax crayons, water colors, tempera colors, and other items of school supplies were to be resold or offered for resale. At and by means of said meetings and discussions, respondents came to an agreement or understanding to fix the prices, terms, and discounts at which they would and thereafter to a substantial extent did offer for sale and sell competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices substantially uniform as among the respondents, and fixed and maintained substantially uniform resale price schedules containing prices at which said chalk and wax crayons, water colors, tempera colors, and other items of school supplies were suggested to be resold. From time to time thereafter, pursuant to such understanding, respondents made substantially uniform changes in said prices and in said resale price schedules.

On or about May 1936, the respondents formed the Crayon, Water-Color & Craft Institute which is named as one of the respondents herein. Since the formation of the Association hereinbefore referred to and since the formation of the respondent Crayon, Water-Color & Craft Institute, the respondents have reported to said Association and to said Institute information as to the prices, suggested resale prices, terms of sale, and discounts subject to change without notice at which these respondents had sold and were selling said chalk and wax crayons, water colors, tempera colors, and other items of school supplies. All of said information has been duly disseminated by said Association and by said Institute to its members; and during all of this period of time, the said Association and the said Institute have acted as a clearing house for the exchange of information submitted by said corporate respondents.

The respondent, Joseph Dixon Crucible Company, resigned from the respondent Crayon, Water-Color & Craft Institute on June 19, 1936, and at all times material herein was engaged only in the sale of wax crayons manufactured by others and in certain other items of school supplies which it manufactured, to wit, compressed crayons.

Respondent, Art Crayon Company, resigned from the Paint & Crayon Industry Association on June 4, 1935, and has never been a member of respondent, Crayon, Water-Color and Craft Institute. Said respondent did not report in writing to the Paint & Crayon Industry Association subsequent to its resignation therefrom and has not so reported to the Crayon, Water-Color & Craft Institute. It has at times discussed with the Crayon, Water-Color & Craft Institute information as to prices, suggested resale prices and terms of sale and discounts at which it has sold and was selling said chalk and wax crayons, water colors, tempera colors, and other items of school supplies.

Order

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PAR. 4. The result of said meetings and discussions and understandings and the things done pursuant thereto as above stated, has been to cause and to tend to cause respondents to offer for sale and sell competitive chalk and wax crayons, water colors, tempera colors, and other items of school supplies at prices substantially uniform among said respondents, to fix and maintain substantially uniform resale price schedules of chalk and wax crayons, water colors, tempera colors, and other items of school supplies and to substantially restrict price competition among and between said respondents and to keep prices at an artificial level.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice of the 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents and a stipulation and statement of facts in support of the allegations of the 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 said corporate respondents, American Crayon Company, Binney & Smith Company, Milton Bradley Company, Talens School Products, Inc., Joseph Dixon Crucible Company, Standard Crayon Manufacturing Co., National Crayon Company, New Jersey Crayon Company, Pennart Crayon Co., Creston Crayon Company, Weber Costello Co., American Art Clay Co., Globe Crayon Company, and Art Crayon Company, their subsidiaries, officers, agents, and employees, and each of them, do cease and desist from acting in cooperation with each other and through and in cooperation with said respondent Association, whereby they enter into agreements to fix and maintain uniform prices, terms and discounts at which chalk and wax crayons, water colors, tempera colors, and other items of school supplies are to be sold, or prices at which said

Order

chalk and wax crayons, water colors, tempera colors, and other items of school supplies are to be resold or offered for resale to customers located throughout the several States of the United States in interstate commerce; and from enforcing and maintaining by concert of action the aforesaid fixed prices, terms, and discounts by the exchange of information with each other directly or through said respondent Association as to the prices, terms, and discounts at which said corporate respondents are offering to sell said chalk and wax crayons, water colors, tempera colors, and other items of school supplies to customers located throughout the several States of the United States in interstate commerce; and from doing any acts or taking any other steps by concert of action to enforce and maintain said fixed prices, terms, and discounts to said customers located throughout the several States of the United States in interstate commerce.

It is further ordered, That said respondent association, Crayon, Water-Color & Craft Institute, its officers, agents, and employees do cease and desist from cooperating with said corporate respondents by holding meetings of the members of said respondent association at which said meetings said corporate respondents enter into agreements to fix prices, terms, and discounts at which said chalk and wax crayons, water colors, tempera colors, and other items of school supplies are sold or offered to be sold by said corporate respondents to their said customers located throughout the several States of the United States in interstate commerce; and from acting as a clearing house for the exchange of information submitted by said corporate respondents as to said prices, terms, and discounts fixed by agreement at which said chalk and wax crayons, water colors, tempera colors, and other items of school supplies are offered to be sold, or at which they are to be resold or offered for resale in interstate commerce as aforesaid in the enforcement and maintenance of said agreements; and from doing any acts or taking any action in the enforcement and maintenance of said agreements.

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 forth.

IN THE MATTER OF
BANNER MANUFACTURING COMPANY

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

Docket \$067. Complaint, Aug. 28, 1937¹—Decision, Jan. 31, 1938

Where a corporation engaged in distribution and sale of certain automobile accessories and other products to purchasers in other States and in District of Columbia, in substantial competition with those engaged in manufacture, distribution, and sale of similar products and others intended and designed for similar use, or in distribution and sale thereof, in commerce among the various States and in said District, and including those who do not in any way misrepresent the character and nature of their respective businesses and to purchasing public that their said products are generally safe from standpoint of corrosion for use as antifreeze products, and do not make use of other misleading representations as below set forth, or others similar thereto; in advertising certain of its antifreeze products in booklets, circulars, and show window displays distributed to purchasing public through service stations, hardware stores, accessory stores, and direct through the mails, and in other ways—

- (a) Represented that said preparations were safe and harmless solutions for general use in automobile radiators, through such statements as "THE SAFE ANTI-FREEZE," and through certifying, "FOR THE PROTECTION OF THE USER," and that product was made as below set forth "in strict conformity of standard," etc.; and
- (b) Represented, through use of word "Manufacturing" in its corporate name, and through statements, in their advertising and branding of their said antifreeze solutions, "FOR THE PROTECTION OF THE USER against inferior compounds we certify that the product on which our name appears is made in strict conformity of standard under the strict supervision of our laboratories. COMPOUNDED FOR AUTOMOBILE RADIATORS, BANNER MANUFACTURING COMPANY," that it was the manufacturer of said antifreeze preparations and that they were made in its laboratories under its strict supervision;

Facts being said antifreeze solutions would cause corrosion in cooling system in which continually used, would in many instances lessen effectiveness thereof and cause engine to overheat, and also corrosion on spark plugs, ignition wires, and other metal parts with which it came in contact, and would in many instances lessen effectiveness of ignition system through causing "shorts" therein, and said antifreeze preparations in aforesaid respects were not safe, it did not manufacture or supervise manufacture or makeup thereof, nor operate any laboratory for the purpose of manufacturing, compounding, and testing such products along scientific lines;

With result that public was led to believe that said antifreeze products were safe and harmless solutions for general use, not only from standpoint of protecting against freezing or damage due thereto, but from that of not causing corrosion in cooling system in which continually used, and other

¹ Amended.

Complaint

troubles and difficulties as aforesaid indicated, and that its said products were made under strict laboratory supervision and that it manufactured same, and of misleading and deceiving members of purchasing public into erroneous and mistaken belief that said representations were true, and into purchase of substantial quantities of its said products as result of such erroneous and mistaken beliefs thus engendered, and of unfairly diverting thereby trade to it from competitors who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Benjamin N. Brody, of New York City, 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 Banner Manufacturing 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 said 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, Banner Manufacturing Company, is now, and has been for several years last past, a corporation organized, existing, and doing business under the laws of the State of New York with its principal place of business at 841 East Forty-third Street, Brooklyn, N. Y.

PAR. 2. The respondent has been, and is now, engaged in the business of manufacturing, distributing, and selling certain automobile accessories and other products used in the operation and upkeep of automobiles. The respondent causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof located in various States other than the State of New York and in the District of Columbia, and maintains a constant course of trade in said products so distributed and sold by it in commerce among and between the various 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 with firms, and individuals and partnerships engaged in the manufacture, distribution, and sale of similar products and other products intended

and designed for similar use in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Some of the products marketed by respondent are anti-freeze preparations for use in automobile radiators, designated as Super-Artic, Gold Seal, Colonial, Globe, and Banner Radiator Glycerine.

PAR. 4. In the operation of its business and for the purpose of inducing the purchase of said antifreeze products on the part of members of the purchasing public respondent has made use of certain advertising literature such as booklets, circulars, and show-window displays represented to be descriptive of the various products herein named. The advertising literature herein referred to is distributed to members of the purchasing public through the medium of automobile service stations, hardware stores, automobile accessory stores, and through the United States Mails direct to prospective purchasers and in other ways.

With reference to the product designated as Banner Radiator Glycerine, the following representation is made in the advertising and branding of the product:

THE SAFE ANTI-FREEZE

* * * * *

With reference to the Banner Radiator Glycerine, and other anti-freeze preparations, namely, Super Artic, Gold Seal, Colonial, and Globe, the following representations are made in the advertising and branding of the product:

FOR THE PROTECTION OF THE USER
 against inferior compounds we
 certify that the product on which
 our name appears is made in strict
 conformity of standard under the
 strict supervision of our labora-
 tories

COMPOUNDED FOR AUTOMOBILE RADIATORS

BANNER MANUFACTURING COMPANY

In said statements as set for above, together with other similar statements not herein set out, and in its general advertising respondent represents, and as the result of said representations the public is led to believe; that the above named antifreeze products are safe and harmless antifreeze solutions for general use both from the standpoint of giving protection against freezing or damage due to freezing and from the standpoint of causing corrosion in the cooling system in which they are continually used and causing corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which

they might come in contact when used as directed; that its products generally are made under strict laboratory supervision; and that the respondent manufactures its antifreeze products at its premises.

In truth and in fact the said Banner Radiator Glycerine and other antifreeze preparations, namely, Super-Artic, Gold Seal, Colonial, Globe, and Banner are not safe antifreeze preparations for general use from the standpoint of corrosion, as they will cause corrosion in the cooling system in which they are continually used, which will, in many instances, lessen the effectiveness of the cooling system and cause the engine to overheat; and they will cause corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which such products come in contact, which will, in many instances, lessen the effectiveness of the ignition system by causing "shorts" therein. The respondent does not manufacture or supervise the manufacturing or make-up of these products, and the respondent does not operate any laboratory for the purpose of manufacturing, compounding, and testing these products along scientific lines.

PAR. 5. There are among the respondent's competitors in commerce as herein set out those who do not in any way misrepresent the character and nature of their respective businesses, and who do not in any way represent to the purchasing public that their products are generally safe for use as antifreeze products for automobile radiators when they are not, and do not make use of the other misleading representations herein set out or others similar thereto.

PAR. 6. The aforesaid false and misleading statements and representations as used by the respondent in its offering for sale and selling its various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted to respondent from competitors who do not, in the sale and distribution of their respective products make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 7. The methods, acts, and practices of respondent herein set forth are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, 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.

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 28, 1937, issued, and on September 2, 1937, served its amended complaint in this proceeding upon respondent, Banner Manufacturing 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 amended complaint and the filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the amended complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint and the substitute answer, no briefs having been filed or oral argument made, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Banner Manufacturing Company, is now, and has been for several years last past, a corporation organized, existing and doing business under the laws of the State of New York with its principal place of business at 841 East Forty-third Street, Brooklyn, N. Y.

PAR. 2. The respondent has been, and is now, engaged in the business of distributing and selling certain automobile accessories and other products used in the operation and upkeep of automobiles. The respondent causes these products, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States other than the State of New York and in the District of Columbia, and maintains a course of trade in said products so distributed and sold by it in commerce among and between the various States of the United States.

Findings

In the course and conduct of said business respondent has been, and is, in substantial competition with other corporations and with firms, and individuals and partnerships engaged in the manufacture, distribution, and sale of similar products and other products intended and designed for similar use, or in the distribution and sale of such products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Some of the products marketed by respondent are antifreeze preparations for use in automobile radiators, designated as Super-Artic, Gold Seal, Colonial, Globe, and Banner Radiator Glycerine.

Chemical examination of the products known as Super-Artic, Gold Seal, Colonial, and Globe showed the following results:

Nature of sample.....	clear, violet-colored, mobile liquid
Reaction to litmus.....	neutral
Specific gravity at 15.5° C.....	0.920
Methanol (Methyl Alcohol).....	present
Residue at 105° C.....	0.76%
Calcium chloride (CaCl ₂ , anhydrous).....	0.58%
Acetone.....	not detected
Borax.....	not detected

Probable Composition:

Methanol.....	49% by weight
Water.....	50.4% by weight
Calcium chloride, anhydrous.....	0.6% by weight
Coloring matter.....	present

This solution has a freezing point below -40° F. so it will give protection at all temperatures normally encountered. Since the solution is approximately half water, larger quantities of this material will be required for protection at temperatures down to -40° F. than is the case with denatured alcohol or with the usual grades of "antifreeze methanol."

Chemical analysis of the Banner Radiator Glycerine shows the following:

Nature of sample.....	clear, pale yellow, viscous liquid
Reaction to litmus.....	neutral
Specific gravity at 20° C.....	1.240
Glycerine.....	present
Calcium chloride (CaCl ₂ , anhydrous).....	12.9%
Sugar.....	not detected
Borax.....	not detected
Sodium nitrite (NaNO ₂).....	not detected

Probable Composition:

Glycerine.....	47% by weight
Water.....	40% by weight
Calcium chloride, anhydrous.....	13% by weight

This solution (undiluted) starts to freeze at -36° F. When diluted with an equal volume of water, it starts to freeze at $+8^{\circ}$ F. and, when diluted with one third its volume of water, it starts to freeze at -11° F. These figures show that the proportions recommended on the can for use at various temperatures will give protection against freezing.

The presence of calcium chloride in both these solutions is likely to give rise to electrolytic corrosion. The calcium chloride concentration in the cooling system will gradually increase due to successive additions of the antifreeze solution made necessary by evaporation of the methanol. With calcium chloride in the cooling system, care must be taken to see that none of the solution comes in contact with spark plugs or ignition wires. The salt deposited when the water evaporates is very difficult to remove and when it cools it absorbs water and becomes a good electrical conductor, causing short circuits which are not easy to locate as they disappear when the engine is heated up.

PAR. 4. In the operation of its business and for the purpose of inducing the purchase of said antifreeze products on the part of members of the purchasing public respondent has made use of certain advertising literature such as booklets, circulars, and show-window displays represented to be descriptive of the various products herein named. The advertising literature herein referred to is distributed to members of the purchasing public through the medium of automobile service stations, hardware stores, automobile accessory stores, and through the United States Mails direct to prospective purchasers and in other ways.

With reference to the product designated as Banner Radiator Glycerine, the following representation is made in the advertising and branding of the product:

THE SAFE ANTI-FREEZE

* * * * *

With reference to the Banner Radiator Glycerine, and other antifreeze preparations, namely: Super-Artic, Gold Seal, Colonial, and Globe, the following representations are made in the advertising and branding of the product:

FOR THE PROTECTION OF THE USER against inferior compounds we certify that the product on which our name appears is made in strict conformity of standard under the strict supervision of our laboratories

COMPOUNDED FOR AUTOMOBILE RADIATORS
BANNER MANUFACTURING COMPANY

In said statements as set forth above, together with other similar statements not herein set out, and in its general advertising respondent represents, and as the result of said representations the public is led to believe; that the above-named antifreeze products are safe and harmless antifreeze solutions for general use both from the standpoint of giving protection against freezing or damage due to freezing and from the standpoint of not causing corrosion in the cooling system in which they are continually used and not causing corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which they might come in contact when used as directed; that its products generally are made under strict laboratory supervision; and that the respondent manufactures its antifreeze products.

In truth and in fact the said Banner Radiator Glycerine and other antifreeze preparations, namely, Super-Artic, Gold Seal, Colonial, Globe, and Banner are not safe antifreeze preparations for general use from the standpoint of corrosion, as they will cause corrosion in the cooling system in which they are continually used, which will, in many instances, lessen the effectiveness of the cooling system and cause the engine to overheat. Said preparations will cause corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which they come in contact, which will, in many instances, lessen the effectiveness of the ignition system by causing "shorts" therein. The respondent does not manufacture or supervise the manufacturing or make-up of these products, and the respondent does not operate any laboratory for the purpose of manufacturing, compounding, and testing these products along scientific lines.

PAR. 5. There are among the respondent's competitors in commerce as herein set out those who do not in any way misrepresent the character and nature of their respective businesses, and who do not in any way represent to the purchasing public that their products are generally safe from the standpoint of corrosion for use as antifreeze products for automobile radiators when they are not, and do not make use of the other misleading representations herein set out or others similar thereto.

PAR. 6. The aforesaid false and misleading statements and representations as used by the respondent in its offering for sale and selling its various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's various products as a result of said erroneous and mistaken beliefs engendered as aforesaid.

Order

26 F. T. C.

As a result thereof trade in said commerce is unfairly diverted to respondent from competitors who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent Banner Manufacturing 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer thereto filed herein on December 28, 1937, by respondent admitting all the material allegations of the amended complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, Banner Manufacturing Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of antifreeze preparations for use in automobile radiators in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparations are safe and harmless solutions for general use in automobile radiators; provided, however, respondent is not prohibited from representing that said products, as now composed, when used under the suggested directions of respondent as to proper quantities thereof for designated temperatures, are effective as antifreeze solutions.

2. Representing, through the use of the word "manufacturing" or any other word or term of similar import and meaning in its corporate name, or in any other manner, or through any means or device, that it is the manufacturer of said antifreeze preparations or that said prepa-

614

Order

rations are made in its laboratories under its strict supervision unless and until it actually owns and operates or directly and absolutely controls a factory or manufacturing plant wherein such preparations are made by it under such supervision.

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

HENRY R. SHAPIRO, INDIVIDUALLY, AND TRADING AS
MONARCH FASHION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3018. Complaint, Feb. 25, 1937¹—Decision, Feb. 3, 1938*

Where an individual engaged in sale and distribution of hosiery, lingerie, men's shirts, tablecloths and napkins, and various other articles and items—

Furnished and distributed to members of the general public in practically all States and in the District of Columbia push cards, order blanks, and advertisements depicting merchandise thus being offered, and instructions, suggestions, and circulars describing his said plan of selling such merchandise, by which chance purchaser paid for chance varying amount, or nothing, dependent upon number disclosed within various disks of aforesaid cards, and received one or two pairs of women's hosiery (or three or six pairs of men's, or other merchandise thus being offered and sold, as the case might be), or nothing, depending upon success or failure in selecting feminine names corresponding to those concealed under card's red and blue seals, respectively, and he compensated by similar merchandise operator or representative, and thereby placed in the hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of his said products, with knowledge and intent that said cards had been, were, and would be used in sale and distribution thereof to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;

With result that sale of similar or like merchandise by competitors was injuriously affected, and trade was diverted from them to him by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition; to the prejudice and injury of the public and competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on December 21, 1936, issue its complaint herein charging and alleging that respondent had been guilty of unfair methods of competition in commerce, as "commerce" is defined in an Act of Congress,

¹ Amended and supplemental.

Complaint

approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and

Whereas, This Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, Acting in the public interest pursuant to the provisions of the act aforesaid, the Federal Trade Commission charges that Henry R. Shapiro, individually, and trading as Monarch Fashion Company, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the name and style of Monarch Fashion Company, with his principal office and place of business located at 1414 South Wabash Avenue, in the city of Chicago, State of Illinois. He is now, and for more than 1 year last past has been engaged in the sale and distribution of hosiery, ladies' lingerie, men's shirts, tablecloths, napkins, bedspreads, pillows, blankets and comforters, silverware, and pen and pencil sets, in commerce between and among the various States of the United States and in the District of Columbia, and causes, and has caused said products when sold to be shipped from his 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 in the District of Columbia.

In the course and conduct of his business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like merchandise in commerce 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 above, respondent, in soliciting the sale of and selling his 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 push cards, order blanks, and advertisements containing illustrations of his merchandise and circulars explaining

Complaint

26 F. T. C.

respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. In order to obtain addresses of "prospects," respondent addresses a letter to a woman employee of some firm or organization offering her a pair of ladies' silk hosiery free on condition that she send to respondent the names and addresses of ten other women in different offices. If the person addressed complies, the pair of hosiery promised of the size and color indicated is sent to her by respondent, and to each of the other "prospects" respondent sends said sales literature, including a paper push card with printed instructions for its operation.

Respondent's push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated disks marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push cards also have a large red partially perforated disk and a large blue partially perforated disk, and concealed within each of these two disks is one of the names appearing elsewhere on said cards. The push cards bear printed legends or instructions, one of which is as follows:

RED	14 Numbers	BLUE
SEAL	are FREE	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

The other push cards bear similar legends but vary in detail. Such variations cover the merchandise to be distributed, the price to be paid, and the number of pushes which are free. The said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push card.

Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. Each of said prizes or premiums is allotted to the customer or purchaser in accordance with the legends contained on said push cards. The fact as to whether a customer receives specified merchandise free or pays a sum of money from 1 cent to 15 cents, or in other cases from 1 cent to 20 cents, and in still other cases from 1 cent to 25 cents, and the fact as to whether a customer receives nothing for the amount paid or receives certain specified merchandise, is thus determined wholly by lot or chance.

Respondent furnishes specified merchandise to his representatives making sales by means of said push cards. Respondent also furnishes his representatives with additional printed instructions or suggestions for using his said push cards.

PAR. 3. Respondent, in selling his said merchandise in connection with the aforesaid push cards, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

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 United States and contrary to criminal statutes of many of the States of the United States. By reason of said facts many competitors 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 and ultimate consumers of respondent's merchandise are attracted by the element of chance involved in respondent's sales method as 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. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at a price much less than the normal retail price thereof.

The use by respondent of said method in the sale of his merchandise, and the sale of his merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, 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 or any other method that is contrary to public policy, and such competitors refrain therefrom. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert trade and custom to respondent from its said competitors who do not use the same or equivalent methods.

PAR. 5. Many dealers in and ultimate purchasers of respondent's merchandise are attracted by respondent's said methods and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods, and trade is thereby diverted to respondent from his said competitors.

PAR. 6. The aforesaid acts and practices of 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, 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 21, 1936, issued and served its complaint in this proceeding upon the respondent, Henry R. Shapiro, individually, and trading as Monarch Fashion Company; thereafter, on February 25, 1937, the Federal Trade Commission issued and served its amended and supplemental complaint in this proceeding upon the said respondent, 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 amended and supplemental complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said amended and supplemental complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by Morris Blank and John A. Nash, attorneys for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 amended and supplemental complaint, the answers thereto, testimony and other evidence, brief in support of the complaint (counsel for the respondent having failed to file any brief and having indicated their desire not to orally argue the matter); and the Commission having duly considered the matter and now 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, Henry R. Shapiro, is an individual trading under the name and style, Monarch Fashion Company, with his principal office and place of business located at 1414 South Wabash Avenue in the city of Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of hosiery, ladies' lingerie, men's shirts, table cloths, table napkins, bedspreads, pillows, blankets, comforters, silverware, pen and pencil sets, in commerce between and among the various States of the United States and in the District of Columbia. He causes such merchandise, when sold, to be shipped or transported from his principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in practically all of the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. In so carrying on said business, respondent is, and has been, engaged in active competition with other individuals, and with partnerships and corporations engaged in the manufacture of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Findings

26 F. T. C.

PAR. 2. In the course and conduct of his business as described in paragraph 1 above, respondent, in soliciting the sale of and selling his merchandise, has adopted and pursued, and still continues, the following methods and practices:

Respondent distributes to members of the general public in practically all of the States of the United States and in the District of Columbia through the United States mail certain literature, instructions, and sales outfits, including paper push cards, order blanks, advertisements containing illustrations of the merchandise which he is offering for sale, and circulars explaining respondent's plan of selling such merchandise and of allotting it as premiums or prizes to the operators of said push cards.

All of the said cards used by respondent involve the same principle or sales plan or method but vary to some extent in detail. One of the said push cards bears 60 feminine names with ruled columns for writing in the name of the customer opposite the feminine name selected. Said push card has 60 small round partially perforated disks marked "PUSH," above each of which is printed one of the feminine names heretofore referred to. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has one large red seal and one large blue seal, concealed within each of which is one of the feminine names above referred to. The numbers concealed within each of the partially perforated disks cannot be ascertained until a push or selection has been made and the names concealed within the large red and blue seals cannot be ascertained until the seals have been removed. The push card bears printed legends or instructions, among others, as follows:

	14 Numbers	
	are FREE	
Red	5-15-20-25	Blue
Seal	30-35-38-40	Seal
	45-48-50	
	55-58-60	

Lucky Name under Red Seal receives
TWO Pairs

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¢

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

* * * * *

Findings

TWO PAIR are given you for disposing of the card. TWO PAIR given to the party drawing the lucky name found under the RED SEAL. ONE PAIR is given to the party drawing the lucky name found under the BLUE Seal.

* * * * *
 If the order is sent us within ten days, we will include a SURPRISE GIFT for the person sending us the order.

Sales of hosiery by means of said push cards are made in accordance with the above described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The fact as to whether a customer pays a sum from 1 cent to 15 cents for one or two pair of ladies' hosiery, or three or six pair of men's hosiery, or receives the same free of charge, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

In addition to the three pair of ladies' hosiery or nine pair of men's hosiery distributed to purchasers from said push card, the respondent furnishes two pair of ladies' hosiery or six pair of men's hosiery and generally an additional item of merchandise to his representative making sales by means of said push card. Respondent also furnished his representatives with additional printed instructions or suggestions for using said push cards. One of the said printed instructions bears the following legends, to wit:

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¢.

Be sure and write name of persons pushing out numbers on the line opposite the number they have selected.

Persons pushing out number 5-15-20-25-

Persons pushing out number 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 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 pairs of Men's Silk Hose instead of Each Pair of Ladies'.

As stated above, the other push cards which respondent furnishes are identical in principle but vary in detail. Some of the said push cards are furnished by the respondent and used by the public in purchasing and distributing the other merchandise sold and distributed by respondent and heretofore referred to. The members of the public to whom respondent furnishes his push cards and other literature, use the same in the manner suggested by respondent, thereby distributing respondent's merchandise to others by lot or chance and procuring respondent's merchandise for themselves. The sale and distribution of respondents' merchandise through the use of or by means of the said push cards constitutes the operation of lotteries, games of chance, or gift enterprises, and the respondent in furnishing said push cards puts in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the distribution of his merchandise.

PAR. 3. The respondent, in furnishing said push cards, has knowledge that the same are, have been, and will be used in distributing his merchandise, and furnishes said push cards so that his merchandise may be sold or distributed to the public by lot or chance.

PAR. 4. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondent, who do not furnish push cards similar to those furnished by respondent, and who do not furnish any device by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondent who are opposed to use of push cards in the sale and distribution of their merchandise, and such competitors refrain from furnishing such devices. Competitors of respondent were called as witnesses and testified in this proceeding, and the Commission finds that the sale of merchandise by means of said push cards injuriously affects the sale of similar or like merchandise by such competitors, and that trade is diverted to respondent from his said competitors by reason of the furnishing of said push cards or like devices. The use of such methods by the respondent, in the sale and distribution of his merchandise is prejudicial and injurious to the public and to respondent's competitors, and has resulted in the diversion of trade to respondent from his said competitors and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 5. As stated previously in these findings, the respondent sells his merchandise in practically all of the States of the United States and in the District of Columbia, the respondent having testified that his customers are located pretty generally throughout the United States. While the annual volume of respondent's business was not shown exactly, the respondent testified and the Commission finds, that for the period beginning January 1, 1936, and ending November 30, 1936, the respondent distributed approximately 207,000 push cards. The Commission further finds that his sales of merchandise are, and have been, substantial.

PAR. 6. The Commission finds that the sale and distribution in interstate commerce of merchandise as described above, by means of lot or chance, is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of respondent, Henry R. Shapiro, individually and trading as Monarch Fashion Company, 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 amended and supplemental complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein on behalf of counsel for the Commission (brief of respondent and oral argument having been waived), and the Commission having made its findings as to the facts and 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, Henry R. Shapiro, individually and trading as Monarch Fashion Company, his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of hosiery, ladies' lingerie, men's shirts, tablecloths, table napkins, bedspreads, pillows, blankets, comforters, silverware, pen

and pencil sets, and other merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping, or transporting to members of the public push cards or other similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of merchandise by the use of push cards or other similar devices, or in any manner selling or otherwise disposing of such merchandise free of charge or at varying prices depending upon lot or chance.

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

Syllabus

IN THE MATTER OF
UNIVERSITY FORUM, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3078. Complaint, July 29, 1937¹—Decision, Feb. 3, 1938

Where a corporation engaged in sale and distribution of 20-volume and 12-volume sets of books, respectively designated as "University Forum Series" and "Effective Speech Series," and represented as respectively adapted for advancement of adult education and for self-advancement in effective speech-making; second organization engaged as National Association of Delta Theta Chi in conducting so-called sorority and in purchase for resale to so-called chapters thereof of aforesaid two series; individual engaged as owner of aforesaid two corporations in sale of said series and in promoting the organization and conduct of said so-called association and pretended sorority; and an individual engaged as self-styled grand secretary of said association and as agent of aforesaid owner individual and of aforesaid corporations in the sale of said series and in the conduct of said association or so-called sorority; in substantial competition, as thus engaged, in sale of their said books to purchasers in other States and in the District of Columbia with others likewise engaged in sale and distribution of encyclopedias, treatises, home study, and correspondence school courses adapted to and used for self-advancement through adult education in commerce among the various States and in the aforesaid District; in promoting the sale of aforesaid sets through their practice, directly and through their agents and representatives, of making contact in different cities for the establishment of a chapter of said association and securing the agreement of the prospective members, whom they entertained, to pay \$45.00 initiation or membership fee and other annual dues—

Represented, in aforesaid connection, that said association was a legitimate professional or business women's sorority, and that while prime purpose thereof was social, it had certain cultural aspects, and that to further said cultural aspects local chapter would be given two sets each of aforesaid two series, of which one of each was to remain at local chapter rooms or headquarters and one was to be placed in possession of local chapter's educational director, and that members of said national association or pretended sorority would receive instruction under direction of a university or college professor, facts being said so-called National Association of Delta Theta Chi was not a legitimate professional or business women's sorority, or sorority in any sense of the word, as generally understood, but outlet only for aforesaid publications, and no member thereof, as a result of such membership, ever received from college or university professor any form of instruction whatsoever, and representations in said respects were untrue; With result that members and prospective members of said National Association of Delta Theta Chi were led into erroneous and mistaken beliefs that they were joining legitimate sorority within general meaning of term, and would secure other benefits represented, and aforesaid corporations and individuals

¹ Amended.

Complaint

26 F. T. C.

sold memberships therein and aforesaid series to various members of consuming public in the United States joining purported sorority and purchasing said books as a result of such statements, misrepresentations and inducements, and trade was unfairly diverted to said corporations and individuals from legitimate competitors engaged in sale of encyclopedias, treatises, home study, and correspondence school courses and who do not misrepresent their products or business status; to the substantial injury of 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. S. Brogdyne Teu, II for the Commission.

Mr. Harvey B. Cox and *Mr. William E. Richardson*, of Washington, D. C., for respondents.

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 University Forum, Inc. and The National Association of Delta Theta Chi (corporations), and P. E. Guillot and Helen K. Blackstone, individuals, all herein-after 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 its charges in that respect as follows:

PARAGRAPH 1. University Forum, Inc. is an Illinois corporation, and is now and has been at all times mentioned herein, doing business at 1811 Prairie Avenue in the city of Chicago, State of Illinois, and Casa Nova Hotel, 354 O'Farrell Street in the city of San Francisco, State of California. It is now and has been for more than 1 year last past, distributing certain series of books under the trade name of "University Forum" and "Effective Speech" series, to individuals and organizations for their respective uses in commerce as herein set out.

PAR. 2. The National Association of Delta Theta Chi is a Delaware corporation, and is now and has been at all times mentioned herein doing business at 1811 Prairie Avenue in the city of Chicago, State of Illinois, and Casa Nova Hotel, 354 O'Farrell Street in the city of San Francisco, State of California. The respondent, The National Association of Delta Theta Chi, is used solely as an outlet for the "University Forum" and "Effective Speech" series of books hereinbefore referred to, published, sold, and distributed by the University Forum, Inc., respondent herein. Respondent, The National Asso-

ciation of Delta Theta Chi, is now and has been at all times mentioned herein, engaged in the sale and distribution of the aforementioned series of books published and distributed by the respondent, University Forum, Inc., in commerce as herein set out.

PAR. 3. P. E. Guillot is an individual and the sole owner of the corporate respondents, University Forum, Inc. and The National Association of Delta Theta Chi, is now and has been at all times mentioned herein doing business at 1811 Prairie Avenue in the city of Chicago, State of Illinois, and Casa Nova Hotel, 354 O'Farrell Street in the city of San Francisco, State of California. He is now and has been for more than 1 year last past engaged in selling "University Forum" and "Effective Speech" series of books to individuals and organizations in commerce as herein set out. He directs and controls the sales, policies, and general business operations of the corporate respondents.

PAR. 4. Helen K. Blackstone is an individual representing herself as the grand secretary of The National Association of Delta Theta Chi, and is an agent for P. E. Guillot, University Forum, Inc., and The National Association of Delta Theta Chi, and is now and has been at all times herein mentioned doing business at 1811 Prairie Avenue in the city of Chicago, State of Illinois, and at the Allerton Hotel in the city of Chicago, State of Illinois, and at 354 O'Farrell Street in the city of San Francisco, State of California. Said respondent is now and has been for more than 1 year last past engaged in the business of selling "University Forum" and "Effective Speech" series of books to individuals and organizations in commerce as herein set out.

PAR. 5. Said respondents, being engaged in business as aforesaid, cause said books "University Forum Series" and "Effective Speech Series" to be transported from their principal offices and places of business in the State of Illinois and in the State of California, to purchasers thereof located in other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past, a constant current of trade in said books so sold and distributed by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of their said business respondents are now and have been in substantial competition with other individuals, firms, and corporations likewise engaged in the business of selling and distributing encyclopedias, treatises, home-study, and correspondence school courses adapted to and used for the self-ad-

vancement of adult education in commerce between and among various States of the United States and in the District of Columbia.

PAR. 7. Respondents, in the course and conduct of their business as detailed in paragraphs 1 and 6 hereof, have made oral and printed representations to their customers and prospective customers in the various States of the United States regarding the products offered for sale by them. These representations made and circulated purport to be descriptive of the commodities offered for sale and sold by respondents, as follows:

The respondents herein, and their agents, are engaged in the offering for sale and in the selling of the above described "University Forum" and "Effective Speech" series of books. The "University Forum" series of books is purported to be a 20-volume set of books adapted for the advancement of adult education. The "Effective Speech" series of books is a 12-volume set of books purported to be adapted for self advancement in effective speech making. The said respondents merchandise the above referred to and described series of books in the following manner:

Respondents, or their agents and representatives, establish contacts in a city where it is their intention to establish an alleged chapter of The National Association of Delta Theta Chi. The said respondents, directly and through their agents or representatives, represent to the prospective members of The National Association of Delta Theta Chi that it is a legitimate professional or business woman's sorority; that while the prime purpose of the sorority is social, yet it has certain cultural aspects. The prospective members of the proposed chapter of The National Association of Delta Theta Chi are entertained at a dinner given at one of the leading hotels of that particular city. The respondents pay the expenses of the dinner. The prospective members agree to pay a \$45 initiation or membership fee, and other annual dues.

In connection with the establishment of an alleged local chapter of The National Association of Delta Theta Chi, prospective members are informed that to further the cultural aspect of the sorority hereinbefore referred to, the local chapter will be given two sets of the "University Forum" series and two sets of the "Effective Speech" series. One set each are to remain at the local chapter rooms or headquarters for the use of the members of the sorority, the other or second set are to be placed in the possession of the educational director of the local chapter.

The respondents herein, directly and through their agents, represent to prospective members of The National Association of Delta Theta Chi that they will be given instructions under the supervision of a college or university professor.

In truth and in fact the above set out representations by respondents, that The National Association of Delta Theta Chi is a legitimate professional or business woman's sorority, are not true. The National Association of Delta Theta Chi is only a sham and an outlet for the publications described as "University Forum" and "Effective Speech" series of books. The National Association of Delta Theta Chi is not a sorority in any sense of the word whatsoever or within the meaning of the term, "sorority," as it is generally understood.

Further, the representations made by respondents that members of The National Association of Delta Theta Chi will receive supervised instruction under a college or university professor are untrue. No member of The National Association of Delta Theta Chi has ever received in any form whatsoever instructions from a college or university professor because of their membership in said sorority.

PAR. 8. By reason of the foregoing acts, exaggerations and misrepresentations, statements, and inducements as herein set forth, members and prospective members of The National Association of Delta Theta Chi have been led into the erroneous and mistaken belief that they are joining a legitimate sorority, a sorority within the general meaning of the term "sorority."

Further, as a result of the aforesaid acts, exaggerations and misrepresentations, statements, and inducements, the respondents have sold and are now selling memberships in The National Association of Delta Theta Chi, and have sold and are now selling the "University Forum" and "Effective Speech" series of books to various members and prospective members of the consuming public in the United States who have a right to and do rely on the acts, statements, representations, and inducements of the respondents, and who, as a result of the acts, statements, representations, and inducements, have joined and are joining the purported sorority and purchase the above referred to series of books.

PAR. 9. As a result of the foregoing false and misleading statements and representations on the part of the respondents, trade has been unfairly diverted from legitimate competitors engaged in the sale of encyclopedias, treatises, home-study, and correspondence school courses. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 10. The aforementioned methods, acts, and practices of the respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Said methods, 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.

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 March 15, 1937, served its complaint in this proceeding upon respondents, University Forum, Inc., a corporation, The National Association of Delta Theta Chi, a corporation, and P. E. Guillot and Helen K. Blackstone, individually and as officers and agents of University Forum, Inc., and The National Association of Delta Theta Chi, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

On July 30, 1937, the Commission served upon respondents, its amended complaint. Thereafter the respondents, University Forum, Inc., and Helen K. Blackstone and P. E. Guillot, filed their answers to the Commission's amended complaint in which answers they admitted all the material allegations of the complaint to be true and stated that they waived hearing on the charges set forth in the said amended complaint and that without further evidence or intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion, and an order to cease and desist from the violations of law charged in the complaint.

Subsequent to the filing of said answers to the amended complaint the Commission, by order granted the motion of respondent, The National Association of Delta Theta Chi, to be allowed to withdraw its answer previously filed and to file in lieu thereof a substitute answer identical to that filed by the other respondents herein, which substitute answer was thereafter filed.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said amended complaint and the answers thereto, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The University Forum, Inc., is an Illinois corporation organized and doing business under the laws of the State of Illinois and having its principal office and place of business at 1811

Prairie Avenue in the city of Chicago, State of Illinois. It has been for more than 2 years last past engaged in the sale and distribution of two sets of books known respectively as "University Forum Series" and "Effective Speech Series."

PAR. 2. The National Association of Delta Theta Chi is a Delaware corporation organized and doing business under the laws of the State of Delaware and having its principal office and place of business at 1811 Prairie Avenue in the city of Chicago, in the State of Illinois. It has been for more than 1 year last past engaged in the business of conducting a so-called sorority and in the purchase for resale to so-called chapters of said organization from University Forum, Inc., a certain series of books designated "University Forum Series" and "Effective Speech Series."

PAR. 3. P. E. Guillot is an individual and owner of the corporate respondents University Forum, Inc., and The National Association of Delta Theta Chi Sorority. He is and has been at all times mentioned herein engaged in the business of selling the "University Forum Series" and "Effective Speech Series" of books and promoting the organization and conducting of respondent, the National Association of Delta Theta Chi at 1811 Prairie Avenue, in the city of Chicago, State of Illinois and Casanova Hotel, 354 O'Farrell Street, in the city of San Francisco, State of California.

Helen K. Blackstone is an individual representing herself as the Grand Secretary of The National Association of Delta Theta Chi and is an agent for P. E. Guillot, University Forum, Inc., and The National Association of Delta Theta Chi. She is now and has been for more than 2 years last past doing business at 1811 Prairie Avenue, in the city of Chicago, State of Illinois, and at the Allerton Hotel in the city of Chicago, State of Illinois, and at 354 O'Farrell Street, in the city of San Francisco, State of California. She has been for more than 2 years last past engaged in the business of selling the "University Forum Series" and "Effective Speech Series" of books and in organizing and conducting the respondent, The National Association of Delta Theta Chi.

PAR. 4. The respondents have been engaged in business as aforesaid and cause the books, "University Forum Series" and "Effective Speech Series" when sold, to be transported from their principal offices and places of business in the States of Illinois and California to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade in said books so sold and distributed by the respondents in commerce between and among

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

PAR. 5. In the course and conduct of their business, respondents are now and have been in substantial competition with other individuals, firms, and corporations likewise engaged in the business of selling and distributing encyclopedias, treatises, home study, and correspondence school courses adapted to and used for self-advancement through adult education in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. Respondents have made representations to their customers and prospective customers in the various States of the United States regarding the products offered for sale by them. These representations made and circulated purport to be descriptive of the commodities offered for sale and sold by respondents. These representations were, and are, made in the following manner:

The respondents and their agents are engaged in the offering for sale and in the sale of "University Forum Series" and "Effective Speech Series" of books. University Forum Series of books is represented to be a 20-volume set of books adapted for the advancement of adult education. The Effective Speech Series of books is a 12-volume set of books represented to be adapted for self-advancement in effective speech-making.

The respondents, directly and through their agents and representatives, establish contact in the city where it is their intention to establish a chapter of The National Association of Delta Theta Chi. The respondents, directly and through their agents or representatives, represent to the prospective members of The National Association of Delta Theta Chi that it is a legitimate professional or business women's sorority; that while the prime purpose of the sorority is social, yet it has certain cultural aspects. The prospective members of the proposed chapter of The National Association of Delta Theta Chi are entertained at a dinner. The respondents pay the expenses of dinner, the prospective members agree to pay a \$45.00 initiation or membership fee, and other annual dues.

In connection with the establishment of a local chapter of The National Association of Delta Theta Chi, prospective members are informed that to further the cultural aspects of the sorority, the local chapter will be given two sets of the University Forum Series and two sets of the Effective Speech Series of books. One set each are to remain at the local chapter rooms or headquarters for the use of the members of the sorority, while the other or second set are to be placed in the possession of the educational director of the local chapter.

The respondents, directly and through their agents, represent to prospective members of The National Association of Delta Theta Chi that they will be given instructions under the supervision of a college or university professor.

All of the above set out representations by respondents to the effect that The National Association of Delta Theta Chi is a legitimate professional or business women's sorority are not true. The National Association of Delta Theta Chi is only an outlet for the publications described as University Forum Series and Effective Speech Series of books. The National Association of Delta Theta Chi is not a sorority in any sense of the word whatsoever or within the meaning of the term "sorority" as it is generally understood.

The representations made by respondents that members of The National Association of Delta Theta Chi will receive supervised instruction under a college or university professor are not true. No member of The National Association of Delta Theta Chi has ever received from a college or university professor any form of instruction whatsoever, as a result of their membership in the so-called sorority.

PAR. 7. By the use of the foregoing misrepresentations, statements and inducements as set forth herein, members and prospective members of The National Association of Delta Theta Chi have been led into the erroneous and mistaken beliefs that they are joining a legitimate sorority, within the general meaning of the term "sorority," and will secure the other benefits represented.

The respondents have sold, and are now selling, memberships in The National Association of Delta Theta Chi, and have sold and are now selling the University Forum Series and the Effective Speech Series of books to various members of the consuming public in the United States, who, as a result of the statements, misrepresentations, and inducements aforesaid, made by respondents, have joined and are joining the purported sorority and are purchasing the books herein described.

PAR. 8. As a result of the false and misleading statements and representations herein set out on the part of the respondents, trade has been unfairly diverted to respondents from legitimate competitors engaged in the sale of encyclopedias, treatises, home study, and correspondence school courses who do not misrepresent their product or business status. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

Order

26 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondents, University Forum, Inc., a corporation, The National Association of Delta Theta Chi, a corporation, and P. E. Guillot and Helen K. Blackstone, individually and as officers and agents of University Forum, Inc., and The National Association of Delta Theta Chi, are to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress 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 and the answers thereto, in which answers respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the amended complaint, and the Commission having made its findings as to the facts and 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, University Forum, Inc., a corporation, and The National Association of Delta Theta Chi, a corporation, their respective officers, representatives, agents, and employees, and P. E. Guillot, and Helen K. Blackstone, individually, and as officers and agents of University Forum, Inc., and The National Association of Delta Theta Chi, in connection with the offering for sale and distribution of books in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or in any other manner:

1. Representing that The National Association of Delta Theta Chi is a business woman's sorority or is a sorority within the generally understood meaning of the term "sorority."

2. Representing that the books sold and distributed by University Forum, Inc., are essential and necessary for the conduct of the said so-called sorority.

635

Order

3. Representing that members of The National Association of Delta Theta Chi will receive instruction under the direction of a university or college professor.

4. Representing that The National Association of Delta Theta Chi and University Forum, Inc., are other than book selling and distributing organizations.

5. Representing that any number of sets of the books sold by University Forum, Inc., will be given free or without additional cost to each chapter of The National Association of Delta Theta Chi.

6. Representing that the "University Forum" and "Effective Speech" series of books are adapted to self help adult education.

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

IN THE MATTER OF
ROYAL LOTUS CORPORATION

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

Docket 3254. Complaint, Oct. 25, 1937—Decision, Feb. 5, 1938

Where a corporation engaged in manufacture, sale, and distribution of its "Royal Lotus" hair preparation, and of its "Creme Royale" and "Creme Helies" line of cosmetics to purchasers at various points in other States and in the District of Columbia, in substantial competition with those likewise engaged in distribution and sale of similar preparations for treatment of the hair and skin, in commerce among the various States and in said District; in advertising its said products in newspapers of general circulation throughout the United States, and through advertising folders and literature similarly circulated to customers and prospective customers—

(a) Represented that said "Royal Lotus" preparation was "in no sense a hair dye" and restored "true, natural color" and was "absolutely harmless," and prevented hair diseases and stopped and overcame falling hair, and was a corrective or cure for dandruff, itching scalp, dry hair, and alopecia, and preserved and grew hair, facts being it was a dye, imparted artificial color to hair, would not restore faded, streaked, or gray hair to its natural color or bring back natural color of hair of whatever type, shade, or color, and it did not stop or overcome falling hair, was not positive corrective for dandruff and itching scalp, or absolutely harmless, and did not accomplish other results as above claimed or correct "dry hair"; and

(b) Represented, as aforesaid, that its said "Creme Royale" and "Creme Helies" preparations would penetrate the outer epidermis of the skin so as to reach and benefit the lower fleshy layers thereof and have beneficial effect in renovating the skin, counteracting and overcoming blemishes, lines, wrinkles, blackheads, sunburn, enlarged pores, and impurities, through such statements as "* * * because of its very nature * * * penetrates the outer layers of the skin and reaches within," and "* * * it is behind the skin that Creme Royale does its best work," and "* * * aids the growing tissues and encourages the living cells," and "* * * clears and rejuvenates the skin. Removes wrinkles, transforms the complexion. Keeps skin fresh, soft, and velvety," etc., facts being said preparations did not renovate skin nor penetrate to lower fleshy layers thereof or benefit skin and assist nature counteract causes of blemished skin, did not prevent lines and wrinkles, etc., as above claimed and indicated, and representations made with respect to beneficial value of its aforesaid preparations were misleading;

With tendency and capacity to mislead a substantial portion of purchasing public into erroneous belief that all such representations were true, and with result that a number of the consuming public, as direct consequence of mistaken and erroneous beliefs induced by its advertisements and misrepresentations, purchased substantial volume of its said products, and trade was unfairly diverted to it from those likewise engaged in preparation and sale of hair preparations and cosmetics and who truthfully advertise the same; to the substantial injury of competition in commerce:

Complaint

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

Mr. George Foulkes for the Commission.

Amend & Amend, 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 Royal Lotus 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, Royal Lotus Corporation, is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 13 Ackerman Avenue, Ramsey, N. J. Respondent is now, and has been for some time, engaged in the business of manufacturing and distributing in commerce, as herein set out, a hair preparation designated "Royal Lotus," and a line of cosmetics designated "Creme Royale" and "Creme Helies."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from its office and place of business in the State of New Jersey to purchasers thereof located at various points in States of the United States other than the State from which such shipments are made. Respondent now maintains a constant current of trade in commerce in said products 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 corporations and with individuals and firms likewise engaged in the business of distributing and selling hair preparations and cosmetics and kindred preparations for treatment of the hair and skin in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of its business and for the purpose of inducing individuals to purchase the preparation "Royal Lotus," respondent has caused advertisements to be inserted in newspapers 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. Certain advertising matter used by the respondent in representing the efficacy of Royal Lotus is herein set out, as illustrative of respondent's representations, but is not all-inclusive. Such advertisements are as follows:

GROW HEALTHY, LUXURIANT, BEWITCHING HAIR

Father Lepetitjean's marvelous French discoveries now yours.

This astonishing Regenerateur restores true, natural color, beautifies, preserves and grows hair—prevents all hair diseases—overcomes falling hair, dandruff, itching scalp—remedies and prevents brittleness of permanents without affecting wave. Royal Lotus is absolutely harmless—truly a miracle of rare herbs. Not a dye.

Royal Lotus is in no sense a hair dye and leaves no stains on scalp or linen.

It is an unadulterated, pure hygienic product—a positive corrective for dandruff, scurf and itching, and an unfailing restorative of the natural color to the hair. It also strengthens the scalp and stops falling hair, and generally cures alopecia (baldness).

Not only rejuvenates the color of the hair, but also has an added and almost miraculous bonus—it protects and helps to grow hair.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that its product designated "Royal Lotus": (1) Will restore faded, streaked, or gray hair to its natural color or will reproduce or bring back the natural color of such hair of whatever type, shade or color; (2) is not a dye and does not impart an artificial color to the hair; (3) stops or overcomes falling hair and is a positive corrective for dandruff and itching scalp, and generally cures alopecia; (4) is absolutely harmless; and (5) preserves and grows hair and prevents all hair diseases, and corrects "Dry Hair."

PAR. 5. The representations made by respondent with respect to the efficacy of its product designated "Royal Lotus" are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said "Royal Lotus" will not restore faded, streaked, or gray hair to its natural color, and will not reproduce or bring back the natural color of hair of whatever type, shade, or color. Said preparation is a dye and imparts an artificial color to the hair. Royal Lotus does not stop or overcome falling hair and is not a positive corrective for dandruff and itching scalp and does not cure alopecia. Said preparation is not absolutely harmless and does not preserve and grow hair and prevent all hair diseases. Royal Lotus does not correct "Dry Hair."

PAR. 6. Further in the course and operation of its business, respondent manufactures and sells a line of cosmetics designated

Complaint

"Creme Royale" and "Creme Helies," and in order to induce individuals to purchase said cosmetics, respondent has caused advertisements to be inserted in newspapers 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. Certain advertising matter used by respondent in representing the beneficial value of "Creme Royale" and "Creme Helies" is herein set out as illustrative of respondent's representations, but is not all-inclusive. Said advertisements are as follows:

CREME HELIES clears and rejuvenates the skin. Removes wrinkles, transforms the complexion. Keeps skin fresh, soft and velvety.

Creme Helies * * * keeps the skin free from those impurities which, after all, usually cause poor complexions.

Fine lines, wrinkles, sunburn, enlarged pores, tender, irritated skin can all be guarded against by the use of Creme Helies.

Creme Royale * * * because of its very nature * * * penetrates the outer layers of the skin and reaches within.

* * * it is behind the skin that Creme Royale does its best work.

Fine lines, wrinkles, sunburn, the harmful effects of wind and sun, dust, and chemicals in the air, enlarged pores, blackheads, tender, irritated skin—all these can be largely negated by the protective qualities of Creme Royale.

Creme Royale * * * penetrates the outer portions, soothing and softening them and * * * aids the growing tissues and encourages the living cells.

In all of its advertising literature, respondent represents through statements and representations herein set out and through statements of similar import and effect that its cosmetics designated "Creme Royale" and "Creme Helies": (1) Renovate and tone the skin; (2) penetrate to the lower fleshy layers of the skin; (3) benefit the skin tremendously and assist nature to counteract the causes of blemished skin; (4) prevent lines and wrinkles; (5) keep the skin free from impurities; and (6) protect the skin against enlarged pores, blackheads, and sunburn.

PAR. 7. The aforesaid representations made by respondent with respect to the beneficial value of its cosmetics are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, said cosmetics do not renovate and tone the skin, nor do they penetrate to the lower fleshy layers of the skin. Creme Royale and Creme Helies do not benefit the skin and assist nature to counteract the causes of blemished skin. Said cosmetics do not prevent lines and wrinkles and do not keep the skin free from impurities. They do not protect the skin against enlarged pores, blackheads, and sunburn.

PAR. 8. Each and all of the false and misleading statements and misrepresentations made by respondent, as hereinabove set forth, in its advertising in newspapers, pamphlets, and other advertising literature, in offering for sale and selling its products, 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 enumerated, a number of the consuming public purchase a substantial volume of respondent's products. As a result, trade has been unfairly diverted to respondent from corporations, firms, and partnerships likewise engaged in the preparation and selling of hair preparations and cosmetics, who truthfully advertise their products. As a consequence thereof, substantial injury has been done 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. 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, and are unfair methods of competition in interstate 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 October 25, 1937, issued and, on October 26, 1937, served its complaint in this proceeding upon respondent, Royal Lotus Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 24, 1938, the respondent filed a substitute answer, in which answer it admitted all the material allegations of the complaint to be true, and stated that it waived hearing on the charges set forth in the complaint and that, without further evidence or intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion, and an order to cease and desist from the violations of law charged 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 now fully

advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Royal Lotus Corporation, is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 13 Ackerman Avenue, Ramsey, N. J. Respondent is now, and has been for some time, engaged in the business of manufacturing, selling, and distributing a hair preparation designated "Royal Lotus," and a line of cosmetics designated "Creme Royale" and "Creme Helies."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from its place of business in the State of New Jersey to purchasers thereof located at various points in States of the United States other than the State of New Jersey, and in the District of Columbia. Respondent now maintains a constant current of trade in commerce in said products 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 corporations and with individuals and firms likewise engaged in the business of distributing and selling hair preparations and cosmetics and kindred preparations for treatment of the hair and skin in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of its business and for the purpose of inducing individuals to purchase the preparation "Royal Lotus," respondent has caused advertisements to be inserted in newspapers 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. Among others of similar import, the following statements are made in said advertisements concerning the efficacy of the preparation "Royal Lotus," in treating the hair and scalp:

GROW HEALTHY, LUXURIANT, BEWITCHING HAIR

Father Lepetitjean's marvelous French discoveries now yours.

This astonishing Regenerateur restores true, natural color, beautifies, preserves and grows hair—prevents hair diseases—overcomes falling hair, dandruff, itching scalp—remedies and prevents brittleness of permanents without affecting wave. Royal Lotus is absolutely harmless—truly a miracle of rare herbs. Not a dye.

Royal Lotus is in no sense a hair dye and leaves no stains on scalp or linen.

It is an unadulterated, pure hygienic product—a positive corrective for dandruff, scurf and itching, and an unfailing restorative of the natural color to the hair. It also strengthens the scalp and stops falling hair, and generally cures alopecia (baldness).

Not only rejuvenates the color of the hair, but also has an added and almost miraculous bonus—it protects and helps to grow hair.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that its product designated “Royal Lotus”: (1) Will restore faded, streaked, or gray hair to its natural color or will reproduce or bring back the natural color of such hair of whatever type, shade or color; (2) is not a dye and does not impart an artificial color to the hair; (3) stops or overcomes falling hair and is a positive corrective for dandruff and itching scalp, and generally cures alopecia; (4) is absolutely harmless; and (5) preserves and grows hair and prevents all hair diseases, and corrects “dry hair.”

PAR. 5. The representations made by respondent with respect to the efficacy of its product designated “Royal Lotus” are misleading. In truth and in fact, said “Royal Lotus” will not restore faded, streaked, or gray hair to its natural color, and will not reproduce or bring back the natural color of hair of whatever type, shade, or color. Said preparation is a dye and imparts an artificial color to the hair. Royal Lotus does not stop or overcome falling hair and is not a positive corrective for dandruff and itching scalp and does not cure alopecia. Said preparation is not absolutely harmless and does not preserve and grow hair and prevent all hair diseases. Royal Lotus does not correct “dry hair.”

PAR. 6. Respondent manufactures and sells a line of cosmetics designated “Creme Royale” and “Creme Helies,” and in order to induce individuals to purchase said cosmetics, respondent has caused advertisements to be inserted in newspapers 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. Among others of similar import, the following statements are made in said advertisements concerning the benefits to be obtained from using said preparations “Creme Royale” and “Creme Helies”:

CREME HELIES clears and rejuvenates the skin. Removes wrinkles, transforms the complexion. Keeps skin fresh, soft and velvety.

Creme Helies * * * keeps the skin free from those impurities which, after all, usually cause poor complexions.

Fine lines, wrinkles, sunburn, enlarged pores, tender, irritated skin can all be guarded against by the use of Creme Helies.

Creme Royale * * * because of its very nature * * * penetrates the outer layers of the skin and reaches within.

* * * it is behind the skin that Creme Royale does its best work.

Fine lines, wrinkles, sunburn, the harmful effects of wind and sun, dust and chemicals in the air, enlarged pores, blackheads, tender, irritated skin—all of these can be largely negated by the protective qualities of Creme Royale.

Creme Royale * * * penetrates the outer portions, soothing and softening them and * * * aids the growing tissues and encourages the living cells.

In all of its advertising literature, respondent represents through statements and representations herein set out and through statements of similar import and effect that its cosmetics designated "Creme Royale" and "Creme Helies": (1) Renovate and tone the skin; (2) penetrate to the lower fleshy layers of the skin; (3) benefit the skin tremendously and assist nature to counteract the causes of blemished skin; (4) prevent lines and wrinkles; (5) keep the skin free from impurities; and (6) protect the skin against enlarged pores, blackheads and sunburn.

PAR. 7. The representations made by respondent with respect to the beneficial value of its preparations "Creme Royale" and "Creme Helies," are misleading.

In truth and in fact, said preparations do not renovate the skin, nor do they penetrate to the lower fleshy layers of the skin. Creme Royale and Creme Helies do not benefit the skin and assist nature to counteract the causes of blemished skin. Said cosmetics do not prevent lines and wrinkles and do not keep the skin free from impurities. They do not protect the skin against enlarged pores, blackheads, and sunburn.

PAR. 8. The acts and practices of the respondent as hereinabove set forth, in using said false representations in its advertising in newspapers, pamphlets, and other advertising literature, in offering for sale and selling its products, as above set forth, had, and now have, the tendency and capacity to mislead 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 enumerated, a number of the consuming public purchase a substantial volume of respondent's products. As a result, trade has been unfairly diverted to respondent from corporations, firms, and partnerships likewise engaged in the preparation and selling of hair preparations and cosmetics, who truthfully advertise their products. As a consequence thereof, substantial injury has been done 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 aforesaid acts and practices of the respondent, Royal Lotus Corporation, 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer filed herein on January 24, 1938, by respondent admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, Royal Lotus Corporation, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cosmetic and toilet preparations now designated as "Royal Lotus," "Creme Royale," and "Creme Helies," or any other products of substantially the same ingredients sold under those names, or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That the preparation now designated as "Royal Lotus" (a) is not a dye and does not impart an artificial color to the hair, and that it will restore, reproduce, or bring back the natural color of hair of any type, shade, or color which has become faded, streaked, or gray; (b) is harmless and prevents all hair diseases, stops or overcomes falling hair, and is a corrective or cure for dandruff, itching scalp, "dry hair," and alopecia, and preserves and grows hair.

2. That the preparations now designated as "Creme Royale" or "Creme Helies" will penetrate the outer epidermis of the skin so as to reach and benefit the lower fleshy layers of the skin, or so as to have any beneficial value in renovating the skin, counteracting, or over-

646

Order

coming blemishes, lines, wrinkles, blackheads, sunburn, enlarged pores, and impurities;
and from making any other representations of similar tenor or import.

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

MAX SCHREIBER, PHILIP W. SIMONS, AND WILLIAM
KLOMPUS, INDIVIDUALLY, AND TRADING AS DE LUXE
MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2294. Complaint, Feb. 7, 1935—Decision, Feb. 9, 1938*

Where three partners engaged in sale and distribution of radio receiving sets and other articles of merchandise to purchasers in practically all the States and in the District of Columbia, in soliciting sale thereof—

Furnished and sent, in response to its advertisements for agents and representatives in periodicals of general circulation, sample pull cards, order blanks, descriptive literature, and advertisements depicting merchandise thus being offered, and circulars describing their said plan of selling such merchandise and of allotting same as prizes to operators of such cards, under plan by which chance purchaser paid for chance varying amount, or nothing, dependent upon number disclosed under various tabs of aforesaid cards, and received radio, or nothing, dependent upon success or failure in selecting feminine name corresponding to that concealed under card's seal depicting such instrument, and thereby placed in the hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of their products, with knowledge and intent that said cards had been, were, and would be used in sale and distribution of their said merchandise to public by lot or chance, contrary to public policy, and in competition with many who were opposed to use of such cards in sale and distribution of their products and refrained from furnishing same;

With result that sale of similar and like merchandise by such competitors was thereby injuriously affected, and trade was diverted from them to said partners by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition, and with tendency and capacity unfairly to divert such trade, as aforesaid; to the prejudice and injury of the public and competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Nash & Donnelly, of Chicago, Ill., 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 Max Schreiber, Philip W. Simons, and William Klompus, individually and as copart-

ners trading under the name and style of DeLuxe Manufacturing Company, hereinafter referred to as respondents, have been and are 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. Respondents are individuals doing business as a co-partnership under the name and style of DeLuxe Manufacturing Company, with their principal office and place of business in the city of Chicago, State of Illinois. Respondents are now and for more than 1 year last past have been engaged in selling radio-receiving instruments to wholesale and retail dealers located in various States of the United States. They cause said merchandise, when sold, to be transported from their principal place of business in the State of Illinois 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 1 year a course of trade and commerce by said respondents in such merchandise between and among different States of the United States and the District of Columbia. In the course and conduct of said business respondents are in competition with other partnerships, individuals, and corporations engaged in the sale and distribution of radio receiving instruments in commerce between and among various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof the respondents have been and are now soliciting the sale of and selling said radio receiving instruments by means of advertisements inserted in periodical publications having an interstate circulation. These advertisements solicit salesmen for the sale of said radio receiving instruments. Among such advertisements is one inserted in the Specialty Salesman Magazine for the month of January 1935, reading in part as follows:

Make up to \$150 weekly giving away free automobile radios and home sets. * * * With our new unique "punch sales card plan," the only one of its kind in the country, you actually give away free fine automobile radios and beautiful ultra-modern home sets.

In another advertisement inserted in the same magazine in the June 1934, issue appears, among others, the following representation:

Who else wants up to \$150 weekly giving away free radios? Automobile and home set radios actually given away absolutely free with a most sensational unique punch sales card plan.

Complaint

26 F. T. C.

Said advertisements are false, misleading, and deceptive and have the capacity and tendency to mislead and deceive prospective salesmen. In truth and in fact the respondents do not give away radio-receiving instruments free but receive the full wholesale value thereof for all instruments distributed by them, and their agents do not regularly make \$150 weekly. Such earnings are the exception and are unusual and are not the usual result to be expected in distributing the respondents' merchandise. The said plan and method of sale is not sensational nor unique and is not new.

PAR. 3. The use by respondents of the above-quoted advertisements and advertisements of like nature and to the same effect are unfair to manufacturers and distributors manufacturing and distributing radio-receiving instruments who do not use the same or similar false and misleading representations in soliciting representatives to sell their product.

By reason of the said false and misleading advertisements, agents are thus induced and persuaded into representing the respondents and in soliciting the sale of and selling respondents' products, all to the injury of the public and respondents' competitors.

PAR. 4. In the course and conduct of their business as described in paragraph 1 hereof the respondents have been and are now soliciting the sale of and selling and transporting in commerce to retail dealers in various States of the United States radio-receiving instruments and in the sale and distribution of said radio-receiving instruments respondents have furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and said radio-receiving instruments are distributed to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards, the use of which by retail dealers in connection with the sale and delivery to the purchasing public of respondents' said radio-receiving instruments and the method or plan suggested by respondents was and is substantially as follows:

The said push cards consist of a booklet containing 110 girls' names and concealed under each name is a number; also, under a master seal there is a name corresponding to one of the 110 names. Prospective purchasers select one of the names and remove the same, disclosing the number thereunder. Numbers from 1 to 35 pay in cents the amount of such number. Persons selecting numbers over 35 pay 35 cents for the privilege of selecting one of the names. The push card bears a legend informing the prospective purchaser that the

656

Complaint

persons selecting a few of the numbers will receive the same free. For illustration:

TEN FREE NUMBERS. NUMBERS 2—3—
4—5—6—7—8—9—10—11
ARE FREE

When all the names have been purchased the master seal is removed and the person selecting the name corresponding to the name under the master seal receives a radio-receiving instrument without further charge and the salesman, agent, representative, or retail dealer soliciting purchasers of chances as above described also receives a radio-receiving instrument without further charge or additional services. The numbers under the names are concealed from the prospective purchasers and they do not know how much they will have to pay for the privilege of selecting one of the names, or whether the same will be obtained free of charge, until the selection has been made and the name removed. Also, the name under the master seal is concealed from the prospective purchasers until all the names have been selected, and the customers or purchasers do not know what they will receive for their money, if anything, until after the master seal has been removed. Those customers selecting names which do not correspond to the name under the master seal receive nothing but the privilege of making a selection for the money which they pay.

The purchasing public are thus induced and persuaded into purchasing pushes from said card in the hope that they may select the prize-winning name and thus obtain the radio-receiving instrument free of charge or for a sum of money not in excess of 35 cents. Radio-receiving instruments are thus distributed to the purchasing public wholly by lot or chance.

The respondents occasionally sell and distribute other articles of merchandise by the method above described but the sale and distribution of radio-receiving instruments constitute the major portion of their business.

PAR. 5. The aforesaid agents, representatives, salesmen, and retail dealers of the respondents expose said radio-receiving instruments in connection with the aforesaid push cards and sell pushes to the purchasing public in accordance with the aforesaid plan whereby the said radio-receiving instruments are distributed to the purchasers of pushes from the said cards wholly by lot or chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the distribution of its radio-receiving instruments, in accordance with the sales plan hereinabove set forth, as a means

of inducing the consuming public to purchase pushes from said cards in an effort to procure respondents' radio-receiving instruments in preference to purchasing the same from respondents' competitors.

PAR. 6. The sale and distribution of radio-receiving instruments to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure such articles of merchandise in the manner alleged. Such game of chance and the sale of such chance to procure such articles of merchandise 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.

By reason of said facts, many persons, firms, and corporations who sell and distribute such merchandise in competition with the respondents as above alleged are unwilling to furnish push cards or to offer for sale or sell their merchandise in connection with such lotteries or gaming devices, and such competitors refrain therefrom.

PAR. 7. Many dealers in and ultimate consumers of such merchandise are attracted by respondents' said methods and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase such merchandise in preference to merchandise offered for sale by competitors of respondents who do not use the same or equivalent methods. Many dealers in such merchandise are induced to purchase the same so offered for sale and sold by respondent in preference to all other similar merchandise because said ultimate consumers thereof give preference to respondents' merchandise on account of the game of chance so involved in the sale thereof.

Respondents' sales plan as mentioned above tends to and does induce many of the consuming public to purchase respondents' merchandise in preference to the merchandise of respondents' competitors because of the chance of obtaining one of said radio-receiving instruments free of charge or at a price not exceeding 35 cents rather than at the nominal retail price of the same, which is many times greater than 35 cents.

PAR. 8. The use of said method by respondents has a tendency and capacity unfairly and because of said game of chance alone to divert to respondents trade and custom from their competitors who do not use the same or equivalent methods; to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said trade and to tend to create a monopoly of said trade in respondents and such other distributors as use the same or equivalent methods and to deprive the

purchasing public of the benefit of free competition in said trade. The use of said method by respondents has the tendency and capacity unfairly to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt or use said method or equivalent methods that are contrary to public policy and to criminal statutes as above alleged. Many of said competitors of respondents are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win a radio-receiving instrument by chance, because such methods are 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 methods are detrimental to the merchandising business or are detrimental to public morals and to the morals of the purchasers of said merchandise or because of any or all of such reasons.

PAR. 9. The aforesaid methods, acts, and practices of the respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Said methods, 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.

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, 1935, issued and served its complaint in this proceeding upon the respondents, Max Schreiber, Philip W. Simons, and William Klompus, individually and as copartners, trading under the name and style of De Luxe Manufacturing 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by John A. Nash, attorney for the respondents, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the

Findings

26 F. T. C.

Commission, having duly considered the matter and now 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, Max Schreiber, Philip W. Simons, and William Klompus, are individuals, and at the time of the issuance of said complaint and for some time subsequent thereto were copartners, doing business under the firm name and style of De Luxe Manufacturing Company, with their principal office and place of business located at 173 West Madison Street in the city of Chicago, State of Illinois. At the time of the taking of testimony in this matter, April 27, 1937, the partnership was composed of Max Schreiber, and William Klompus, the said respondent Philip W. Simons having withdrawn from said partnership approximately 2 months prior to said hearing. The respondents Max Schreiber and William Klompus are now, and all of the said respondents for some time last past have been, engaged in the sale and distribution of radio receiving sets and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. They cause, or have caused, such merchandise, when sold, to be shipped or transported from their principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in practically all of the other States of the United States, as well as in the District of Columbia, at their respective points of location. There is now a course of trade in commerce by said respondents Max Schreiber and William Klompus, and has been for some time past a course of trade in commerce by all of said respondents in such merchandise between and among the various States of the United States and in the District of Columbia. In so carrying on said business, respondents are, or have been, engaged in active competition with other partnerships and with individuals and corporations engaged in the manufacture of similar or like articles of merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 above, respondents in soliciting the sale of and selling their merchandise have adopted and pursued, and still continue, the following methods and practices:

Respondents have caused to be inserted in magazines and periodicals having a general circulation throughout the United States various advertisements soliciting agents, representatives, or salesmen for their

merchandise, and upon receipt of inquiries from members of the public or prospective agents, representatives, or salesmen, send to such persons sample pull cards, order blanks, descriptive literature, and advertisements containing illustrations of the merchandise which they are offering for sale, and circulars explaining respondents' plan of selling such merchandise and of allotting it as premiums or prizes to the operators of said pull cards.

All of the pull cards used by respondents involve, or have involved, the same principle or sales plan or method but vary to some extent in detail. One of the said pullcards bears 110 feminine names with ruled columns for writing in the name of the customer opposite the feminine name selected. Said pull card has 110 small partially separated tabs on each of which is printed one of the feminine names heretofore referred to. Concealed under each tab is a number which is disclosed when the tab is pulled or separated from the card. At the top of said pull card there is a partially perforated seal, concealed under which is one of the feminine names heretofore referred to. The numbers concealed under each of the tabs cannot be ascertained until a pull or selection has been made, and the name concealed under the seal cannot be ascertained until the seal has been removed. The pull card bears printed legends or instructions as follows:

PERSON SELECTING NAME UNDER SEAL RECEIVES A RADIO

(Picture of radio) Do not remove seal until all donations are made.

10 FREE NUMBERS

NUMBERS 2-3-4-5-6-7-8-9-10-11 ARE FREE

Numbers 1 to 35 Pay What you Draw

Numbers Over 35 Pay Only 35¢

NO HIGHER

DIRECTIONS

This catalogue consists of 110 girls' names. The amount of each sale ranges from 1¢ to 35¢. No higher. No sale over 35¢.

There are 10 FREE numbers. Persons selecting numbers 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 pay NOTHING. As each person selects a name the amount to be paid appears on the inside of each slip; for instance: If No. 1 is selected the amount required to pay is 1¢, if No. 26 is selected the amount is 26¢.

Those selecting numbers over 35 pay only 35¢.

Each payment entitles the payee to a free drawing on the radio illustrated in this catalogue when the seal is opened.

Do not remove seal until all money has been collected.

Sales of radio-receiving sets by means of said pull cards are made in accordance with the above described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The fact as to whether a customer

pays a sum of money from 1 cent to 35 cents for a radio-receiving set or receives the same free of charge, and the fact as to whether a customer receives nothing for the amount paid, is thus determined wholly by lot or chance.

As stated above, the other pull cards which respondents furnish are identical in principle but vary in detail. The members of the public to whom respondents furnish their pull cards use the same in the manner suggested by respondents, thereby distributing respondents' merchandise to others by lot or chance. The sale and distribution of respondents' merchandise through the use of or by means of said pull cards constitutes the operation of lotteries, games of chance, or gift enterprises, and the respondents in furnishing said pull cards put in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the distribution of their merchandise.

PAR. 3. The respondents, in furnishing said pull cards, have knowledge that the same are, have been and will be, used in distributing their merchandise, and furnish said pull cards so that their merchandise may be sold or distributed to the public by lot or chance.

PAR. 4. There are in the United States many manufacturers and distributors selling and distributing similar or like merchandise to that distributed by the respondents, who do not furnish pull cards similar to those furnished by respondents, and who do not furnish any device by which their merchandise can be distributed to the public by lot or chance. There are also many competitors of respondents who are opposed to the use of pull cards in the sale and distribution of their merchandise, and such competitors refrain from furnishing such devices. The sale of merchandise by means of said pull cards injuriously affects the sale of similar or like merchandise by such competitors who do not use similar devices in connection with the sale of their merchandise, and trade is diverted to respondents from their said competitors by reason of the furnishing of said pull cards or like devices. The use of such methods by the respondents in the sale and distribution of their merchandise is prejudicial and injurious to the public and to respondents' competitors, and has resulted in the diversion of trade to respondents from their said competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 5. The acts and practices of the respondents, as above set out, have the tendency and capacity unfairly to divert trade in said commerce to the respondents from their competitors, to the injury of such competitors, and to the injury of the public. The sale and distribution in interstate commerce of merchandise by lotteries, games of chance, or gift enterprises as herein described by lot or chance is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress 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, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by Henry C. Lank, counsel for the Commission, and by John A. Nash, counsel for the respondents, and the Commission having made its findings as to the facts and 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, Max Schreiber, Philip W. Simons, and William Klompus, individually and as copartners trading as De Luxe Manufacturing Company, their agents, representatives, and employees, in connection with the offering for sale, sale and distribution of radio receiving sets and other merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling, supplying to, or placing in the hands of others pull cards or other lottery or chance devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping, or transporting to members of the public pull cards or other lottery or chance devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof;

3. Selling or otherwise disposing of merchandise by the use of pull cards or other lottery or chance devices, or in any manner selling or otherwise disposing of such merchandise free of charge or at varying prices depending upon lot or chance.

It is further ordered, That the respondents shall, within 30 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 forth.

IN THE MATTER OF
H. C. BRILL COMPANY, INC.

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

Docket 3299. Complaint, Jan. 15, 1938—Decision, Feb. 10, 1938

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (a)—CUMULATIVE QUANTITY DISCOUNTS—WHERE IRRELATED SIZE OF INDIVIDUAL SHIPMENTS, ORDERS, ETC.

Savings in the cost of serving different customers, aside from differences in methods of sale and delivery, result from the differences in the size of the individual order placed by such customers, irrespective of the aggregate purchases for a given period of time, and a distinction in price between shipping cartons or shelf packages and broken packages is readily understood, and a difference in price based upon the size of individual purchases and shipments is likewise appreciated, large orders ordinarily being obtained, assembled, priced, packed, billed, and delivered at a lower cost per dollar of sales than small orders. Under discount plan, however, based on aggregate volume purchases for given period, it may cost seller more per dollar of sales to serve customer who places large number of small orders, sufficient in aggregate to earn discounts, than customer who places few large orders, total of which is not sufficient to obtain discount, since, while purchasers of large annual amount sometimes buy in larger individual shipments than do buyers whose purchases do not amount to as large a sum, large buyers also place numerous small orders, average size of which is frequently less than that of orders placed by buyers whose aggregate annual purchases are less in volume. There is no certainty and scarcely any probability that the business of the buyer who purchases from \$5,000 to \$10,000 in the aggregate of merchandise within a year will cost the seller more or less in proportion to quantity than the one who purchases more than \$30,000 or less than \$35,000, and cumulative discount is sound only where savings have been achieved by the seller with respect to individual sales made to a particular buyer over a period of time, not reflected in price at which buyer purchased and reserved for purpose of refunding at end of such period.

DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (a)—COMPETITIVE EFFECT—SMALL DIFFERENTIALS—WHERE RELATIVE IMPORTANCE PRODUCT, NOT GREAT.

While price differential of 2¼ percent on single product such as ice cream powder, is not sufficient to give chain store organization of national scope any appreciable competitive advantage in all of its business, such organization does receive definite advantage in sale of that particular commodity, and such competitive advantage becomes greater when such company is permitted to obtain such differential from considerable number of sellers; such sum, i. e., 2¼ percent, in case of Nation-wide and of many food chains represent-

ing difference between profit and loss, and such differentials, even though individually of relatively little importance, in the aggregate giving buyer, whether retail or wholesale, decided competitive advantage, and tending inevitably toward centralization of retail or wholesale trade, by tending to eliminate smaller buyer and building up larger one at former's expense, through securing of lowest price by largest.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (a)—LARGE CUSTOMER DIFFERENTIALS AND SELLER INTEREST AS NOT ALONE CONTROLLING.

While it may be to seller's interest to favor large customers, often doing a Nation-wide business, seller cannot regard his interest exclusively, but must subordinate same to requirement that his prices do not reflect unlawful discrimination.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (a)—CUMULATIVE QUANTITY DISCOUNTS—WHERE DIFFERENTIALS UNRELATED INDIVIDUAL ORDER SIZE AND SHIPMENTS OR DELIVERY OR OTHER COSTS.

Where a corporation engaged in manufacture of preparation for making home-made ice cream, and in sale and distribution thereof (1) to and through Nation-wide and two other retail grocery chains competitively engaged in commerce in resale and distribution of its said preparation, and in dealing with whom it followed practice of treating various warehouses of each as individual customers and soliciting, independently, sales thereof, and shipping merchandise involved to, and billing, such individual warehouses, and (2) to and through wholesalers, and chains, other than aforesaid, under practice pursuant to which, without other exception, it sold all on basis of trade discounts, f. o. b. destination, specified minimum shipping quantities of 10 percent less 1 percent cash, for its liquid product, and 20 percent, less 1 percent cash, for its powder—

Entered into contracts with said three chains providing, in view of "purchases in large quantity, present and prospective," for 12-month period therein named, for cumulative quantity discounts of 1 percent on purchases aggregating therein from \$5,000 to \$10,000, 2 percent on those from 10 to 15, 3 percent on those ranging from 15 to 20, and similar increase for similar additional step, with 5 percent on purchases aggregating over \$30,000 during contract year, and, pursuant to provisions of said contract, or method and amount claimed and insisted on thereunder, paid Nation-wide chain rebates exceeding \$400 and amounting to 3 percent on contract periods aggregate excess purchases of chain's various warehouses, no one of which alone bought sufficient quantity to earn discount in any amount under contract agreement, and to second chain on similar excess aggregate of purchases of such separate warehouse units, no single one of which bought in sufficient quantity to earn rebate, as aforesaid, \$3.53 or 1 percent on such excess aggregate, and to third, for aggregate purchases under contract discount minimum of various warehouses thereof, nothing;

With result that first referred-to chain received definite advantage in sale of particular commodity, and such discrimination tended toward centralization of retail or wholesale trade through giving largest retailer or wholesaler lowest price, and thus tending to build up large, at expense of small, buyer, and latter's elimination:

Complaint

26 F. T. C.

Held, That such contract did not result in economy in selling, credit, ordering, shipping, advertising, or other elements that can be considered as producing a differential in cost, and so-called discount granted aforesaid Nation-wide chain cannot be justified on basis of savings in distribution costs, and so-called discounts paid as aforesaid constituted discriminations in price in violation of provisions of Section 2 (a) of an Act of Congress approved October 15, 1914, as amended.

Mr. A. W. DeBirny for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the H. C. Brill Company, Inc., hereinafter called respondent, since June 19, 1936, has been and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Public, No. 212, the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (Public, No. 692, the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of New Jersey and has its principal office and place of business at 101-111 New Jersey Railroad Avenue in the city of Newark, N. J.

PAR. 2. For many years prior hereto and since June 19, 1936, respondent has been and is now engaged in the business of manufacturing, selling, and distributing certain bakers' supplies such as pie fillings, icings, and flavoring preparations and also liquid and powder preparations for the manufacture of home made ice cream. The preparation for making ice cream is a commodity manufactured, sold, and distributed under the trade name E-Zee Freez. In the course and conduct of its said business the respondent has been and is now manufacturing said commodity at its place of business in the State of New Jersey and has been and is now selling, shipping, and distributing said commodity in commerce from its said place of business in the State of New Jersey to various purchasers of said commodity located in the several States of the United States and in the District of Columbia. For many years prior hereto and since June 19, 1936, there has been and is now between respondent and purchasers of said commodity a course of trade and commerce in said commodity

Complaint

in and between the State of New Jersey and the several other States of the United States and the District of Columbia. The said respondent in the course and conduct of its business as aforesaid has been and is now in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. Since June 19, 1936, in the course and conduct of its business described in paragraph 2 hereof and while engaged in trade and commerce between the State of New Jersey and the other States of the United States and the District of Columbia as therein described, the respondent has been and is now, in the course of such commerce, discriminating in price between different purchasers of said commodity of like grade and quality sold and shipped in commerce, as aforesaid, by respondent to said purchasers and by them purchased from respondent in commerce for resale within the several States of the United States and the District of Columbia, in that the respondent has been and is now allowing to some of said purchasers a larger rebate from the prices at which said commodity was and is sold to them by respondent than the rebate, if any, which respondent has been and is now allowing to other purchasers of said commodity of like grade and quality purchased from respondent at the same prices.

PAR. 4. Shortly after the effective date of the Robinson-Patman Act, June 19, 1936, a representative of The Great Atlantic & Pacific Tea Company presented a so-called quantity discount agreement to the respondent herein, which agreement was executed by respondent in words and figures as follows:

QUANTITY DISCOUNT AGREEMENT

Purchaser: The Great Atlantic & Pacific Tea Company.

Address: Graybar Building, New York City.

No. of Stores, 14,938.

Manufacturer: H. C. Brill Company, Inc.

Address: Newark, N. J.

Commodity: E-Zee Freez.

The purchaser has obligated itself to buy from the manufacturer a large quantity of merchandise and, in view of the purchases in large quantity, present and prospective, the manufacturer agrees to allow the following quantity discount on amounts bought by the purchaser, between the period commencing on

June 20, 1936 and expiring on June 19, 1937

\$5,000 to \$10,000	—1%
10,000 to 15,000	—2%
15,000 to 20,000	—3%
20,000 to 30,000	—4%
30,000 to over	—5%

Complaint

26 F. T. C.

Payable at expiration of agreement.

The manufacturer avows its willingness to make the same agreement as is here made with any other purchaser similarly situated and on proportionally equal terms.

This agreement may be cancelled by either the purchaser or the manufacturer upon notice.

H. C. BRILL COMPANY, INC.,
Manufacturer.

By HARRY C. BRILL, *Pres.*

THE GREAT ATLANTIC & PACIFIC TEA CO.,

Purchaser.

By G. F. MORROW.

PAR. 5. The respondent sold and shipped from its said plant to The Great Atlantic & Pacific Tea Company's various warehouses between June 20, 1936 and June 19, 1937 said commodity as follows:

PURCHASES VARIOUS A & P UNITS

	6/20/36-12/31/36	1/1/37-6/19/37
Altoona, Pa.....	\$355.71	\$128.00
Albany, N. Y.....	81.60	
Atlanta, Ga.....		729.00
Baltimore, Md.....	244.80	545.09
Broux, N. Y.....	458.99	964.58
Brooklyn, N. Y.....		184.50
Buffalo, N. Y.....	46.82	
Charlotte, N. C.....	3.40	
Cincinnati, Ohio.....	232.05	266.22
Cleveland, Ohio.....	234.60	119.34
Dallas, Texas.....	452.20	292.23
Des Moines, Iowa.....	17.00	550.80
E. Aurora, N. Y.....	10.20	
Pittsburgh, Pa.....	862.83	540.13
Garden City, N. Y.....	173.40	523.01
Grand Rapids, Mich.....	85.00	
Indianapolis, Ind.....		430.44
Louisville, Ky.....	272.25	679.32
Hartford, Conn.....	151.72	295.65
Newark, N. J.....	913.29	1,081.01
Paterson, N. J.....	360.79	721.77
Philadelphia, No. Side.....	1,225.27	
Philadelphia, So. Side.....	872.52	951.98
Providence, R. I.....	168.26	124.20
Somerville, Mass.....	136.22	
Springfield, Mass.....	101.89	230.63
St. Louis, Mo.....	14.45	86.40
Syracuse, N. Y.....	326.40	837.93
Washington, D. C.....	153.00	
Youngstown, Ohio.....	527.00	244.80
Total.....	\$8,144.64	\$10,525.93

PAR. 6. The total purchases of the various warehouses of The Great Atlantic & Pacific Tea Company, as aforesaid, amounted to \$18,670.57. No single unit purchased in sufficient quantity to earn any rebate under the contract agreement. Each of said warehouses is treated by respondent as an individual customer, sales are solicited independently and the merchandise was shipped and billed to the individual warehouses. On July 21, 1937, respondent sent The Great Atlantic & Pacific Tea Company a check for \$260.12. This amount was arrived at by granting to The Great Atlantic & Pacific Tea Company a rebate of 1 percent on its purchases between \$5,000 and \$10,000, 2 percent on its purchases between \$10,000 and \$15,000, and 3 percent on its purchases in excess of \$15,000. The Great Atlantic & Pacific Tea Company objected to this method of computing its rebate, claiming that it was entitled to the full 3 percent rebate on all purchases in excess of \$5,000. Accordingly, on July 26th, 1937, respondent paid to The Great Atlantic & Pacific Tea Company an additional sum of \$150.00, making the total rebate \$410.12.

PAR. 7. Respondent executed a contract in the same form with The Kroger Grocery and Baking Company covering the period commencing on June 20, 1936 and expiring June 19, 1937. The respondent sold and shipped said commodity from its said plant to the various warehouses of The Kroger Grocery and Baking Company between June 20, 1936 and June 19, 1937 as follows:

PURCHASES KROGER UNITS

	6/20/36-12/31/36	1/1/37-6/19/37
Charleston, W. Va.....	\$280. 50	\$96. 39
Chicago, Ill.....	91. 80	
Cincinnati, Ohio.....	2, 147. 09	600. 63
Dayton, Ohio.....	57. 37	33. 66
Detroit, Mich.....	112. 20	
Evanston, Ill.....	28. 05	
Indianapolis, Ind.....	40.80	36. 72
Louisville, Ky.....	680. 00	549. 27
Oak Park, Ill.....	55. 25	
Pittsburgh, Pa.....	91. 80	114. 75
St. Louis, Mo.....	957. 36	
	<u>\$4, 542. 22</u>	<u>\$1, 431. 42</u>
	1, 431. 42	
Total purchases.....	\$5, 973. 64	
Less Returns 6/20/36-6/19/37.....	620. 20	
Net Purchases.....	\$5, 353. 44	

PAR. 8. The total purchases of the various warehouses of The Kroger Grocery and Baking Company, as aforesaid, amounted to \$5,353.44. No single unit purchased in sufficient quantity to earn any rebate under the contract agreement. Each of said warehouses is

Complaint

26 F. T. C.

treated by said respondent as an individual customer, sales are solicited independently and the merchandise is shipped and billed to the individual warehouses. On September 20, 1937 respondent sent The Kroger Grocery and Baking Company a check in the amount of \$3.53. This amount was arrived at by granting to The Kroger Grocery and Baking Company a 1 percent rebate on its purchases in excess of \$5,000, namely \$353.44.

PAR. 9. Respondent executed a contract in the same form with the American Stores Company covering a period commencing on October 20, 1936 and expiring October 19, 1937, during which period the American Stores Company purchases amounted to the sum of \$4,150.01. The respondent sold and shipped said commodity from its said plant to seven warehouses of the American Stores Company located respectively in Baltimore, Md.; Syracuse, N. Y.; Johnstown, Pa.; Orange, N. J.; Wilkes-Barre, Pa., and two warehouses located in the city of Philadelphia, Pa. No rebate was paid to the American Stores Company inasmuch as the total purchases did not aggregate more than the sum of \$5,000.

PAR. 10. The aforesaid rebate agreements were entered into by respondent with the aforesaid three large corporate chain store companies and with no other customers. Respondent made an additional special arrangement with most customers by which a special discount of 5 percent on E-Zee Freez powder was allowed and 10 percent on all purchases of liquid E-Zee Freez in consideration of the distributor contracting for and agreeing to purchase an agreed number of dozens of said commodities during a year's time and such discounts or allowances were granted, paid, or allowed to the aforesaid corporate chains in addition to the rebate, if any, which each of said corporate chains received. Purchasers who would not contract for their purchases at the beginning of the year were not allowed the additional special discounts or if they did not take the amount contracted for respondent was entitled to a charge-back of 5 percent on all E-Zee Freez powder drawn against the said contract or 10 percent on all liquid E-Zee Freez drawn against said contract.

PAR. 11. Upon the termination of the aforesaid rebate contract with The Great Atlantic & Pacific Tea Company, a second contract in the same form was executed by respondent covering the period commencing on June 20, 1937 and expiring June 19, 1938. This second contract had an additional clause providing that Canadian purchases applied.

PAR. 12. Since June 19, 1936 many purchasers of said commodity, E-Zee Freez, from respondent and who did not receive any rebate have been and are now in substantial competition in the sale, resale,

and distribution of said commodity with The Great Atlantic & Pacific Tea Company and many units of The Kroger Grocery and Baking Company and American Stores Company, as aforesaid, are likewise in substantial competition with The Great Atlantic & Pacific Tea Company.

PAR. 13. The effect of the discriminations in price referred to in paragraph 3 may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged or to injure, destroy, or prevent competition with the respondent or The Great Atlantic & Pacific Tea Company, or other beneficiary of like discrimination.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), the Federal Trade Commission on January 15, 1938, issued and served its complaint in this proceeding upon the respondent, H. C. Brill Company, Inc., a corporation, charging it with discriminating in price between different purchasers of liquid and powder preparations for the manufacture of home made ice cream in violation of subsection (a) of Section 2 of the aforesaid act.

After the issuance of said complaint, respondent filed answer thereto admitting all the material allegations of the complaint to be true and waiving intervening procedure, briefs, argument, and final hearing, which answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, briefs and oral arguments of counsel having been waived and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, the H. C. Brill Company, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of New Jersey with its principal office and plant located at 101-111 New Jersey Railroad Avenue in the city of Newark, N. J. At all times herein mentioned, said respondent has been engaged in the business of manufacturing, selling, shipping, and distributing a preparation for the

making of home made ice cream from its said place of business in the State of New Jersey to various purchasers of said preparation located in the State of New Jersey and the several States of the United States and there has been and is now between the respondent and purchasers of said preparation a course of trade and commerce in said preparation in and between the State of New Jersey and the several States of the United States. The said respondent in the course and conduct of its business as aforesaid has been and is now in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. Said respondent's customers are generally food wholesalers and retail grocery chain stores. Certain of the chain stores are competitively engaged in commerce in the resale and distribution of the said preparation with other of respondent's customers. The Great Atlantic & Pacific Tea Company is generally in competition in the resale and distribution of the said preparation with most of respondent's other customers. The Great Atlantic & Pacific Tea Company directly competes with The Kroger Grocery and Baking Company and the American Stores Company in the resale and distribution of the said preparation.

PAR. 3. Shortly after the effective date of the Robinson-Patman Act, June 19, 1936, a representative of The Great Atlantic & Pacific Tea Company presented a so-called quantity discount agreement to the respondent herein, which agreement was executed by respondent and The Great Atlantic & Pacific Tea Company in words and figures as follows:

QUANTITY DISCOUNT AGREEMENT

Purchaser: The Great Atlantic & Pacific Tea Company.

Address: Graybar Building, New York City.

No. of Stores: 14,938.

Manufacturer: H. C. Brill Company, Inc.

Address: Newark, N. J.

Commodity: E-Zee Freez.

The Purchaser Has Obligated Itself to Buy from the Manufacturer a Large Quantity of Merchandise and, in View of the Purchases in Large Quantity, Present and Prospective, the Manufacturer Agrees to Allow the Following Quantity Discount on Amounts Bought by the Purchaser, Between the Period Commencing on

June 20, 1936 and Expiring on June 19, 1937

\$5,000 to \$10,000	—1%
10,000 to 15,000	—2%
15,000 to 20,000	—3%
20,000 to 30,000	—4%
30,000 to over	—5%

666

Findings

Payable at Expiration of Agreement

The Manufacturer Avows its Willingness to Make the Same Agreement as is Here Made With Any Other Purchaser Similarly Situated and on Proportionally Equal Terms.

This Agreement May Be Cancelled by Either the Purchaser or the Manufacturer Upon Notice.

H. C. BRILL COMPANY, INC.,
Manufacturer.

By HARRY C. BRILL, *Pres.*

THE GREAT ATLANTIC & PACIFIC TEA CO.,
Purchaser.

By G. F. MORROW.

PAR. 4. The respondent sold and shipped from its said plant to The Great Atlantic & Pacific Tea Company's various warehouses between June 20, 1936 and June 19, 1937 said commodity as follows:

PURCHASES VARIOUS A & P UNITS

	6/20/36-12/31/36	1/1/37-6/19/37
Altoona, Pa.....	\$355.71	\$126.90
Albany, N. Y.....	81.60	
Atlanta, Ga.....		729.00
Baltimore, Md.....	244.80	545.00
Bronx, N. Y.....	458.99	964.58
Brooklyn, N. Y.....		184.50
Buffalo, N. Y.....	46.32	
Charlotte, N. C.....	3.40	
Cincinnati, Ohio.....	232.05	266.22
Cleveland, Ohio.....	234.60	119.34
Dallas, Tex.....	452.20	292.23
Des Moines, Iowa.....	17.00	550.80
E. Aurora, N. Y.....	10.20	
Pittsburgh, Pa.....	862.83	540.13
Garden City, N. Y.....	173.40	523.01
Grand Rapids, Mich.....	85.00	
Indianapolis, Ind.....		430.44
Louisville, Ky.....	272.25	679.32
Hartford, Conn.....	151.72	295.65
Newark, N. J.....	913.29	1,081.01
Paterson, N. J.....	360.79	721.77
Philadelphia, No. Side.....	1,225.27	
Philadelphia, So. Side.....	872.52	951.98
Providence, R. I.....	168.26	124.20
Somerville, Mass.....	136.22	
Springfield, Mass.....	101.89	230.63
St. Louis, Mo.....	14.45	86.40
Syracuse, N. Y.....	326.40	837.93
Washington, D. C.....	153.00	
Youngstown, Ohio.....	527.00	244.80
Total.....	\$8,144.64	\$10,525.93

PAR. 5. The total purchases of the various warehouses of The Great Atlantic & Pacific Tea Company, as aforesaid, amounted to \$18,670.57. No single unit purchased in sufficient quantity to earn any amount under the contract agreement. Each of said warehouses was treated by respondent as an individual customer, sales were solicited inde-

Findings

26 F. T. C.

pendently and the merchandise was shipped and billed to the individual warehouses. On July 21, 1937, respondent paid The Great Atlantic & Pacific Tea Company \$260.12. This amount was arrived at by combining all purchases and granting to The Great Atlantic & Pacific Tea Company 1 percent on its purchases between \$5,000 and \$10,000, 2 percent on its purchases between \$10,000 and \$15,000, and 3 percent on its purchases in excess of \$15,000. The Great Atlantic & Pacific Tea Company objected to this method of computation and claimed it was entitled to the full 3 percent on all purchases in excess of \$5,000. Accordingly, on July 26th, 1937, respondent paid to The Great Atlantic & Pacific Tea Company an additional sum of \$150.00, making the total rebate \$410.12.

PAR. 6. Respondent executed a contract in the same form with The Kroger Grocery and Baking Company covering the period commencing on June 20, 1936, and expiring June 19, 1937. The respondent sold and shipped said commodity from its said plant to the various warehouses of The Kroger Grocery and Baking Company between June 20, 1936, and June 19, 1937, as follows:

PURCHASES KROGER UNITS

	6/20/36-12/31/36	1/1/37-6/19/37
Charleston, W. Va.....	\$280.50	\$96.39
Chicago, Ill.....	91.80	
Cincinnati, Ohio.....	2,147.09	600.63
Dayton, Ohio.....	57.37	33.66
Detroit, Mich.....	112.20	
Evanston, Ill.....	28.05	
Indianapolis, Ind.....	40.80	36.72
Louisville, Ky.....	680.00	549.27
Oak Park, Ill.....	55.25	
Pittsburgh, Pa.....	91.80	114.75
St. Louis, Mo.....	957.36	
	<u>\$4,542.22</u>	<u>\$1,431.42</u>
	1,431.42	
Total purchases.....	\$5,973.64	
Less Returns 6/20/36-6/19/37.....	620.20	
Net Purchases.....	\$5,353.44	

PAR. 7. The total purchases of the various warehouses of The Kroger Grocery and Baking Company, as aforesaid, amounted to \$5,353.44. No single unit purchased in sufficient quantity to earn any rebate under the contract agreement. Each of said warehouses is treated by said respondent as an individual customer, sales are solicited independently and the merchandise is shipped and billed to the individual warehouses. On September 20, 1937 respondent sent The Kroger Grocery and Baking Company a check in the amount of

\$3.53. This amount was arrived at by granting to The Kroger Grocery and Baking Company a 1 percent rebate on its purchases in excess of \$5,000, namely \$353.44.

PAR. 8. Respondent executed a contract in the same form with the American Stores Company covering a period commencing on October 20, 1936 and expiring October 19, 1937, during which period the American Stores Company purchases amounted to the sum of \$4,150.01. The respondent sold and shipped said commodity from its said plant to seven warehouses of the American Stores Company located respectively in Baltimore, Md.; Syracuse, N. Y.; Johnstown, Pa.; Orange, N. J.; Wilkes-Barre, Pa., and two warehouses located in the city of Philadelphia, Pa. No rebate was paid to the American Stores Company inasmuch as the total purchases did not aggregate more than the sum of \$5,000.

PAR. 9. Respondent sells to wholesalers and to chain stores as follows:

Liquid E-Zee Freez is packed in cases containing 2 dozens and 12 dozens. The price is 85 cents a dozen with a trade discount of 10 percent, less 1 percent cash discount f. o. b. destination. Minimum shipping quantity 24 dozens. Powder E-Zee Freez is packed 1 dozen to the carton, 15 cartons to the shipping case. The price is 90 cents a dozen with a trade discount of 20 percent, less 1 percent cash discount f. o. b. destination. Minimum shipping quantity 30 dozens. Brokerage is allowed and paid to independent food brokers on all sales within such brokers' territory and was allowed and paid on the sales to the said retail food chains.

PAR. 10. The 10 percent trade discount allowed on liquid E-Zee Freez was originally intended as a special trade discount for contract as distinguished from spot purchases; similarly, 5 percent of the 20 percent allowed on the powder E-Zee Freez was so intended. However, only a few of such contracts were entered into when respondent changed its plan and sold all, whether on spot or contract purchases, on the same terms with the exception of the so-called quantity discount allowances referred to in paragraph 3.

CONCLUSION AND OPINION

From the facts as herein found, the first question that arises concerns the offer by respondent of varying discounts to customers based on the amount each customer purchased annually.

The consideration on which the offer is made, as stated in the contract, is "in view of the purchases in large quantity, present and prospective, the manufacturer agrees to allow the following quan-

Conclusion and Opinion

26 F. T. C.

tity discount on amounts bought by the purchaser, between the period commencing on June 20, 1936 and expiring on June 19, 1937.

\$5,000 to \$10,000	—1%
10,000 to 15,000	—2%
15,000 to 20,000	—3%
20,000 to 30,000	—4%
30,000 to over	—5%

The consideration is the purchase "in large quantity" of the goods sold by respondent. However, the offer neither expressly nor by implication can be construed to relate to the purchase of single shipments of the value specified nor was it so construed by the parties as evidenced by the settlements.

Purchasers of large annual amounts sometimes buy in larger individual shipments than do buyers whose purchases do not amount to as large a sum. Large buyers, however, also place numerous small orders and the average size of such orders is frequently less than the average size of orders placed by buyers whose aggregate annual purchases are less in volume. Indeed under a discount plan based on aggregate volume purchases for a given period, such as that contained in the aforesaid contract, it may cost the seller more per dollar of sales to serve a customer who places a large number of small orders which are sufficient in the aggregate to earn the discounts, than to serve the customer who places a few large orders whose total is not sufficient to obtain the discount.

Large wholesalers and chain retailers often obtain concessions in the form of cumulative discounts in the belief that their transactions, in proportion to the amount purchased, are fewer in number, take less of the time and attention of the seller, and cost the seller less. However, when such a belief is not supported by the facts the conclusion obviously is erroneous and an offer predicated thereon discriminatory. There is no certainty and scarcely any probability that the business of the buyer who purchases from \$5,000 to \$10,000 in the aggregate of merchandise within a year will cost the seller more or less in proportion to quantity than the business of one who purchases more than \$30,000 or less than \$5,000.

A distinction in price between shipping cartons or shelf packages and broken packages is readily understood and a difference in price based upon the size of individual purchases and shipments is likewise appreciated but no such distinction is made in this offer. One whose individual purchases were in thousand dollar lots would if his purchases amounted to, let us assume, \$8,000 be required to pay a higher price than another whose individual purchases were in hundred dollar lots but whose total for the year amounted to more

than \$10,000. Such a differential producing an injurious effect in any line of commerce cannot be justified.

No justification has been affirmatively shown for the discrimination in price found herein and the Commission finds no substantial difference between the respondent's cost of selling and delivering ice cream powder to the individual warehouses of The Great Atlantic & Pacific Tea Company, and its cost of serving the individual warehouses of any other chain store company, or any other customer purchasing the said merchandise in quantities comparable to those purchased by the individual warehouses of The Great Atlantic & Pacific Tea Company. Aside from differences in methods of sale and delivery, savings in the cost of serving different customers aside from result from the differences in the size of the individual orders placed by such customers, irrespective of the aggregate purchases for a given period of time. Ordinarily large orders are obtained, assembled, priced, packed, billed, and delivered at a lower cost per dollar of sales than small orders. In the instant case, the respondent employed the same methods of sale and delivery in serving the individual warehouses of The Great Atlantic & Pacific Tea Company as it used in serving its other customers. The record contains no evidence that the individual orders for ice cream powder placed with the respondent by the several warehouses of The Great Atlantic & Pacific Tea Company were any larger than the orders placed with the said respondent by other customers. Indeed, for the year covered by the aforesaid contract, the aggregate amount of ice cream powder purchased from the respondent by the individual warehouses of The Great Atlantic & Pacific Tea Company ranged from less than \$3.40 to not more than \$1,994.30, while the individual orders of the said warehouses were even smaller. It cannot be assumed that the respondent's individual sales or shipments to The Great Atlantic & Pacific Tea Company were fewer in number, and therefore larger, than its sales to other customers, or that it cost said respondent less per dollar of sales to make these individual sales or shipments to the said Great Atlantic & Pacific Tea Company than it did to make individual sales or shipments to other customers. In view of these facts, the Commission finds, therefore, that the so-called discount granted to The Great Atlantic & Pacific Tea Company cannot be justified on the basis of savings in distribution costs. The contract did not result in economy of selling, credit, ordering, shipping, advertising, or other elements that can be considered as producing a differential in cost.

A cumulative discount is sound only where savings have been achieved by the seller with respect to individual sales made to a particular buyer over a period of time, which savings were not reflected

in the price at which the buyer purchased and which are reserved for the purpose of refunding at the end of a period of time. But any system of discounts based on the amount of annual sales is a price discrimination contrary to Section 2 (a) of the Clayton Act, as amended, if it has any of the injurious effects on competition enumerated in the statute, unless justified as by making only due allowance for differences in cost not previously allowed and resulting from the quantities sold or delivered.

Many food chains, including the three aforesaid grocery chains, operate on a net margin of profit of $1\frac{1}{2}$ percent to 2 percent. The sum of $2\frac{1}{4}$ percent represents a difference between profit and loss. Of course a price differential of $2\frac{1}{4}$ percent on a single product of no greater importance than ice cream powder is not sufficient to give The Great Atlantic & Pacific Tea Company any appreciable competitive advantage in all of its business, but it does receive a definite advantage in the sale of that particular commodity. The competitive advantage becomes the greater when a company doing a Nation-wide business is permitted to obtain a $2\frac{1}{4}$ percent differential from a considerable number of sellers. Even though individually they are of relatively little importance, the sum of the differentials would undoubtedly give the buyer a decided competitive advantage. Such discrimination inevitably tends toward centralization of retail or wholesale trade, for the largest retailer or wholesaler gets the lowest price—it thus tends to eliminate smaller buyers and builds up the large buyer at the expense of small ones.

It may be to respondent's interest to favor large customers often doing a Nation-wide business. However, the seller cannot regard his interests exclusively and must subordinate such interest to the requirement that his prices not reflect an unlawful discrimination.

The so-called discounts paid, as provided for and more fully set forth in paragraph 3 hereof, constitute discriminations in price in commerce in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, section 13), 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 respondent admitting all the material allegations of the complaint to be true and waiving the taking of evidence and all other intervening procedure and the Commission having made its findings as to the facts and its

conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended:

It is ordered, That the respondent, H. C. Brill Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of liquid and powder preparations for the manufacture of home made ice cream, do forthwith cease and desist from granting or paying, or agreeing to grant or pay, sums amounting to discriminations in price in the form of cumulative discounts described in paragraph 3 of the findings as to the facts and conclusion; and from granting or paying, or agreeing to grant or pay, sums amounting to discriminations in price in the form of cumulative discounts, except where such discount makes only due allowance for differences in cost which have been achieved with respect to individual sales made to a particular buyer over a period of time, which differences in cost were not reflected in the price at which the buyer purchased.

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

IN THE MATTER OF

J. W. McPHEETERS, TRADING AS MID-WEST SOAP COMPANY, AND AS SAVON PRODUCTS

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

Docket 2995. Complaint, Nov. 27, 1936—Decision, Feb. 11, 1938

Where an individual engaged in manufacture of a cheap, inferior cold process soap of a grade and quality generally not used as a toilet soap, and in the sale and distribution thereof to wholesalers and dealers at various points in other States for resale to house-to-house canvassers or peddlers, at cost thereto of approximately $4\frac{1}{2}\text{¢}$ per three-cake carton, in competition with many who sell, in commerce as aforesaid, soap similar in grade and quality to that sold by him, and many who sell soap of a far superior grade and quality and which has a retail value of, and sells for, price marked by him on his said containers, and who do not in any way misrepresent the price, quality, or character of their products—

Placed on three-bar containers of brands of his aforesaid cheap and inferior soap, words "3 bars—75¢," together with words "Toilet," "Bath," "Shampoo," and trade name and address, notwithstanding fact price thus marked and indicated was many times in excess of selling price of said soaps to aforesaid canvassers, and many times in excess of true value thereof, and much greater than actual price at which such containers were sold to ultimate purchaser, and price indicated was not intended to be true retail price of products in question, but was wholly false and fictitious and in no way represented true value or selling price of products so marked; and thereby put in hands of its purchasers and of said house-to-house canvassers or peddlers instrument or means whereby they could and did commit a fraud upon substantial portion of purchasing and consuming public, through enabling them to represent to purchasers and prospective purchasers, and to cause such purchasers to believe, that said products were in fact high grade and of a retail value substantially as marked and indicated, and represented through statements on containers in question;

With result that such canvassers or peddlers could and did sell said soap at price greatly in excess of fair and reasonable value thereof and of prices at which soap of similar grade and quality was usually and customarily sold, and of aiding and abetting them in misleading and deceiving purchasing and consuming public through such fictitious markings, and of furthering deception thus occasioned through placing on said containers statements falsely indicating soap in question was of grade and quality of soap which had retail value of, ordinarily sold for, price marked thereon, and with tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such soap had the value of and ordinarily retailed for the price thus marked and indicated, and that said representations and statements as to grade and quality thereof were true, and with result that substantial number of consuming public, as true consequence of mistaken and erroneous beliefs induced by his said acts and practices, purchased substantial volume of his said products and trade was unfairly diverted to him from

Complaint

competitors who truthfully advertise and represent their respective soaps; to the substantial injury of competitors in commerce as aforesaid, and to the injury of the public:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Wm. T. Chantland and *Mr. George Foulkes* for the Commission.

Mr. Harry A. Weaver, Jr., of Korbly & McNutt, 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 Federal Trade Commission, having reason to believe that J. W. McPheeters, trading as Mid-West Soap Company, and as Savon Products, 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, J. W. McPheeters, trading as Mid-West Soap Company, and as Savon Products, personally and through said Mid-West Soap Company and said Savon Products, with office and principal place of business at 901 High Street, Indianapolis, Ind., is now and for some time has been engaged in the business of distributing, and selling in commerce, as herein set out, certain alleged toilet soaps.

PAR. 2. Said respondent being engaged in business as aforesaid, causes said soaps, when sold, to be transported from his office and place of business in the State of Indiana to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondent now maintains a constant current of trade in commerce in said soaps, distributed and sold by him 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 and with firms and corporations engaged in the business of distributing and selling toilet soaps, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business and for the purpose of inducing the purchase of his said soaps, respondent has been, and is now, engaged in misbranding, fictitious price marking, misrepresentation, and false and misleading advertising.

Complaint

26 F. T. C.

Among the acts done and representations made by respondent are the following:

1. Under the trade name "Mid-West Soap Co., Indianapolis," respondent sells a three-bar or cake soap combination called and labelled "Burberry," in a box marked "3 bars—75;" and each cake stamped—"25¢," and advertised on the box as "A toilet and bath soap"; "Use as a shampoo," and "Excellent for shaving."

2. Under the trade name "Savon Products, Indianapolis," respondent sells:

(a) A three-bar or cake soap combination called and labelled "Vello," in a box marked "3 bars—Price 75¢," and advertised on the box as for "Toilet—Bath—Shampoo."

(b) A three-bar or cake soap combination called and labelled "Creem—O," in a box marked "3 bars—Price 75¢," and advertised on the box as for "Toilet—Bath—Shampoo."

PAR. 5. The representations made by respondent with respect to the prices, nature, and effective qualities of said soaps are grossly exaggerated, false, misleading, and untrue. The truth and facts are that said soaps are never sold or offered for sale at the excessive prices marked on the boxes; neither are such soaps the fine toilet soaps which such fictitious high prices and the labels are intended to, and do, claim, and imply, but are in fact cheap grades of soaps without valuable qualities as indicated by their names.

The truth and facts are that said soaps are sold by respondent to its peddlers at 4 cents per box of 3 cakes, and that the cheap, printed, cardboard containers cost about as much or more to make as the three small cakes of inferior soap contained therein.

The said products above mentioned are sold by the respondent principally to house to house canvassers for resale to ultimate consumers. The prices marked on the boxes in which the products above mentioned are sold are many times in excess of the actual selling price to said house to house canvassers and many times in excess of the actual value thereof and are much greater than the actual price at which said products are sold by said canvassers to said ultimate purchasing and using public. The prices so indicated were not intended by respondent to be the true retail price or the true retail value of said products, and are false and fictitious and in no sense represents either the true value or the true selling price of the products so price marked. The prices marked as above indicated were intended by respondent and the canvasser purchasing for resale to be far in excess of the price actually charged the ultimate consumer.

PAR. 6. There are among respondent's competitors many who distribute and sell toilet soaps which have ingredients and qualities which may justify prices somewhat in line with respondent's fictitious prices and often at much less than such fictitious prices, who do not in any way misrepresent the prices, quality or character of their respective products.

PAR. 7. Each and all of the false and misleading statements, representations and implications made by the respondent in pricing, designating and describing his products, and the quality of said products, as hereinabove set out, in the labels and advertising, in the course of distributing said products, 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.

Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, labeling and representations of respondent, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's 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 toilet soaps which have the qualities and values claimed by respondent for his products, who truthfully advertise their respective products and sell them at such higher prices as their quality warrant. As a result thereof, substantial injury has been and is now being done by respondent to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above, and foregoing acts, practices, and representations, actual and implied, 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 November 27, 1936, issued and, on November 30, 1936, served its complaint in this proceeding upon respondent J. W. McPheeters, trading as Mid-West Soap Company,

and as Savon Products, 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 other evidence in support of the allegations of said complaint were introduced by William T. Chantland and George Foulkes, attorneys for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Harry A. Weaver, Jr., attorney for the respondent; and said testimony and other 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 other evidence, and brief in support of the complaint, no brief having been filed by the respondent, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. W. McPheeters, trading and doing business as Mid-West Soap Company and Savon Products, at Indianapolis, Indiana, is now and since the 9th day of November 1934, has been engaged in the business of manufacturing, distributing and selling certain soaps. The respondent has caused and still causes said soaps when sold to be transported from his place of business in the State of Indiana to purchasers thereof located at various points in States of the United States other than the State of origin of the shipment. Respondent has maintained and still does maintain a constant current of trade in commerce in said soaps distributed and sold by him between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondent manufactures all of the soap sold and distributed by him at his plant in Indianapolis, Ind. The respondent sells to wholesalers and dealers who resell said soap through house-to-house canvassers, commonly known as peddlers. The respondent's said soaps cost the peddlers approximately $4\frac{1}{2}$ cents per carton of three cakes. The respondent formerly manufactured, sold and distributed three brands of soap, named, packaged, marked, and priced as hereinafter set out:

"Burberry" brand soap was sold three bars in a container, marked "3 bars—75¢", whereon appeared the following statements: "Toilet and Bath Soap" "Used as a Shampoo" "Excellent for Shaving";

"Mid-West Soap Co., Indianapolis." Each bar of said soap had stamped thereon the following: "25¢—Burberry." The manufacture, sale, and distribution of "Burberry Brand" of soap was discontinued approximately one year ago. Sales of this brand were confined to the State of Indiana.

"Vello" brand soap was and is sold three bars in a container, marked "3 bars—75¢" "Toilet—Bath—Shampoo"; "Savon Products, Indianapolis." This brand was and is sold and distributed to purchasers located in States other than Indiana.

"Cream-O" brand soap was and is sold three bars in a container, marked "3 bars—price 75¢" "Toilet—Bath—Shampoo"; "Savon Products, Indianapolis." This brand was and is sold and distributed to purchasers located in States other than Indiana.

The soap offered for sale and sold in said containers, marked and priced as above set forth, weighs approximately three ounces or less per bar and was and is a cheap, inferior cold process soap of a grade and quality not generally used as a toilet soap.

PAR. 3. The price of 75 cents marked and indicated on said containers as above set out is many times in excess of the selling price of said soaps to said house-to-house canvassers, and many times in excess of the true value of the soaps therein contained. The price so marked is much greater than the actual price at which said container of soap is sold to the ultimate purchaser. The price so indicated was not intended by the respondent to be the true retail price of said products but was and is wholly false and fictitious and in no way represents the true value or the true selling price of the products so marked.

PAR. 4. The fictitious and exaggerated price markings placed by the respondent on said containers, containing said cheap, inferior soap, places in the hands of purchasers from the respondent and the house-to-house canvassers or peddlers an instrument or means whereby said house-to-house canvassers or peddlers can and do commit a fraud upon a substantial portion of the purchasing and consuming public in that it enables said canvassers or peddlers falsely to represent to their purchasers and prospective purchasers, and to cause said purchasers and prospective purchasers to believe that said products are in fact high-grade soaps and of a retail value substantially as marked and indicated on said containers and as represented in the statements on said containers. As a result said house-to-house canvassers or peddlers can and do sell said soap at prices greatly in excess of the fair and reasonable value thereof and greatly in excess of the prices at which soap of a similar grade and quality is usually and customarily sold. By placing such fictitious markings on said containers, the

respondent has aided and abetted and now aids and abets house-to-house canvassers or peddlers in misleading and deceiving the purchasing and consuming public. The respondent furthers the deception occasioned by the use of said fictitious price markings by placing on said containers the statements above set out indicating that the soap therein contained is of the grade and quality of soap which has a retail value of, and ordinarily sells for, the price marked on said containers, when in truth and fact the soap in said containers is grossly inferior to soaps which ordinarily retail at the prices indicated on the containers.

PAR. 5. There are among respondent's competitors in said commerce many who sell soap similar in grade and quality to that sold by the respondent and many who sell soap of a grade and quality which has a retail value of, and sells for, the price marked by the respondent on said containers who do not in any way misrepresent the price, quality, or character of their products.

PAR. 6. The acts and practices of the respondent, as herein above set out, have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said soap is of the value of, and ordinarily retails for, the price marked and indicated by the respondent, and to believe that said representations and statements as to the grade and quality of said soap are true.

PAR. 7. As a true consequence of the mistaken and erroneous beliefs induced by the acts and practices of the respondent as herein above set out, a substantial number of the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from his competitors in said commerce who truthfully advertise and represent their respective products. As a result thereof, substantial injury has been and is now being done by respondent to competitors in said commerce between and among the various States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, J. W. McPheeters, are to the prejudice of the public and to 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 respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore designated by it, in support of the allegations of said complaint and in opposition thereto, and brief for the Commission filed herein (no brief having been filed by 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, J. W. McPheeters, individually, or trading as Mid-West Soap Company, and as Savon Products, or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of soap in interstate commerce, or in the District of Columbia, do forthwith cease and desist from, directly or indirectly, either personally or through any corporate or other device:

1. Representing through the use of fictitious price marks, or in any other manner, that said soap has a retail value or price in excess of the actual customary retail value or price thereof;

2. Representing that said soap is generally offered for sale and sold at retail at a price in excess of the usual and customary price at which such soap is actually and customarily offered for sale and sold to the ultimate purchaser;

3. Representing, by price markings, or in any other manner, that the soap now sold and distributed by the respondent, or any other soap of similar grade and quality, has a retail value of, and ordinarily sells for, 75 cents per box of three bars.

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

IN THE MATTER OF
EMILE CARPENTIER, TRADING AS DR. EMILE
CARPENTIER

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

Docket 3073. Complaint, Mar. 10, 1937—Decision, Feb. 11, 1938

Where an individual engaged in manufacture of his "T. B. Compound" proprietary preparation for tuberculosis in various forms and for chronic bronchitis and other ailments, and in sale and distribution thereof to individual purchaser users and to members of the medical profession; in advertising the same in newspapers of general circulation and posters and circulars mailed to purchasers and prospective purchasers throughout the country and through legend captioned "Pass This On!" contained on label of each package thereof, and through advertising leaflets—

- (a) Represented that said product was a cure and remedy for tuberculosis of the lungs, larynx, intestines, and other parts of the body and that such malady had been cured thereby and that victims thereof could verify the astonishing results achieved with the herbs, roots, and other ingredients which were used therein;
- (b) Made use of the abbreviation "Dr." and represented himself as a "naturopathic doctor," and that physicians had prescribed his said product for patients suffering from tubercular conditions and had sent to him patients suffering from such ailments and that it was not necessary for him to diagnose or see patients for their treatment which they took at home, and which consisted of two teaspoons of his said compound daily for "proper results"; and
- (c) Represented that his said product also constituted cure for chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum and ailments of the stomach or intestines;

Facts being said compound had no curative, remedial, or therapeutic value in the treatment of the various types of tuberculosis or causes thereof or various other ailments or conditions above specified and was of no beneficial value whatever in the treatment thereof, no one had been cured of tuberculosis by its use, nor had physicians successfully prescribed it in treatment of patients with tuberculosis or other diseases for which he claimed his product to be a cure, said product was not an original or secret discovery and use thereof by persons afflicted with tuberculosis might delay the securing of essential medical care and hospitalization so long that there was no possibility of arresting the disease, through attempted self-medication without proper and necessary advice or otherwise, and said individual had had no medical training and was not a physician and maintained no office nor place where condition of purchasers or prospective purchasers might be determined;

With effect of misleading and deceiving substantial part of purchasing public into false and erroneous belief that said representations were true and that his said preparation was a cure for all types of tuberculosis and causes thereof and other ailments and conditions above specified, and that public acting in the mistaken and erroneous beliefs induced by such false

and exaggerated statements and representations bought a substantial volume of his said product and trade was unfairly diverted to him from competitors likewise engaged in manufacture, sale, and distribution of treatments intended and used for relieving pains incident to diseases and afflictions of the body and for which said individual recommended his said compound, or for building up resistance of patients to such diseases and afflictions and who truthfully represent the extent of the therapeutic value of their respective products:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. S. Brogdyn Teu, II, 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 Emile Carpentier, an individual trading as "Dr. Emile Carpentier," 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. Respondent, Emile Carpentier, an individual trading as "Dr. Emile Carpentier," has his principal office and place of business located at 68 Chestnut Street, in the city of Hillsdale, State of New Jersey. Respondent has been for more than 1 year last past engaged in the business of compounding, selling, and distributing a compound that is an alleged cure for tuberculosis, chronic bronchitis, colitis, chronic gastritis, ulcerated duodenum, ulcerated stomach, and ulcerated intestines. In the course and conduct of his business, respondent offers said compound for sale and sells the same in commerce between the State of New Jersey and the several States of the United States and the District of Columbia.

When said product is sold, respondent transports it, or causes it to be transported from his principal place of business in the State of New Jersey to purchasers thereof located in States of the United States other than the State in which said shipments originated, and in the District of Columbia. There has been for more than 1 year last past, and still is, a constant current of trade and commerce in said product so manufactured, sold, and shipped by respondent between and among the various States of the United States and in the District of Columbia.

Respondent has been, for more than 1 year last past, and is now engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture of like and similar products, or other products, and treatments intended, designed, and used for similar purposes in the treatment of tuberculosis, and for the treatment of chronic bronchitis, colitis, chronic gastritis, ulcerated duodenum, ulcerated stomach, and ulcerated intestines, 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. Respondent, in soliciting the sale of and selling his commodity, and for the purpose of creating a demand for it on the part of the consuming public, causes his commodity to be advertised through the medium of printed matter published, issued, and circulated to customers and prospective customers in the various States of the United States and in the District of Columbia. In the course and conduct of his aforesaid business, the respondent has advertised in various printed media, as follows:

(1)

PASS THIS ON

Ample verifications have proved absolute cures in from 6 weeks to 6 months' time. In all of the diseases involving tuberculosis of the lungs, the larynx, the bones, the intestines, the kidneys or the brains, chronic bronchitis, which means congested lungs, colitis, chronic gastritis, ulcerated duodenum, stomach or intestines. Intestinal tuberculosis of 9 years' standing was completely cured in six weeks in 1927. A case of hasty consumption was cured in six weeks in 1928.

CERTIFICATE OF PURITY BY THE DISCOVERER

I certify that my tuberculosis compound contains no creosote, mercury, calomel, strychnine or narcotics, nor habit-forming drugs; nor anything irritating, dangerous or harmful to the stomach or the intestines. It contains only tested, exhilarating and vitalizing herbs, roots and ingredients that eliminate the bugs.

Take two level teaspoons a day, one on arising in the morning and one on retiring at night.

(2)

TUBERCULOSIS

Beneficial results have been proven since 1927 by taking DR. EMILE CARPENTIER'S COMPOUND of ORIENTAL HERBS and NATUROPATHIC-NON-SURGICAL Treatment. Checks the disease and saves the victims, in any climate and in all countries, without diagnosing or ever seeing them. T. B's. contagion is only in the sputum.

Diametrically contrary to and revolutionizing all previous sterile cures and treatments. Verified by the Court, State and Government authorities. Secret formula and Registered Patent Rights for sale by discoverer. Registered Patented in 26 World Countries.

EMILE CARPENTIER, N. D.

68 Chestnut Street, Hillsdale, Bergen County, New Jersey and 3261 S. W. 23rd Terrace, Miami, Florida.

(3) Victims of Tuberculosis can verify the astonishing results achieved with the herbs, roots and other ingredients which are used in the T. B. Compound of Mr. Emile Carpentier of Hillsdale, Bergen County, N. J.

Physicians of New York and New Jersey send critical and incurable consumptive patients to take his medicine.

(4) CONSUMPTION

Is Cured By

Dr. Emile Carpentier's

T. B. Compound

He does NOT Diagnose

The aforesaid statements, together with other similar statements not set out herein, serve, directly or through implication, as representations with respect to the efficacy and therapeutic value of said compound in use, to the effect that it will cure tuberculosis of the lungs, larynx, bones, intestines, kidneys, and brain; that it will cure chronic bronchitis, chronic gastritis, ulcerated duodenum, stomach, and intestines; that it contains exhilarating and vitalizing herbs and roots; that it will cure tuberculosis in all climates and in all countries; that the results achieved can be verified by many persons who have been cured of tuberculosis through the use of said compound; and that physicians send critical and incurable consumptive patients to respondent.

Over a period of many years the universally used professional designations for a Medical Doctor or a Doctor of Medicine have been, and now are, the abbreviations "Dr." and "M. D." The abbreviation "N. D." when used with respondent's name in connection with the representations or statements herein set out is a colorable simulation and imitation of the well known and long used term "M. D." The respondent's use of the terms "Dr." and "N. D." in close proximity to his name in the aforementioned statements and representations serves as a representation to prospective purchasers that respondent is a Medical Doctor or a Doctor of Medicine and tends to and does lead them into the mistaken and erroneous belief that he is a Medical Doctor.

The representations made by the respondent with respect to the nature and effect of his compound when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the alleged compound will not cure tuberculosis of the lungs, larynx, bones, intestines, kidneys, or brain; and it will not cure chronic bronchitis, colitis, chronic gastritis, ulcerated duodenum, ulcerated stomach, and ulcerated intestines. It does not contain any exhilarating and vitalizing herbs, roots, or ingredients. It will not cure the victims of tubercu-

losis in any climate or any country. No victim of tuberculosis can, or is competent to, verify the statements made by respondent that such person has been cured of tuberculosis through use of said compound. Physicians do not send to respondent critical or incurable consumptive patients. The respondent is not either medically trained or a medical practitioner and is not a Doctor of Medicine.

PAR. 3. The effect of the foregoing false and misleading representations of the respondent in selling and offering for sale the alleged tuberculosis compound is to mislead and deceive a substantial portion of the consuming public in the various States of the United States and in the District of Columbia, into the erroneous and mistaken beliefs that said tuberculosis compound will cure consumption of the lungs, larynx, bones, intestines, kidneys, and brain, and will cure chronic bronchitis, chronic gastritis, ulcerated duodenum, ulcerated stomach, and ulcerated intestines; that the said compound contains exhilarating and vitalizing herbs and roots; and it will cure tuberculosis in all climates and in all countries; that the victims of tuberculosis can verify the results achieved by the use of the alleged compound; that physicians send critical, incurable consumptive patients to respondent; and that Emile Carpentier is a medical doctor and practitioner.

PAR. 4. Each and all of the false and misleading statements and representations used by the respondent in designating and describing his compound and the effectiveness of said compound for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human body herein named, were and are calculated to, and had, and now have, the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true and that said compound will in truth accomplish the results claimed.

Further as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's compound, with the result that trade has been unfairly diverted to respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended, and sold for use in the cure, relief, or treatment of the various diseases, ailments, and afflictions, and conditions named herein, and who truthfully represent the effectiveness of their respective products. As a result thereof, 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. 5. The aforesaid acts and practices of the 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.

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 March 10, 1937, issued, and on March 12, 1937, served its complaint in this proceeding upon respondent Emile Carpentier, 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 and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by Emile Carpentier, before John W. Norwood, an examiner of the Commission, theretofore duly designated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, oral argument not having been requested; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Emile Carpentier, trading as Dr. Emile Carpentier, is an individual. His principal office and place of business are at 68 Chestnut Street, Hillsdale, Bergen County, N. J. He is engaged in the manufacture, sale, and distribution of a product called "T. B. Compound," a proprietary preparation advertised and sold as a cure for tuberculosis of the lungs, larynx, bones, intestines, kidneys, and brains, and as a cure for chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum, stomach, and intestines.

PAR. 2. Respondent's said product is compounded and packaged at his place of business in Hillsdale, Bergen County, N. J., and sold and distributed to individual purchasers and to members of the medical

profession. When orders are received for respondent's said product he causes it to be shipped by railway express from his place of business at Hillsdale, Bergen County, N. J., to the purchasers thereof located at various points in the various States of the United States other than the State of New Jersey. Since the date the respondent began the compounding of his said product he has maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. At all times since respondent entered into said business he has been in substantial competition with other individuals, partnerships, and corporations engaged in the sale and distribution, or in the manufacture, sale, and distribution of preparations designed and sold as treatments for relieving the pain incident to or for building up the resistance of the patient to such diseases and afflictions of the human body as those for which respondent recommends his said compound as being a cure in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. The respondent advertises his said product in newspapers having a general interstate circulation, and by posters at expositions. Respondent has also advertised and now advertises his product by means of circulars mailed to purchasers and prospective purchasers throughout the country. He also advertises his product by means of a label on each package of his T. B. Compound bearing the legend "PASS THIS ON!" as follows:

Ample verifications have proved absolute cures in from 6 weeks to 6 months' time. In all of the diseases involving tuberculosis of the lungs, the larynx, the bones, the intestines, the kidneys, or the brains. Chronic bronchitis, which means congested lungs, colitis, chronic gastritis, ulcerated duodenum, stomach or intestines. Intestinal tuberculosis of 9 years standing was completely cured in six weeks in 1927. A case of hasty consumption was cured in six weeks in 1928.

Respondent, in addition to advertising his compound as set out above, has advertised and now advertises his T. B. Compound by advertising leaflets. The following is representative of the statements and claims as to the therapeutic and curative values of respondent's compound, made by him in said advertising leaflets:

Tuberculosis is cured since 1927 by the Specific which is on sale by its discoverer, Dr. Emile Carpentier, Naturopathic Doctor. He does not diagnose nor need he ever see the patients to treat them. They must take two level teaspoons of his T. B. Compound each day. He was publicly and judicially acquitted of Fraud in 1935 in the U. S. Federal Court in spite of continuous persecutions and prosecutions for many years by the American Medical Association and the American Tuberculosis Association. Barred from the mail, then arrested and put under \$2,000 bond for committing the crime of curing the White Plague.

Findings

The following representations appeared in a current circular or broadside which respondent sends out to purchasers and prospective purchasers:

EUREKA!

Victims of Tuberculosis can verify the astonishing results achieved with the herbs, roots and other ingredients which are used in the T. B. Compound of Mr. Emile Carpentier of Hillsdale, Bergen County, N. J.

Physicians of New York and New Jersey send critical and incurable consumptive patients to take his medicine. Ample verifications have conclusively proven its value in open court where 50 past victims presented themselves as evidence in the First District Court of Bergen County at Englewood, N. J., on Oct. 22, 1929. The patients stay at home and take two teaspoons of this compound each day to obtain proper results.

By means of the foregoing statements the respondent represents to purchasers and prospective purchasers, that his T. B. Compound is an effective cure for all types and forms of tuberculosis, and for chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum, stomach, and intestines, whether caused by or associated with a tubercular condition or any other affliction or condition of the human body.

PAR. 5. A qualitative analysis of respondent's T. B. Compound was made by a government agency. This analysis showed the respondent's compound to contain:

Total solids:

(5 hrs. at 100° C.)-----	84.94%
Water (Xylene method)-----	18.8 %
Ash (Chiefly magnesium, carbonate and sulphate with traces of iron, calcium and chloride)-----	.41%
Acidity of steam distillate as acetic acid-----	.77%
Chloroform soluble material-----	42.45%
Saponification value of chloroform soluble material (U. S. P. XI for lard=195-203)-----	201.2 %
Iodine value of chloroform soluble material (U. S. P. XI for lard=46-70)-----	52.1 %
Reducing sugars before inversion as invert sugar-----	30.52%
Reducing sugars after inversion as invert sugar-----	31.10%

A reading at 87° C. on an inverted half normal solution of the same gave only 0.5° V. At 25° C., the solution was levorotatory. This shows the absence of glucose and indicates that either simple syrup or honey was used.

The product is a semi-solid preparation consisting chiefly of lard and a syrupy liquid. There is a small amount of acetic acid present and some unidentified plant material. The syrup was originally either simple syrup (sucrose and water) or honey, but because of the action of the acetic acid now consists chiefly of invert sugar.

Small amounts of bark or pithy material are present.

PAR. 6. Uncontroverted medical testimony is to the effect that there is no known cure for tuberculosis.

PAR. 7. It is found that respondent's T. B. Compound has no curative, remedial, or therapeutic value in the treatment of the various types of tuberculosis or the various causes thereof and has no beneficial value whatever in the treatment of such conditions and ailments. It is further found that said T. B. Compound will not cure or in any way be beneficial in the treatment of chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum, stomach, and intestines, whether caused by or associated with a tubercular condition or any other affliction or condition of the human body.

PAR. 8. Upon the testimony and other evidence in the record it is found that the representations as to the therapeutic and curative values of respondent's T. B. Compound are untrue; that no one has been cured of tuberculosis by its use; that physicians have not successfully prescribed it in the treatment of patients with tuberculosis or other diseases for which the respondent claims his product a cure, and that respondent's compound is not an original or secret discovery. The ingredients of his compound have long been known. It is also found that by the use of respondent's compound persons afflicted with tuberculosis may delay the securing of essential medical care and hospitalization so long that there is no possibility of arresting the disease.

Respondent's product is sold direct to purchasers who can and do attempt self medication without the proper and necessary advice as to their condition and proper treatment therefor. This oftentimes results in the condition of the patient reaching a point where it is beyond the aid of medical treatment.

PAR. 9. Respondent is not a medical doctor, he has never had any medical training; never served an internship in any hospital or been connected with the medical profession in any way other than as an orderly in hospitals. Respondent maintains no office or place where the condition of purchasers and prospective purchasers of his compound may be determined.

The use by respondent of the representations set forth above in his advertising literature has had, and now has, the capacity and tendency to, and does mislead and deceive a substantial part of the purchasing public into the false and erroneous belief that said representations are true and that said T. B. Compound is a cure for all types of tuberculosis and the causes thereof, chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum, stomach, and intestines, whether caused by or associated with a tubercular condition or any other affliction or condition of the human body.

Acting under the above mistaken and erroneous beliefs induced by the false and exaggerated statements and representations by the respondent as above referred to, the public has purchased a substantial volume of the respondent's said product. As a result trade has been

unfairly diverted to respondent from his competitors likewise engaged in the manufacture, sale, and distribution of treatments intended to be used and used for relieving the pains incident to the diseases and afflictions of the human body for which respondent recommends his compound, or for building up the resistance of the patients to such diseases and afflictions, who truthfully represent the extent of the therapeutic value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent Emile Carpentier, an individual, trading as Dr. Emile Carpentier, are to the prejudice and injury 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 respondent, testimony and other evidence taken before John W. Norwood, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, oral argument not having been requested, and the Commission having made its 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, Emile Carpentier, an individual, trading as Dr. Emile Carpentier, or trading under any other name, or through any corporate or other device, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a medicinal product now designated as "T. B. Compound," or any other medicinal product containing substantially the same ingredients or possessing substantially the same properties, sold under that name or any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly:

1. Representing that said product has any curative, remedial, or therapeutic value, or is in any way beneficial in the treatment of tuberculosis of the lungs, larynx, intestines, kidneys, brains, or tuberculosis of any other part or parts of the human body.

Order

26 F. T. C.

2. Representing that said product has any curative, remedial, or therapeutic value, or is in any way beneficial in the treatment of chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum, or of diseases and maladies of the stomach and intestines, or of any other similar or allied condition or conditions of the human body.

3. Representing that said product contains any oriental herbs of any nature or description whatsoever.

4. Representing that physicians have prescribed said product for patients suffering from any tubercular conditions, or that physicians have sent critical and incurable consumptive patients to the said Emile Carpentier to take said product.

5. Representing that "Consumption" or tuberculosis in any form is cured by Emile Carpentier.

6. Representing through the use of the term medical doctor, or doctor of medicine, or any abbreviation thereof or any other professional designation of like or similar import that Emile Carpentier is a physician or doctor.

7. Representing that any one has been cured of tuberculosis in from 6 to 8 weeks, or any other period of time, by use of respondent's compound.

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

Syllabus

IN THE MATTER OF

RUSSEKS FIFTH AVENUE, INC., AND FASHION FIRSTS,
INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3226. Complaint, Sept. 14, 1937—Decision, Feb. 12, 1938*

Where a corporation, stock of which was owned by, and widely distributed to, general public, and which was engaged in advertisement, distribution, and sale of furs, coats, suits, dresses, hats, and other wearing apparel; and its corporate advertising agency, under common control, and engaged in designing, modeling, advertising, and fostering sale exclusively of such products as were offered by said first-named corporation in cooperation with others, and in publishing periodical "Fashion Firsts," sold to first corporation as principal subscriber and to other retail dealers throughout the United States for distribution to their patrons under aforesaid title and with imprint thereon of particular retailer, and depictions of live models of furs, coats, dresses, hats, and other articles of wearing apparel selected by such agency from group of manufacturers who, in cooperation with, and at instance and request of, said first-named corporation and itself manufacture, sell, and distribute said merchandise exclusively to it and other retail dealer subscribers to said "Fashion Firsts," with exclusive right in their respective localities to sell merchandise therein depicted; in soliciting sale and in sale and distribution of garments and wearing apparel sold by said first corporation, and of aforesaid "Fashion Firsts" magazine, and cooperating together and with others—

Represented and implied that the garments and wearing apparel described and advertised in said magazines were designed, fabricated, tailored, and made in England through use in magazine in question of pictorial representations of the British Royal Coat of Arms and depictions of the Royal Hussars and of rural and other parts of the British Isles, together with illustrations of garments and other wearing apparel thus offered, and designated and described by distinctively English names, together with statements referring to some part of the aforesaid Isles, such as "Buckingham," "What would a collection of English coats be without a highbuttoning reefer?"; "York House," "Knize has made one (a coat) for Fashion Firsts in a new hairy Scottish woolen" and other references and names of similar tenor and implication, along with frequent references to England and English taste, styling, garments, and places, and thereby indicated to retail dealers and to consuming public, and especially to persons of English blood or origin and to other purchasers with preference for goods manufactured or tailored in England, that the garments and other wearing apparel designated, described, and represented as aforesaid were designed, made and tailored in England upon authority of the Royal Warrant Holders Association or members thereof or by the British Government or members of the British royal family;

Notwithstanding fact neither said first named corporation nor its corporate advertising agency were members of said Association and neither the British Government nor said Association or any member of said family or of said Association having right to use said Royal Coat of Arms had ever granted or

consented to use thereof by them, and their aforesaid use thereof was without authority, warrant or consent of the legal owners and users;

With tendency and capacity to cause retail dealers and members of purchasing public to form erroneous belief that their said garments and wearing apparel were designed, tailored and made in, and imported from, England and with result of placing in the hands of others means whereby public might be deceived, and result that many retailers and members of purchasing public, acting under such erroneous beliefs induced by aforesaid misrepresentations, bought their said garments and wearing apparel and trade was unfairly diverted to them from competitors engaged in selling in commerce among the various States similar garments and wearing apparel truthfully advertised; to the substantial injury of competition in commerce:

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

Mr. Carrel F. Rhodes for the Commission.

Weisman, Quinn, Allan & Spett, 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 Russeks Fifth Avenue, Incorporated, and Fashion Firsts, Incorporated, corporations, hereinafter referred to as respondents, have been, for more than 1 year last past and are now, using unfair methods of competition in commerce as "commerce" is defined in said act of Congress; and it appearing to the 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. Russeks Fifth Avenue, Incorporated, and Fashion Firsts, Incorporated, are corporations, organized, existing, and doing business under and by virtue of the laws of the State of New York with their principal offices and places of business located at 390 5th Avenue, New York City, N. Y.

PAR. 2. Respondent, Russeks Fifth Avenue, Incorporated, hereinafter known and designated as "Russeks," is now and, for more than 1 year last past, has been engaged in the business of manufacturing, advertising, selling, and distributing furs, coats, suits, dresses, hats, and other wearing apparel. Said respondent now causes, and for more than 1 year last past has caused its said products, when manufactured and sold, to be transported from its principal place of business in New York City in said State, into the District of Columbia and through and into the several States of the United States other than the State of origin, where said products are delivered to retail stores, some of which are owned and operated by respondent, and to other purchasers thereof at their

701

Complaint

respective points of location. Said respondent, in the course and conduct of its said business, 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 furs, coats, suits, dresses, hats, and other articles of wearing apparel, and in offering such products for sale in commerce between and among the various States of the United States and in the District of Columbia.

Said respondent, Russeks, in the course and conduct of its said business, caused to be organized and incorporated, and controls respondent, Fashion Firsts, Incorporated, and uses said corporation as a medium or agency to design, fashion, model, and advertise the said furs, coats, suits, dresses, hats, and other merchandise manufactured, sold, and distributed by respondent Russeks.

PAR. 3. Respondent, Fashion Firsts, Incorporated, is a corporation wholly managed, controlled, and operated by respondent, Russeks. Said respondent, Fashion Firsts, Incorporated, in the course and conduct of its business designs, fashions, models, and advertises the said products manufactured and sold by said respondent, Russeks. Said respondent, Fashion Firsts, Incorporated, in the course and conduct of the business of designing, fashioning, modeling, and advertising the said furs, coats, suits, dresses, hats, and other products manufactured, sold, and distributed by said respondent, Russeks, has caused and now causes to be published, under the title "Fashion Firsts," certain magazines, booklets, brochures, circulars, and other periodicals which it circulates, sells, distributes, and transports through the mail and otherwise in interstate commerce from its principal place of business in the State of New York through and into other States of the United States and in the District of Columbia to retail dealers and other purchasers thereof at their several places of location.

PAR. 4. In the course and conduct of their said business as aforesaid, the said respondents, cooperating with each other and with others, in soliciting the sale, and in the sale and distribution of said products so manufactured and sold by the respondent Russeks and in the sale and distribution of said magazines, booklets, brochures, circulars, and periodicals, advertising said products, now represent and imply, and for more than 1 year last past have represented and implied, through said advertising media so sold, circulated, and distributed to dealers and others in said commerce as above alleged, that the coats, suits, and other apparel described and advertised in said magazines, booklets, brochures, circulars, and periodicals were and are designed, fabricated, manufactured, made, or tailored in England. Said representations and implications are made by the said respondents through the use in said advertising media of a pictorial repre-

sentation of the British Royal Coat of Arms, consisting of a shield supported by a lion and a unicorn, upon which shield is superimposed a crown, underneath the whole of which is inscribed "Dieu et Mon Droit"; and pictorial representations and descriptions of typical English scenes, one of which shows soldiers standing at attention, dressed to represent the Royal Hussars, and others which show rural and other views of parts of the British Isles. These pictorial representations of the British Royal Coat of Arms and typical English scenes are used in connection with pictorial representations appearing in said advertising media of suits, coats, and other apparel designated and described by distinctively English names accompanied by statements referring to some part of the British Isles. These distinctively English names and the accompanying statements are, in part, as follows:

Buckingham

What would a collection of English coats be without a highbuttoning reefer?

Piccadilly

"Fashion Firsts" was delighted with its baby box coat suit when it arrived from the talented hands of Digby Morton.

Marlborough

No Spring wardrobe can possibly be complete without a buttondown-the-front coat of English homespun.

York House

Knize has made one (a coat) for "Fashion Firsts" in a new hairy Scottish woolen. * * *

Windsor

Peter Russel reflected the Paris feeling for pockets in this three piece Irish homespun suit * * *

Regent Street

* * * Digby Morton immediately set to work to make the perfect bolero suit for "Fashion Firsts." It's made of an English Twill * * *

Hyde Park

Debenham saddle stitched the very short Scottish homespun jacket suit he made for "Fashion Firsts" * * * and added a new touch to English tailoring * * *. It's a reigning British fashion translated into "Fashion Firsts" economy * * *

"Fashion Firsts" has captured the very feeling and atmosphere of England with this new Spring Collection of BRITISH COATS AND SUITS as featured in Vogue.

A toast to England for the great success * * * sudden and dramatic * * * made by her young designers. "Fashion Firsts" salutes them once more, by devoting a whole collection of the first Spring coats and suits to British creators. Now, with England the cynosure of all eyes * * * the smart English woman emerges as a fashion figure * * * her superb poise to be imitated * * * her casual chic to be followed * * * her clothes to be copied. Recognizing this trend * * * "Fashion Firsts" has "done" England from the Scottish moors to Hyde Park * * * and has transplanted the very feeling and atmosphere of England, English fabrics and English fashions, into this superb group of "Fashion Firsts." Designers patronized by

Complaint

royalty have created these costumes * * * Digby Morton * * * Dorville
House * * * Debenham * * * Peter Russel * * * Knize * * *
Creed * * *

The said designations, descriptions, and representations hereinabove set out and described, and the pictorial representations of the British Coat of Arms and English scenes, as used and employed by said respondents, Russeks and Fashion Firsts, Incorporated, in cooperation with others, in describing the said products sold in interstate commerce are of English meaning, implication, and suggestion, and indicate to the retail dealers and to the consuming public, especially to persons of English blood or origin, and to other purchasers having a preference for goods fabricated, manufactured, tailored, or made in England, that the said furs, coats, suits, dresses, hats, and other wearing apparel thus designated, described, and represented were designed, fabricated, manufactured, made, or tailored in England by and upon authority of Royal Warranty Holders and members of the Royal Warrant Holders Association when in truth such is not the fact.

PAR. 5. The British Royal Coat of Arms is the property of the British Government and the right to its use and to the use of pictorial representations thereof is limited to the British Government and its functions and to the British Royal family and to Royal Warranty Holders, and members of the Royal Warrant Holders Association, that is to say those corporations, partnerships, and individuals, who as a result of long continued, faithful service to members of the British Royal family have, by them, been granted special permission so to use said Coat of Arms in recognition of said service.

The said respondents, Russeks and Fashion Firsts, Incorporated, have not rendered any conspicuous service to the British Government or to the British Royal family, and neither the British Government nor the British Royal family, nor any member thereof, has ever granted or consented to the use by said respondents of the British Coat of Arms and the use thereof by said respondents and others is without authority, warrant, or consent of the rightful owners and users thereof.

PAR. 6. The said representations of said respondents and others, as aforesaid, are false and misleading and have had and do have a tendency and capacity to mislead and deceive a substantial number of retail dealers and the purchasing public into the mistaken and erroneous belief that the furs, suits, coats, dresses, hats, and other wearing apparel so marked, branded, designated, advertised, and sold by respondents are manufactured by and with authority of the

British Government, the Royal British family, or British Royal Warranty Holders and are designed, fabricated, manufactured, tailored, or made in England and imported from England when such is not the truth in fact. The said representations of said respondents and others, have had and do have the capacity to induce retail dealers and members of the purchasing public to buy respondents' said merchandise because of the erroneous beliefs engendered by said false and misleading representations, and to divert trade unfairly from competitors, who are engaged in the sale of like merchandise to that sold by respondents in commerce in and among the various States of the United States and in the District of Columbia, who do not use such false and misleading representations. Said acts and practices deceive the public and injure competitors who do not misrepresent like products manufactured and sold by them and places in the hands of others the means whereby the public might be and are deceived.

PAR. 7. The above alleged acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 September 14, 1937, issued, and on September 15, 1937, served its complaint in this proceeding upon the respondents, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., corporations, 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, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer, dated December 29, 1937, was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the

Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their offices and principal place of business located at 390 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent, Russeks Fifth Avenue, Inc., is now, and for more than 1 year prior to the 14th day of September 1937, has been engaged in the business of advertising, distributing, and selling furs, coats, suits, dresses, hats, and other wearing apparel. Said respondent now causes, and for more than 1 year prior to September 14, 1937, has caused its said products, when sold, to be transported and distributed from its aforesaid principal place of business in New York, and also from its branch outlet located in the city of Chicago, State of Illinois, to the purchasers thereof, at their respective points of location in the several States of the United States, other than the States of New York and Illinois, and in the District of Columbia.

In the course and conduct of its business, said respondent, at all times herein mentioned, has been, and is now, engaged in substantial competition with various other corporations, and with partnerships and individuals likewise engaged in the offering for sale, sale, and distribution of similar garments and other wearing apparel in commerce between and among the various States of the United States and in the District of Columbia.

The stock in respondent, Russeks Fifth Avenue, Inc., is owned and widely distributed to the general public.

PAR. 3. Respondent, Fashion Firsts, Inc., is a closed corporation sponsored by respondent, Russeks Fifth Avenue, Inc., and a majority of its stock is owned by a few of the stockholders of respondent, Russeks Fifth Avenue, Inc., which said stockholders direct and control the business and policies of said respondent, Russeks Fifth Avenue, Inc., and said respondent, Fashion Firsts, Inc.

Respondent, Fashion Firsts, Inc., is an advertising agency for respondent Russeks Fifth Avenue, Inc. Said respondent, Fashion Firsts, Inc., in its business, designs, models, advertises, and fosters the sale of only such products as are offered for sale and sold by said respondent, Russeks Fifth Avenue, Inc., in cooperation with others.

Respondent, Fashion Firsts, Inc., publishes monthly and quarterly magazines under the title "Fashion Firsts," which are sold to retail

dealers throughout the United States, including respondent, Russeks Fifth Avenue, Inc. Respondent, Russeks Fifth Avenue, Inc., is the principal subscriber of said magazine service. Said magazines so purchased by said Russeks Fifth Avenue, Inc., and said other retail dealers, are distributed to their patrons. When so distributed to the public, said magazines bear the imprint "Fashion Firsts, Inc.," and also the imprint of the particular retail dealer so distributing them.

Said "Fashion Firsts" magazines contain pictures and representations on live models of furs, coats, suits, dresses, hats, and other articles of wearing apparel selected by Fashion Firsts, Inc., from a selected group of manufacturers who, in cooperation with, and at the instance and request of said respondents, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., manufacture and sell and distribute said merchandise exclusively to said respondent, Russeks Fifth Avenue, Inc., and other retail dealer subscribers to said "Fashion Firsts" magazines, who have the exclusive right, in their respective localities, for the sale of said merchandise so pictured and represented in said magazines, and who are advised by respondent, Fashion Firsts, Inc., of the names of the manufacturers from whom they may purchase said products.

Said respondent, Fashion Firsts, Inc., caused and now causes said magazine, which it sells and distributes, to be shipped, through the mail and otherwise, in commerce from its principal place of business in the city of New York to retail dealers at their respective places of location in the various States of the United States, other than New York and in the District of Columbia.

Said respondent, Fashion Firsts, Inc., is now, and at all times since more than 1 year prior to September 14, 1937, has been, engaged in substantial competition with other corporations and with partnerships and individuals engaged in designing, modeling, advertising, and fostering the sale of garments and wearing apparel similar to or like the aforesaid products sold by respondent, Russeks Fifth Avenue, Inc., and in publishing, circulating, selling, and distributing magazines and other periodicals and advertising media in connection therewith in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., in soliciting the sale and in the sale and distribution of garments and wearing apparel sold by respondent, Russeks Fifth Avenue, Inc., and in the sale and distribution of said magazine "Fashion Firsts," cooperating together and with others, now represent, and have represented and implied, that the garments and wearing apparel described and

advertised in said magazines were designed, fabricated, tailored, and made in England. Said representations and implications are variously made by the said respondents through the use in said magazine, "Fashion Firsts," of pictorial representations displaying the British Royal Coat of Arms, consisting of a shield supported by a lion and a unicorn, upon which shield is superimposed a crown, under the whole of which is inscribed "Dieu et Mon Droit," and other pictorial representations and inscriptions of typical English scenes, one of which shows soldiers standing at attention, dressed to represent the Royal Hussars, and other scenes which show rural and other parts of the British Isles.

These representations of the British Royal Coat of Arms and typical English scenes are used in connection with pictorial representations of garments and other wearing apparel designated and described by distinctively English names, accompanied by statements referring to some part of the British Isles. These distinctively English names and accompanying statements, designations, descriptions, and representations are, in part, as follows:

Buckingham

What would a collection of English coats be without a highbuttoning reefer?

Piccadilly

"Fashion Firsts" was delighted with its baby box coat suit when it arrived from the talented hands of Digby Morton.

Marlborough

No spring wardrobe can possibly be complete without a buttondown-the-front coat of English homespun.

York House

Knlze has made one (a coat) for "Fashion Firsts" in a new hairy Scottish woolen * * *.

Windsor

Peter Russel reflected the Paris feeling for pockets in this three-piece Irish homespun suit * * *.

Regent Street

* * * Digby Morton immediately set to work to make the perfect bolero suit for "Fashion Firsts." It's made of an English Twill * * *.

Hyde Park

Debenham saddle stitched the very short Scottish homespun jacket suit he made for "Fashion Firsts" * * * and added a new touch to English tailoring * * *. It's a reigning British fashion translated into "Fashion Firsts" economy * * *.

"Fashion Firsts" has captured the very feeling and atmosphere of England with this new Spring Collection of BRITISH COATS AND SUITS as featured in Vogue.

A toast to England for the great success * * * sudden and dramatic * * * made by her young designers. "Fashion Firsts" salutes them once more by devoting a whole collection of the first Spring coats and suits to British creators. Now, with England the cynosure of all eyes * * * the smart English woman emerges as a fashion figure * * * her superb poise to be

imitated * * * her casual chic to be followed * * * her clothes to be copied. Recognizing this trend * * * "Fashion Firsts" has "done" England from the Scottish moors to Hyde Park * * * and has transplanted the very feeling and atmosphere of England, English fabrics and English fashions, into this superb group of "Fashion Firsts." Designers patronized by royalty have created these costumes * * * Digby Morton * * * Dorville House * * * Debenham * * * Peter Russel * * * Knize * * * Creed * * *.

The aforesaid designations, descriptions, and representations hereinabove set out, and the pictorial representations of the British Royal Coat of Arms and English soldiery and scenes, as used and employed by said respondents, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., in cooperation with others, in describing said garments and wearing apparel sold in commerce as herein set out, are of English meaning, implication, and suggestion. Such designations, descriptions, and representations indicate to the retail dealers and to the consuming public, especially to persons of English blood or origin and to other purchasers having a preference for goods fabricated, manufactured, tailored, or made in England, that said garments and other wearing apparel thus designated, described, and represented were designed, fabricated, manufactured, tailored, and made in England upon authority of said Royal Warrant Holders' Association or members thereof, or by the British Government, or members of the British Royal Family, when in truth such is not the fact.

PAR. 5. The British Royal Coat of Arms is the property of the British Government and the right to its use and to the use of pictorial representations thereof is limited to the British Government and its functions, to the British Royal Family, and to Royal Warranty Holders and to members of the Royal Warrant Holders' Association, that is to say, those corporations, partnerships, and individuals who, as a result of long continued, faithful service to members of the British Royal Family, have been granted by them special permission to use said Coat of Arms, in recognition of said service.

The said respondents, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., are not members of the Royal Warrant Holders' Association; and neither the British Government, nor any member of the British Royal Family, nor the Royal Warrant Holders' Association, or any member thereof, having the right to use the British Royal Coat of Arms, has ever granted or consented to the use of said respondents of the British Royal Coat of Arms, and the aforesaid use thereof by said respondents is without authority, warrant, or consent of the legal owners and users thereof.

The use by respondents of said pictures of the British Royal Coat of Arms and English soldiery and scenes, and said names and

designations, in the manner hereinabove set out, serve as representations by respondents that the said garments and wearing apparel, so represented, sold, and transported, were designed, fabricated, manufactured, tailored, and made in England, and imported from England contrary to the facts.

PAR. 6. There are, among the competitors of respondents as referred to hereinabove, corporations, partnerships, firms, and persons who are engaged in the sale of garments and wearing apparel similar to the garments and wearing apparel mentioned by respondents in their advertising, who do not advertise and represent that their garments and wearing apparel were designed, fabricated, tailored, or made in England, or imported from England, when such is not the fact.

PAR. 7. The use of the aforesaid false and misleading representations and practices on the part of respondents in the sale and offering for sale of their said furs, coats, suits, dresses, hats, and other wearing apparel, has had and now has, the tendency and capacity to cause retail dealers and members of the purchasing public to form the erroneous belief that respondents' said garments and wearing apparel are designed, fabricated, tailored, and made in England, and imported from England, when such is not the truth in fact. Such acts and practices also place in the hands of others a means whereby the public might be deceived. Acting under such erroneous beliefs, induced by the various misrepresentations of respondents as hereinabove detailed, many retail dealers and members of the purchasing public have purchased respondents' said garments and wearing apparel. As a result trade has been unfairly diverted to respondents from competitors engaged in selling, in commerce among and between the various States of the United States, similar garments and wearing apparel which are truthfully advertised and represented. Thereby, substantial injury has been done, and is being done, by respondents to 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 respondents, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

26 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer dated December 29, 1937, filed herein by respondents, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all intervening procedure, 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, Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of furs, suits, coats, dresses, hats, and other garments and wearing apparel which were not designed, fabricated, tailored, or made in England, in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly:

Representing, through the unauthorized use of the British Royal Coat of Arms, or any simulation or imitation thereof, or through the unauthorized use of picturizations of English Royal Hussars or other English soldiery, or through the unauthorized use of the names of any of the members of the Royal Warrant Holders Association, or through use of any picturization of typically English scenes, places or people to designate, describe, or in any way refer to such garments and wearing apparel, or through any other means or device, or in any manner, that said garments and wearing apparel were designed, fabricated, tailored, or made in England.

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

Complaint

IN THE MATTER OF
SHEFFIELD SILVER 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 2638. Complaint, Nov. 21, 1935—Decision, Feb. 14, 1938

Where a corporation engaged in manufacture and sale, to retail jewelers located throughout the United States, of silver-plated hollow ware made by the electro-plating process, in purchase of products of which process, absent fixed standard for composition of base metal or fineness or quantity of silver to be applied generally, public is obliged to depend upon reputation of maker or of trade name or brand attached to product, or representations of maker or seller thereof—

Used, in conduct of its business, corporate name including words "Sheffield Silver," and featured its said name containing word "Sheffield" on letter-heads and invoices distributed in interstate commerce, and on labels affixed to cartons in which its said products were packed and shipped, and supplied salesmen, for presentation to prospects, with photographs of its said ware featuring corporate name as aforesaid, notwithstanding fact its said products were not made or manufactured in accordance with Sheffield process, long theretofore employed and identified by name "Sheffield" with ware of high sales value made by historic process in question;

With result that its said products were advertised as "Sheffield Silverware by Sheffield Company," and with tendency and capacity to confuse and deceive purchasing public with regard to true nature and quality thereof, and to induce purchasers to buy same in and on account of mistaken belief that they were made by aforesaid Sheffield process, and of thereby unfairly diverting trade to it from competitors engaged in sale in interstate commerce of products similar to those sold and distributed by it, and who truthfully and honestly advertise and represent the same, and of placing in hands of unscrupulous or uninformed retailers means and instrumentality whereby they might mislead members of purchasing public into erroneous belief that its said silver-plated hollow ware products were made in accordance with process aforesaid:

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. Alden S. Bradley and *Mr. Gerard A. Rault* for the Commission.

Mr. J. Leo Rothschild, 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 Sheffield Silver 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 New York, having its principal office and place of business in Jersey City, N. J.; and is now and for more than 1 year last past, has been engaged in the business of manufacturing silver-plated hollow ware, and in the sale and distribution thereof to retail jewelry dealers located throughout the United States, and causes said products when sold to be transported from its principal place of business in Jersey City, State of New Jersey, or from its place of origin in other States, to purchasers thereof in the States of Tennessee, Texas, Georgia, and other States of the United States and in the District of Columbia, at their respective places of business, and there is now, and there has been for more than 1 year 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 the respondent, and the respondent, use, in the manufacture of their product, the electroplating process, which process involves the submersion of the base metal form in a chemical solution or bath and, by the electrolization of silicate 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 projection 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 representations 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 excellency in 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 silver-plated 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 1 year last past, has been using as its corporate name, "Sheffield Silver Company, Inc.," and has caused said corporate name, containing the word "Sheffield," to be featured on its letter-heads 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 furnished to its salesmen for presentation to prospective customers in their sales talk, photographs of its silver-plated hollow ware featuring its corporate name; 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 are said products made or manufactured in Sheffield, England, in accordance with such process.

PAR. 5. The said representations made by the respondent in the use of the word "Sheffield" in its corporate name "Sheffield Silver

Company, Inc.," 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 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 the respondent as aforesaid, have tended to induce, and have induced, the purchase of respondent's products by various retail dealers of silver-plated hollow ware and have tended to divert trade, and have diverted 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. Such 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 the 21st day of November 1935, issued, and on December 27, 1935, served its complaint in this proceeding upon respondent, Sheffield Silver Company, Inc., 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 other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, and in opposition thereto by J. Leo Rothschild and Walter S. Beck, attorneys for the respondent, before William C. Reeves, an Examiner of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs, and oral arguments by counsel aforesaid, in support of the

complaint and in opposition thereto, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sheffield Silver Company, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Jersey City, N. J., and is now, and for more than 2 years last past has been, engaged in manufacturing silver-plated hollow ware, and in the sale and distribution thereof to retail jewelry dealers located throughout the United States. Respondent causes said products, when sold, to be transported from its principal place of business in Jersey City, State of New Jersey, into the various States of the United States other than New Jersey, and in the District of Columbia, at the respective places of business of purchasers. There is now, and for more than 2 years last past has been, a course of trade in 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 business, respondent is in competition with 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 in the District of Columbia.

PAR. 2. Competitors of respondent, and the respondent, use, in the manufacture of their products, the electroplating process, which process consists in taking a finished article, so far as its structure is concerned, and immersing it in a solution through which silver is electrolytically deposited on the base metal so that each part of the exposed surface is covered with a layer of silver. The plated silver thus produced varies in quality and value according to the composition of the base metal, the workmanship upon its form, the decoration, the amount and fineness of the silver deposited upon it, and left upon it after the finishing process.

There is no fixed standard for the composition of the base metal nor for the fineness or quantity of silver to be applied generally, so that the purchasing public, in purchasing said silverware, 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 representations of the maker or seller thereof, since the quality of the silverware cannot be determined except by laboratory tests.

PAR. 3. About 200 years ago a process was developed at Sheffield, England, by which sheets of copper and silver were fused, then rolled to sheets of the desired thickness, and from these sheets various articles of hollow ware were made. Hollow ware made by this process is of high quality and has been known in the silver industry as "Sheffield." The word "Sheffield," when applied to silver-plated ware, has a sales value. The Sheffield process is not now generally employed in the manufacture of hollow ware, but existing pieces of ware made by that process carry a high sales value. The name "Sheffield" has thus become identified in the public mind with a high quality of silverware manufactured by the Sheffield process.

PAR. 4. In the course and conduct of its said business, respondent, for more than 2 years last past, has been using as its corporate name Sheffield Silver Company, 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 are packed and shipped in commerce as herein described, and has furnished its salesmen, for presentation to prospective customers in their sales talks, photographs of its silver-plated hollow ware featuring its corporate name. 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 are said products made or manufactured in Sheffield, England, in accordance with said process.

As a result of the use of the word "Sheffield" in the manner herein described, in connection with the sale, advertising, and distribution of silver-plated hollow ware products of the Sheffield Silver Company, Inc., a retailer of Atlanta, Ga., advertised respondent's products in the Atlanta Journal, a newspaper having an interstate circulation, as "Sheffield Silverware by Sheffield Company."

PAR. 5. The acts and practices of the respondent in using the word "Sheffield" as part of its corporate name and otherwise, as herein described, in connection with the sale and distribution of silver-plated hollow ware in commerce, as herein set out, have had and have the tendency and capacity to confuse and deceive the purchasing public with regard to the true nature and quality of its products, and to induce purchasers to buy such products on account of the mistaken belief that respondent's products are made by the Sheffield process herein described. Trade is thereby unfairly diverted to respondent from competitors engaged in the sale in interstate commerce of products similar to those sold and distributed by respondent, which said competitors truthfully and honestly advertise and represent their products.

Further, the acts and practices of respondent, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail

dealers a means and instrumentality whereby said dealers may mislead members of the purchasing public into the erroneous belief that said silver-plated hollow ware products manufactured by the Sheffield Silver Company, Inc., are manufactured in accordance with the Sheffield process hereinbefore described.

CONCLUSION

The aforesaid practices of said respondent, Sheffield Silver Company, Inc., under the conditions and circumstances hereinbefore set forth, 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 an Act of 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 other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments made by Alden S. Bradley, counsel for the Commission, and J. Leo Rothschild, counsel for the respondent, and the Commission having made its findings as to the facts and 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, Sheffield Silver Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its silver plated hollow ware, produced by electroplating, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using the word "Sheffield" in its corporate name or in any other manner, so as to represent or imply that said electroplated hollow ware products are "Sheffield" or are made by the Sheffield process.

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

WILLARD F. MAIN, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE OF W. F. MAIN COMPANY, THE
MACHEN COMPANY, ETC.

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

Docket 2892. Complaint, Aug. 8, 1936—Decision, Feb. 14, 1938

Where an individual engaged in distribution and sale of coin operated vending machines and candy, confectionery, peanuts, and other commodities usually sold or vended through such machines; in selling his aforesaid machines through salesmen instructed by him in, and supplied with, examples of high-pressure salesmanship and with suggested forms of contact advertisements for their use in newspapers in communities in which they were canvassing—

- (a) Falsely represented, through such contact advertisements under such headings as "Help Wanted," "Male Help Wanted," "Employment," "Local Manager Wanted," "Position Open," "Manager Wanted," "County Manager Wanted," or headings of similar import and effect, in classified advertising pages of newspapers or periodicals and through such statements therein as "Manufacturer, well-rated, wants RELIABLE MAN in (name of town) TO HANDLE BUSINESS PROVEN TO BE PROFITABLE," etc., "Field Superintendent will be in ——— for a few days to select through personal interviews, a local Manager for ——— and vicinity. We want a man of integrity and average ability to look after business here. \$1,500 cash investment required. Investment protected. We are a national organization rated up to half million dollars. References required," etc., and others of similar tenor, that it had such positions or jobs at its disposal and was offering employment to persons who answered said advertisements;
- (b) Represented through his said agents, to prospective purchasers or "operators" of his said machines, thus contacted, that prospect's investment was fully protected and that cash return of 120 percent was guaranteed thereon and that if machines operating over a period of time varying from 18 months downward did not make such return, said individual would repurchase same at full purchase price, plus 6 percent interest, and less specified deductions, and that such undertaking was fully protected by guarantee bond and by his credit rating (operating under any one of various trade names employed by him) by Dun & Bradstreet, in claimed amounts ranging from \$300,000 to \$500,000;

Facts being contract employed by him in dealing with operators thus secured embodied large number of conditions precedent to such undertaking, or pretended undertaking, and it was his practice in case of operators failing to realize 120 percent on their investment and, after seeking diligently to comply with numerous terms and conditions imposed as aforesaid, to take advantage of such supposed repurchase agreement, to keep putting off such operators and finally refuse outright to repurchase machines in question, so that many of them, lacking funds, were unable successfully to prosecute suits instituted or were forced to settle for trivial amounts;

(c) Represented, as aforesaid, to prospects to whom his salesmen sold as many machines as prospect's cash on hand or to be raised would purchase, that he wanted a reliable operator in that particular community or territory to operate a chain of his machines and that he was a manufacturer and distributor of candies, confectionery, peanuts, and other commodities usually sold in such machines, with his primary interest in the sale of the commodities, and that machines which operator was obtaining for cash were only beginning of a chain, which he would sell on terms of one-third credit or note, and two-thirds to be paid from one-third of profits derived from operation of machines purchased for cash over specified period of time, and that average minimum monthly net return from operation was \$2 from each, with much higher maximum, and prepared and forwarded to operators letters or testimonials grossly exaggerating results obtained from operation of his said machines;

Facts being separate contract which prospective credit purchaser was required to sign made such credit expansion plan contingent upon prospect's furnishing to company, credit information or security satisfactory to his credit department, or payment of initial one-third by check or draft, it was known that prospective purchaser had no available credit recommendations or references and was raising all of his available cash for initial purchases, and purchasers, after consummation of initial transaction and signing of contract, almost uniformly found that said individual would not accept their note for one-third of machines to be purchased on credit, and that their credit was not satisfactory to his credit department, and misleading testimonials aforesaid were secured by him through gifts of one or two of his machines to operators for their signatures to such testimonials or letters, which did not represent average experience of operator; and

(d) Represented, as aforesaid, that exclusive territory would be allotted to prospective purchaser for operation of machines to be purchased and no other would be sold or allowed to operate therein during continuance of operator's contract, and that competitors, and particularly those distributing cheaper machines, would not grant any such exclusive arrangement, but even sold machines to a number of people within same particular territory, and that contracts for locations of the machines had been obtained from operators of various business establishments, agreeing in some instances personally to locate and place machines for prospects and in many instances exhibiting separate location contracts, and in many instances stating to purchasers regardless of wording of the two contracts, that said individual would not accept cash contract without also accepting credit one, and in one or two instances that latter contract had already been approved;

Facts being said individual, operating under his various trade names, in many instances sold his machines to different purchasers within supposedly exclusive territory and thereby unfairly appropriated territory of other operators, granted to many purchasers identical territory already allotted under operator's term of contract, neither contract contained any provision for the locating or placing of machines which salesmen in almost every instance falsely agreed to, location contracts furnished operators were unauthorized by owners and in some instances at fictitious locations, and salesmen, after the signing of the contract and agreements, in many cases, to supervise or place machines for the operator, immediately left locality;

Complaint

26 F. T. C.

With effect of confusing, misleading, and deceiving substantial portion of purchasing public into erroneous beliefs as to actual or usual profits to be derived from operation of said individual's vending machines and into belief that their investment guaranteed them return of 120 percent, as aforesaid, and that, failing such, they were entitled to refund of their money, as above stated, and were entitled to benefit of additional machines on credit, as aforesaid, by giving their personal notes for one-third of purchase price, with remainder to be paid out of earnings, and with exclusive territory for operation of machines, and with result, as consequence of mistaken and erroneous beliefs induced by such false and misleading representations, that such public purchased substantial volume of his said machines and confectionery products and trade was diverted to him from competitors likewise engaged in sale and distribution of coin operated vending machines and candies, confectionery, peanuts, and commodities for resale therein, and who truthfully represent the possible or usual earnings of the operators of their machines and the terms and conditions of sale; to the substantial injury of competition in commerce:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Elmer A. Johnson, of Cedar Rapids, Iowa, *Mr. Alfred Holman*, of Cincinnati, Ohio, *Rowan & Tesch*, of Milwaukee, Wis., and *Byington & Rate*, of Iowa City, 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 Willard F. Main, an individual doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company and New Specialty Company, being 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 said Commission that a proceeding by it in respect thereof would be in the interest of the public, issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Willard F. Main, is an individual doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company and New Specialty Company, with his principal place of business at Cedar Rapids, Iowa. The principal office and place of business of all the aforesaid companies are located in Cedar Rapids, Iowa, in the same building which houses the W. F.

Main Company. The respondent is now and for more than 1 year last past has been engaged in the business of distributing and selling in commerce, as hereinafter set out, coin-operated vending machines and candy, confectionery, peanuts, and other commodities for use in said vending machines, and causes said vending machines, candy, confectionery, peanuts, and other commodities, when sold, to be shipped and transported from his place of business in Cedar Rapids, Iowa, to operators and purchasers thereof located in States of the United States other than the State of Iowa. The vending machines sold by the respondent are those that are placed in public business places where members of the public may secure therefrom candy, confectionery, peanuts, and other commodities by inserting a coin in the machine.

PAR. 2. In the course and conduct of his business, the respondent, Willard F. Main, doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, is in direct and substantial competition with individuals, partnerships and corporations engaged in offering for sale and selling in interstate commerce among the several States of the United States, similar coin-operated vending machines.

PAR. 3. In the course and conduct of his business as described in paragraphs 1 and 2 hereof, said Willard F. Main sells his vending machines through salesmen whom he employs on a commission basis; each of the purchasers of such machines, termed by him in his advertising literature "Operators," is required to purchase enough machines to equip and operate a "chain"; and a contract is executed and entered into between said Willard F. Main, doing business under all the aforesaid trade names, which contract, among other things, contains the following provision:

* * * The W. F. Main Company (or other trade name of respondent as is the case) guarantees that if a cash return of 120% is not realized on the investment in the machines ordered above, from the operation of a vending machine route for a period of 18 months after the receipt thereof, it will repurchase the same, provided—

Then follow many conditions to be performed by the purchaser, which may be summarized as follows:

- (1) Machines put in prompt operation;
- (2) Buy all products (for use in the machine) from respondent;
- (3) Keep machines in good order and clean;
- (4) Set machine to vend at 70 cents to 85 cents per pound;
- (5) Rotate the products;
- (6) Notify company of all locations and changes thereof;

Complaint

26 F. T. C.

- (7) Make changes of location to keep same in most profitable places;
- (8) Furnish report each six weeks, showing location and kind of products sold and amount, date serviced and the amount taken in by each machine;
- (9) Operate the machine with skill, care and diligence;
- (10) Notify company if machine is out of order and obtain repair parts immediately.

Thereupon, in said contract it is stated that—

It is agreed that the sole and only remedy shall be that the company will repurchase all the machines ordered above, if in good condition, and any remaining confection, at the full purchase price paid therefor, plus 6 percent interest per annum, less the retail price of products vended, after deducting 20% thereof to cover location rental.

* * * * *

In consideration for the above liberal guarantee provision, purchaser agrees that he will not rescind this agreement for any reason inhering in and inducing the contract.

Then follows an exclusive territory provision in the contract, as follows:

The W. F. Main Company (or other trade name of respondent as is the case) agrees from this date to sell the "Magina" model vending machines (or other machines of the style and type of other trade names) to purchaser herein exclusively for operation in _____ (City), _____ (State), so long as purchaser complies with the foregoing conditions and buys additional machines for _____ days until _____ machines are in operation, and continues to actively operate all of his machines.

Respondent furnishes to his salesmen much literature picturing the glowing success of vending machine operators, representing that each machine makes a minimum of \$2 per month, emphasizing the fact that the more machines each operator has in use the more the profits to him depicting his guaranteed protection of investment against loss—some of which are as follows:

Regardless of where you start, you can develop a large route if you want to, as our credit plan enables the operator to go ahead without investing additional capital. It enables the operator to add machines and still make money for himself from their operation while the machines are paying for themselves. Our credit plan is very fair and wonderfully attractive, because it shows the faith we ourselves have in the earning power of these penny confection shops.

You can succeed with us. Our plan provides a history of 120% return, the first eighteen months, and we provide for this plainly in our sales agreement.

You are guarded against loss by our guarantee.

In this last paragraph it is stated, in small print, that—

We will repurchase your machines, plus 6% interest, just as provided in the order.

In said literature, under the heading "Earnings," it is stated that the average is over \$4 per month per machine.

Another paragraph in said literature to be furnished proposed purchasers is entitled "The Liberal Credit Expansion Plan," in which it is stated that the initial one-third of the purchase price of additional machines may be paid by an acceptable 12-months' note, without interest, and the balance payable only from one-third of the net profits from the operation of said machines over a period of 30 months, and that after the initial purchase, the operator can have the right of expanding under this credit plan until a route of approximately 400 machines is formed.

At the time the proposed purchaser or "operator" signs the contract for the purchase of the first of the chain of machines, he is required also to execute another contract for a number of other machines, varying in number, according to the prospective purchaser's or "operator's" cash on hand. This contract for the purchase of additional machines plainly provides that the company will accept his personal note, payable in 12 months from date, for one-third of the purchase price, and the company will accept in full payment of the balance of the two-thirds of the price, a sum equal to one-third of the cash return from the merchandise sold through the machines purchased over a period of 30 months, provided the prospective purchaser, or "operator," furnishes to the company, at Cedar Rapids, Iowa, credit information or security satisfactory to the company's credit department. If this note is not accepted by the company's credit department, the prospective purchaser or "operator" agrees to pay for this initial one-third by check or draft.

Although the wording in this last-named contract is clear, nevertheless, the respondent supplies to his salesmen literature and sales talk which said salesmen use to an unfair advantage upon the prospective purchaser or "operator," in that the salesmen know, in most instances, that the prospective purchaser or "operator" has no available credit recommendations or references except his initial cash outlay which they obtain; but they represent to him that his note will be acceptable, and in some cases go to the extent that they then and there approve the same.

The respondent, W. F. Main, trading and doing business under the various trade names hereinbefore enumerated, has granted in his contracts, and still does grant, to two or more different "operators" the same exclusive territory. This he accomplishes by using a different trade name in his sale to the respective operators.

Respondent prepares testimonial letters, not truthfully stating the facts, which he sends to operators and offers them one or two free machines if they will sign the same and return to him. Respondent further sends his check for \$2, to local banks, with the request that they obtain a testimonial from the local operator.

Complaint

26 F. T. C.

PAR. 4. In truth and in fact, the use by the respondent, operating under his various trade names, of his advertising literature and representations made by salesmen duly authorized to make such statements, has the tendency and capacity to confuse, mislead, and deceive purchasers or "operators" as to the real or usual profits to be derived from the operation of respondent's vending machines; also to confuse, mislead and deceive prospective purchasers or "operators" into the belief that their investment guarantees them a return of 120 percent and that the failure to earn such a percentage will entitle them to a refund of their money plus 6 percent interest; also to confuse, mislead and deceive purchasers and prospective purchasers, or "operators" into the belief that they can purchase additional machines, as provided in said contracts, by giving their personal note for one-third of the purchase price, the remaining two-thirds to be paid out of one-third of the earnings from the sale of products in said vending machines; also to confuse, mislead, and deceive purchasers and prospective purchasers or "operators" into the belief that they are obtaining an exclusive territory for the operation of said machines; also to confuse, mislead, and deceive prospective purchasers or operators as to the real value and earning capacity of said machines by the use of false and misleading testimonials, as aforesaid, when as a matter of fact, the earnings from respondent's machines do not average \$4 or even \$2 per month each, and respondent attaches so many conditions precedent on the part of the purchasers or "operators" in their contracts as to make it impossible for them to fully and substantially comply therewith and obtain the benefit of the repurchase agreement, and the 120 percent profit guarantee is a mere snare and subterfuge; also respondent uniformly refuses to accept the notes of the purchasers or operators for the third down payment on the additional machines and refuses them credit, and in the majority of cases, respondent's salesmen know that the credit of the prospective purchasers or "operators" will not be accepted, but misrepresent the true facts and say that said credit will be honored; also, the respondent, operating under his various trade names, in several instances did sell his machines to different purchasers within supposedly exclusive territory, using a different trade name in each of the purchaser's contracts, thereby unfairly appropriating the other "operator's" territory; also, the aforesaid testimonials do not represent the average experience of an operator, but in certain instances contain untrue statements and are procured through gifts or other inducements by the respondent to certain operators.

PAR. 5. There are many persons, firms, and corporations who manufacture, sell and distribute in interstate commerce coin-operated vend-

ing machines and coin-operated vending machines supplied with candy, confections, or other commodities similar to those of respondent, who truthfully represent the usual earning capacity of their products and their terms and conditions of sale, and who are in substantial competition with respondent.

PAR. 6. The foregoing false and misleading statements and representations of the respondent described and set forth herein have the capacity and tendency unfairly to divert trade to the respondent, Willard F. Main, trading as W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company and New Specialty Company, from competitors who sell similar products in interstate commerce, and to disrupt, demoralize, and otherwise injure the entire trade in coin-operated vending machines and in coin-operated vending machines supplied with the commodity for which such machines are to be used. The acts and practices of the respondent aforesaid have the tendency and capacity to and do mislead and deceive a substantial number of prospective purchasers of coin-operated vending machines into the erroneous belief that said representations are true, and cause a substantial number of said prospective purchasers, because of such erroneous belief, to purchase the coin-operated vending machines of the respondent to the injury of said purchasers and to the injury of said competitors.

PAR. 7. The above acts and practices of the respondent are to the injury of the public and of respondent's competitors 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, 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 8, 1936, issued, and on August 12, 1936, served its complaint in this proceeding upon respondent Willard F. Main, an individual doing business under the trade names and styles of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty 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, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Com-

mission, and in opposition to the allegations of the complaint by Elmer A. Johnson and Charles Rowan, attorneys for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the Commission closed its case and the respondent, through his counsel, waived the taking of further testimony on his behalf. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, the filing of briefs having been waived and oral argument of counsel for respondent not having been requested; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Willard F. Main, is an individual doing business under the trade names and styles of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, with his principal place of business at Cedar Rapids, Iowa. The respondent, Willard F. Main, is now, and for several years last past has been, engaged under the aforesaid trade names in the business of distributing and selling coin-operated vending machines, and also candy, confectionery, peanuts, and other commodities usually sold or vended through said machines, and has caused, and still causes, such vending machines, candy, confectionery, peanuts, and other commodities, when sold, to be shipped and transported from his place of business in Cedar Rapids, Iowa, to purchasers or "operators" thereof located in States of the United States other than the State of Iowa. Respondent has sold and distributed, and still sells and distributes, a substantial portion of the coin-operated vending machines, and the confectionery products generally vended therein, which are sold and distributed throughout the United States. The respondent styles or designates a purchaser of his machines as an "operator," and, in the majority of cases, sells a number or chain of such machines to one purchaser or "operator." These machines are placed or located in public business establishments by the purchaser or "operator" or by respondent's salesmen, and the members of the public may, and do, secure candy, confectionery, peanuts, and other commodities therefrom by inserting a coin and turning a knob or handle, pulling a lever, or other mechanical process.

PAR. 2. In the course and conduct of his business, the respondent, Willard F. Main, doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, is now, and has been, in direct and substantial competition with persons, firms, and corporations engaged in offering for sale and selling in commerce among and between the several States of the United States, coin-operated vending machines, candy, confectionery, peanuts, and other commodities similar to those usually vended through respondent's machines.

PAR. 3. In connection with the offering for sale, sale, and distribution of respondent's products, respondent employs salesmen on a commission basis. Before these salesmen are permitted to handle respondent's products they are given a correspondence course of instructions of eight or more lessons. The lessons comprising this correspondence course of instructions, together with the correspondence from respondent's sales managers, are replete with instructions and examples of "high pressure salesmanship."

The respondent also furnishes to his salesmen suggested forms of advertisements which he recommends that they run in newspapers of the local communities which they are canvassing, and a number of salesmen have inserted said advertisements to contact or "pull in" prospective purchasers. A few of such advertisements are as follows:

LOCAL MANAGER WANTED

Manufacturer, Well Rated, Wants
RELIABLE MAN
 In (name of town)

To handle **BUSINESS PROVEN TO BE PROFITABLE**

No selling or canvassing. Good for \$25.00 a week to right man to start. Cash investment of \$750.00 required which is secured and returnable. References given and demanded. Address X, Box ——— care of (name of paper) giving address.

LOCAL MANAGER WANTED

Field Superintendent will be in ——— for a few days to select through personal interviews, a local Manager for ——— and vicinity. We want a man of integrity and average ability to look after business here. \$1,500 cash investment required (in certain cases less). Investment protected. We are a national organization rated up to half million dollars. References required. Write, giving name, address, phone number. X-724, Journal.

Large Manufacturer, Well Rated Wants
RELIABLE MAN
 To Handle Established
 Business in ———

Findings

26 F. T. C.

No Selling or Canvassing. Good income to start. Investment of \$750.00 required, which is secured and returnable. References given and demanded. Write Box ———. Daily Citizen.

UNUSUAL business opportunity. Many merchants and others engaged in a business which is keeping them confined closely would welcome an opportunity for a business that will take them outdoors and yield an attractive income. Old established, highly rated national firm offers such an opening to industrious man. Cash investment of \$750. required. Investment protected and returnable. This should pay \$35. to \$50. weekly with rapid increase of earnings for right man. No selling. Car an asset. Address A. H. Care Tribune.

LOCAL MANAGER WANTED—National firm rated \$300,000 to \$500,000 wants a man of average ability to look after business in (city). Other openings also in nearby cities. Should be good for \$50. per week to right man. \$750.-\$1500. cash investment required, which is protected and returnable. No selling. References exchanged. Write Box ———, this paper, giving address and telephone number.

LOCAL MANAGER WANTED

Manufacturer, well rated, wants a reliable man to handle established business in ———. No selling or experience necessary. Income about \$100. monthly to start. Cash investment of \$750. required, which is secured and returnable. Larger investment pays proportionately larger income. References given and demanded. Address Box ——— (paper), giving address and telephone number.

COUNTY MANAGER WANTED

One industrious man of integrity and average ability to care for our business in every county in Kansas or ———.

No selling or experience necessary. Should pay up to \$50.00 weekly with rapid increase of earnings. Man selected will have permanent business of his own. Cash investment of \$1500. required, which is protected. Liberal credit plan. Over 45 years successful experience, rated up to half million, back of this business. References given and demanded.

These advertisements are intended to be, and have been, run under such headings as "Help Wanted," "Male Help Wanted," "Employment," and similar headings.

In response to the above advertisements and other solicitations by respondent's salesmen, prospective purchasers or "operators" have contacted and called upon respondent's salesmen. At this interview or subsequent ones, the salesmen have ascertained how much cash the prospective purchaser or "operator" has on hand, or can possibly raise, and have thereupon proceeded to sell the prospect as many coin-operated vending machines as the cash on hand, or to be raised, will purchase. The salesmen have then represented to the prospective purchaser that his investment is fully protected, that a cash return of 120 percent is guaranteed upon the investment, and, if the machines operating over a period of time varying from 18 months downward do not make this return, that the respondent will repurchase the machines at the full purchase price thereof, plus 6 percent interest, less

specified deductions; and further that all of this is fully protected by guaranty bond in the amount of \$10,000, and also by a credit rating of respondent, operating under any one of his trade names, by Dun & Bradstreet, in amounts ranging from \$300,000 to \$500,000. The salesmen have also represented that the respondent wanted a reliable man or "operator" in that particular community or territory to operate a chain of his machines, that respondent was a manufacturer and distributor of candies, confections, peanuts, and other commodities usually sold through these machines, and was interested primarily in the sale of these commodities and not in the sale of vending machines, and, further, that the machines which the prospective purchaser or "operator" was obtaining for cash were only the beginning of a chain of machines which respondent would sell to the prospective purchaser or "operator" on terms of one-third credit or note, and two-thirds from one-third of the profits derived from the operation of the machines purchased for cash over a specified period of time. The salesmen then represented that an exclusive territory would be allotted to the prospective purchaser or "operator" for the operation of the machines to be purchased, and that no other purchaser or "operator" would be sold or allowed to operate respondent's machines within that territory during the continuance of the "operator's" contract. The salesmen also represented that respondent's competitors, and particularly those distributing cheaper machines, do not grant any such exclusive territory arrangement and even sold a number of machines to a number of people within the same particular territory. The salesmen also represented that respondent's machines were the best money making vendors on the market, and that the average minimum net return from the operation of each of these machines for 1 month was \$2, and the maximum net return varied up to much higher figures. The salesmen then represented and elaborated upon the flexible credit expansion plan of the respondent which would enable the "operator" to develop a large route or chain of these machines without the investment of additional capital and without interest on the loan. A few of these representations are as follows:

Regardless of where you start, you can develop a large route if you want to, as our credit plan enables the operator to go ahead without investing additional capital. It enables the operator to add machines and still make money for himself from their operation while the machines are paying for themselves. Our credit plan is very fair and wonderfully attractive, because it shows the faith we ourselves have in the earning power of these penny confection shops.

You can succeed with us. Our plan provides a history of 120% return, the first 18 months, and we provide for this plainly in our Sales Agreement.

You are guarded against loss by our guarantee.

Please understand that this estimate of \$2 net per machine per month is an arbitrary estimate. Some machines earn much more and some much less. The

actual income will depend upon the skill, ability, and diligence with which the operator does the work.

The salesmen have also represented that contracts for locations for the machines have been obtained from the operators of various business establishments, and, in some instances, have agreed personally to locate and place the machines for the prospective purchaser or "operator" at these locations. In many instances, the salesmen have shown and exhibited separate location contracts.

All of the above representations made by respondent's salesmen have been, and are, actually or impliedly authorized by the respondent. The salesmen are directly authorized by respondent to make many of the misrepresentations above set out and respondent furnishes such salesmen with sales promotion lessons, instructions, and other literature incorporating such representations and recommending the use thereof in the sale of his machines. Respondent thus places in the hands of such salesmen a means to further said misrepresentations on apparent authority from him.

PAR. 4. After the respondent's salesmen have led the prospect to believe that all of the foregoing representations are true and have pictured the glowing success of other "operators," they have then informed the prospect of the price of these machines which have ranged per machine with 20 pounds of confections, from \$28.50 upward. If the prospective purchaser is sold on the idea, a contract is produced which, among other things, contains the following:

The company (which may be any of respondent's trade names) agrees that if a cash return of 120% is not realized on the investment in the machines ordered above from the operation of same on a vending machine route for a period of 18 months after receipt thereof, it will repurchase same provided: (Explanation in parenthesis supplied.)

Then follow many conditions to be performed by the "operator," which may be summarized as follows:

- (1) Machines put in prompt operation.
- (2) Buy all products (for use in machines) from respondent.
- (3) Keep machines in good working order, clean, and attractive appearance and well filled with respondent's products.
- (4) Keep machine adjusted to vend products at an average of 65 cents to 85 cents per pound.
- (5) Rotate the different kinds of products.
- (6) Notify the company of all locations and changes thereof giving dates, names and addresses.
- (7) Keep machines located in the most profitable places.
- (8) Furnish a report to company every 30 days (6 weeks in some cases) giving name and business address of person with whom each machine is then located, the date serviced, the amount and kind of

products vended, and the amount of money taken in by each machine, so that the company will know what the machines are doing.

(9) Continuously operate the machines with skill, care, and diligence.

(10) Pay all obligations entered into with the company incurred under the contract or any other contract, promptly when due.

(11) Notify company by registered mail if machine is out of order and obtain repair parts immediately.

Then follows a provision that:

In the event all the provisions herein to be performed by the operator, which are conditions precedent, are complied with by him, and if the above named cash return resulting from the operation of the above machines for the 18 months period is less than 120%, it is agreed that the sole and only remedy shall be that the company will repurchase all machines ordered above if in good condition with the exception of the usual wear from ordinary operation and any remaining confection at the full price paid therefor, plus 6% interest per annum, less the retail price of the products vended after deducting 20% thereof to cover location rental * * *

At the conclusion of said contract, and immediately above the places for the signature, there appears the following:

The company (name of one of respondent's trade names) agrees from this date to sell the above described (type) of Vending Machine to operator herein exclusive for operation in-----

 so long as operator complies with the foregoing conditions and buys additional machines every 30 days until ----- machines are in operation, and continues to actively operate all his machines. (Explanation in parentheses supplied.)

PAR. 5. If the purchaser or "operator" has been sold on the idea of purchasing a chain of machines and has not the cash available but wants to take advantage of the flexible credit expansion plan of respondent, he is then required to execute another contract providing for the purchase of additional machines. This contract, known as a credit order blank, among other things, contains the following:

This purchase is made with the understanding that the company will accept in full payment of $\frac{2}{3}$ of the price of above units a sum equal to $\frac{1}{3}$ the cash return from the merchandise sold through the above machines during the period of 30 months * * *

I am to have the privilege of giving my note without interest until due, payable in 12 months from the date hereof for my initial one-third of the purchase price of the units purchased hereunder, upon furnishing to the company at Cedar Rapids, Iowa, credit information or security satisfactory to the company's Credit Department; or, I will pay for this initial one-third of the purchase price by check or draft, payable to the order of the company, all before shipment is made; * * *

Although the wording of the foregoing contracts is as above set out, nevertheless, the respondent supplies to his salesmen literature and sales instructions as hereinbefore referred to which contain representations different from the provisions of these contracts, which said salesmen use to unfair advantage upon prospective purchasers or "operators" and which can be and have been used by respondent's salesmen in mulcting from a gullible and unsuspecting public many thousands of dollars. There is no provision in either contract for the location or placing of machines, yet salesmen have agreed, in almost every instance in the record, to furnish locations and have furnished to "operators" separate location contracts a number of which were unauthorized by the owner of the location and in some instances the locations were fictitious. The record shows also that, in many instances, respondent's salesmen have agreed to either supervise or actually have the machines placed for the operator, and, in a great number of instances, have skipped town immediately after the sale. There is evidence that respondent's salesmen have known in most instances that the prospective purchaser or "operator" has no available credit recommendations or references, and is raising all of his available cash for the initial purchase. This initial cash outlay is almost always obtained by the salesmen in the purchase under the first contract, but the salesmen have, in many instances, stated to the purchasers that regardless of the wording of the contracts the respondent will not accept the cash contract without accepting the credit contract. In one or two instances, salesmen have stated to prospective purchasers that the company had approved the credit contract by wire to them.

PAR. 6. After the deal has been consummated and the contract signed, the purchasers or "operators" almost uniformly find that the respondent will not accept their note for the one-third of the machines to be purchased on credit; that their credit is not satisfactory to the credit department in Cedar Rapids. In many instances, purchasers or "operators" executed only the cash contract. At the expiration of the time provided for in the contract, and after failing to realize 120 percent on their investment, and after having sought diligently to comply with all the terms and conditions imposed upon them, many purchasers or "operators" have sought to obtain a repurchase of the machines, as provided for in the contract. The evidence discloses that respondent has almost uniformly stalled them along, and finally has refused outright to repurchase the machines. Many operators have instituted suit at great expense to them, and because of their lack of funds have been unable to prosecute successfully these suits, or have been forced to settle for trivial amounts.

Many purchasers or "operators" have been granted exclusive territory for certain localities wherein the respondent has previously, or subsequently and during said "operator's" term of contract, granted the identical territory to other purchasers or "operators." Respondent also has prepared and forwarded to "operators" letters or testimonials, grossly exaggerating the results obtained from the operations of his machines, and has offered and given one or two of his machines free to them for their signatures to such testimonials or letters. He has also sent his check to local banks together with a copy of such letters, asking that the bank obtain the signature of one of his "operators," and said letters have been signed, returned to, and used by respondent in the sale of other machines.

PAR. 7. The respondent attaches so many conditions precedent on the part of the purchasers or "operators" in their contracts as to make it impossible for them fully and substantially to comply therewith and obtain the benefit of the repurchase agreement, and the 120 percent profit guarantee is mere snare and subterfuge. Respondent almost uniformly refuses to accept the notes of the purchasers or "operators" for the third down payment on the additional machines, and refuses them credit, and, in the majority of cases, respondent's salesmen know that the credit of the prospective purchasers or "operators" will not be accepted, but misrepresent the true facts and represent that said credit will be honored. The respondent, operating under his various trade names, in many instances, has sold his machines to different purchasers within supposedly exclusive territory, thereby unfairly appropriating the other "operator's" territory. The aforesaid testimonials do not represent the average experience of an "operator," but in certain instances contain untrue statements, and are obtained by respondent through gifts or other inducements to certain "operators," and these facts are not disclosed to prospective "operators"; also, respondent has no jobs or positions to offer or give as might be inferred from his advertisements "Local Manager Wanted," "County Manager Wanted," and "Help Wanted," but the same are in reality contact advertisements used in connection with the sale of respondent's products; and also, respondent does not furnish or agree to furnish locations for the machines sold by him.

PAR. 8. Many of respondent's competitors who sell and distribute, or manufacture, sell and distribute coin-operated vending machines and candy, peanuts, confectionery, and commodities for sale therein, do not, in any way, misrepresent the terms and conditions of sale or earnings of said machines and commodities.

Order

26 F. T. C.

PAR. 9. The use by the respondent of the representations set forth herein has had, and now has, the capacity and tendency to confuse, mislead, and deceive and has confused, misled, and deceived a substantial portion of the purchasing public into erroneous beliefs as to the actual or usual profits to be derived from the operation of respondent's vending machines; that their investment guarantees them a return of 120 percent, and that failure to earn such a percentage will entitle them to a refund of their money plus 6 percent interest; that they can purchase additional machines as provided in said contract, by giving their personal notes for one-third of the purchase price, the remaining two-thirds to be paid out of one-third of the earnings from the sale of products in said vending machines, and that they are obtaining an exclusive territory for the operation of said machines. As a consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to the purchasing public has purchased a substantial volume of respondent's machines and confectionery products with a result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the business of selling and distributing coin-operated vending machines, candies, confections, peanuts, and commodities for resale therein, who truthfully represent the possible or actual earnings of the operators of their machines and the terms and conditions of sale. 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 aforesaid acts and practices of the respondent, Willard F. Main, an individual, doing business under the trade names and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, and New Specialty Company, 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 re-

spondent, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, the respondent having waived the taking of further testimony and the filing of briefs on his behalf and not having requested oral argument 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 Willard F. Main, individually, or doing business under the trade name and style of W. F. Main Company, The Machen Company, Standard Mercantile Company, Appleton Novelty Company, or New Specialty Company, or under any other name or through any corporate or other device, his servants, employees, and representatives, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of coin-operated vending machines, candies, confectionery, peanuts, and other commodities for use in said vending machines, forthwith cease and desist:

1. From representing directly or indirectly, that a cash return of 120 percent on the investment is guaranteed from the operation of his machines for a period of 12 or 18 months, or for any other stated period of time.

2. From representing directly or indirectly that unless a specified percentage is realized by the purchaser from the operation of his machines over a specified period of time under stated conditions precedent he will repurchase the same at the purchaser's cost plus interest, unless and until he does so repurchase said machines, when the conditions precedent have been complied with or performed and said percentage is not realized from the operation of said machines over said specified period of time.

3. From representing directly or indirectly, that a profit of 120 percent, or any other sum, will be or is guaranteed from the operation of respondent's vending machines when in truth and in fact respondent's contracts do not so specify, and no guarantee is, or is intended to be, carried out.

4. From representing directly or indirectly, to purchasers or operators or prospective purchasers or operators, that they obtain an exclusive territory for the operation of said machines unless the territory described in their contracts is in truth and in fact exclusive and unless during the life of said contracts the respondent refrains from selling or offering for sale his vending machines in such terri-

tory to any person, firm, or corporation other than the holders of such contracts.

5. From representing directly or indirectly, that each machine nets a minimum average of \$2 per month or any other amount, when such is not the fact.

6. From representing directly or indirectly, through the use of such statements or expressions as "at least" or "as much as," or any other statements or expressions of similar import and effect or through any other means or devices or in any other manner, that his machine's minimum, usual and customary, or maximum earnings for any fixed period of time, are any net amount in excess of amounts actually earned during said fixed period of time by the average operators of respondent's machines under normal conditions in due course of business.

7. From representing directly or indirectly, that additional machines can be purchased on a flexible credit expansion plan, when in truth and in fact the respondent or his servants, employees, or representatives have knowledge that the purchasers thereof have not sufficient credit rating to obtain the benefits of this plan.

8. From representing directly or indirectly, to prospective purchasers that when and if said purchasers buy or contract to buy any of respondent's machines for cash, that simultaneously therewith or because of this cash purchase respondent will grant them the privilege of buying additional machines on credit, unless and until respondent is prepared to and does grant them such credit privilege.

9. From representing directly or indirectly, through advertisements inserted by respondent's salesmen in classified advertising pages of newspapers, magazines, or other advertising literature, under such headings as "Help Wanted," "Male Help Wanted," "Employment," "Local Manager Wanted," "Position Open," "Manager Wanted," "County Manager Wanted," or headings of similar import and effect or through the use of any other means, that respondent has such positions or jobs at his disposal or that such employment is being, or will be, offered to persons who answer said advertisements, when said advertisements are in reality contact advertisements used in connection with the sale of respondent's vending machines and confections.

10. From representing directly or indirectly, that contracts for the location of machines to be sold to the prospective purchaser or operator have been obtained unless and until such is the fact.

11. From representing directly or indirectly that respondent is primarily engaged in the manufacture and sale of candies and similar commodities and that the sale by him of coin-operated vending ma-

720

Order

chines is only incidental thereto or an outlet for the sale of such products.

It is further ordered, That the respondent shall, within 90 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.

IN THE MATTER OF
PASCAL COMPANY, INC.

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

Docket 2945. Complaint, Oct. 15, 1936—Decision, Feb. 16, 1938

Where a corporation engaged in manufacture of "Breatheasy," preparation, and atomizer or "nebulizer" for treatment of asthma, hay fever and kindred diseases, and in the sale and distribution thereof through distributors and drug stores in the various States, in substantial competition with those engaged in interstate sale and distribution of other preparations recommended for, and useful in, treatment of such diseases, and of atomizers for use in connection therewith; in extensively advertising its said product through various newspapers of interstate circulation and through radio broadcasts having interstate transmission, and through booklets and circulars issued and distributed by it—

Represented that said preparation was a cure or remedy for asthma, hay fever and kindred diseases, which could be used successfully without following any particular form of diet, and constituted a harmless remedy which would return the user to vigorous, buoyant health, had therapeutic value also in chronic bronchitis and numerous other specified ailments and conditions, including heart disease and cardiac distress, various skin diseases, and inflammations of the nose and throat, etc., and in neuralgia and neuritis, and was the one sure relief available for treatment of asthma, and a new medicament for such treatment, through such statements, among others, as "FOR ASTHMA * * * THE GREATEST DISCOVERY. Created by a physician to successfully cure his own asthma * * *." " * * * only one Remedy for ASTHMA And that Remedy is Breatheasy," " * * * beneficial, according to authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, * * *," " * * * the one, sure asthmatic relief available today * * * gives a sense of well-being, a return to vigorous, buoyant health * * *," " * * * no diet is necessary. You may eat anything you may desire," "Introduces a new medicament of scientific formula which applies synthetic adrenal gland extract vaporized * * *," etc.;

Facts being asthma, as classified by medical profession, may result from many varying causes, no specific cure for asthma is recognized by said profession, and such preparation is not cure therefor nor for hay fever, and, while preparation in question, as well as many other remedies, containing adrenalin, may in some cases temporarily relieve asthma, it does not constitute treatment therefor, and use thereof will not bring about or restore vigorous, buoyant health or give absolute and instant relief to sufferers therefrom, should not be taken at all in many cases in which diet is essential, and is no less dangerous to user because taken through "nebulizer" than if taken through hypodermic injection, and is not beneficial in treatment of chronic bronchitis, heart disease and various other ailments and conditions specified, and, as equivalent, through epinephrin content, of synthetic adrenalin, is not new medicament;

Complaint

With capacity and tendency to mislead and deceive public into erroneous belief that said "Breatheasy" was in truth and in fact a remedy and cure for asthma, hay fever and kindred diseases, and that in use thereof it was not necessary to follow any particular diet, and to induce such purchasing public to buy said "Breatheasy" in preference to other preparations designed for treatment of aforesaid diseases and offered for sale by manufacturers, retailers and distributors, and with result of unfairly diverting trade to it from such manufacturers, retailers and distributors of such other preparations who do not misrepresent the character and quality of their respective products or the results to be obtained in the use thereof:

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

Before *Mr. Henry M. White*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Clarence L. Gere, of Seattle, Wash., 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 Pascal Company, Inc., 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, Pascal Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1014 American Bank Building, Second Street at Madison, in the city of Seattle, within the State of Washington. Said respondent is now and for more than 1 year last past has been engaged in the manufacture and sale of a product known as "Breatheasy" for the treatment of asthma, hay fever, and kindred diseases, and of an atomizer or so-called "nebulizer" for administering the preparation "Breatheasy," and in the distribution thereof in commerce between and among the various States of the United States. It causes said "Breatheasy" and the nebulizer, when sold by it, to be transported to purchasers thereof located in the State of Washington and in various States of the United States other than the State of Washington. There is now and has been for a long time, to wit, for more than 1 year last past, a constant current of trade and commerce by respondent in said "Breatheasy" and said nebulizer, between and among the various States of the United States.

In the course and conduct of its said business, said respondent is now and for a long time, to wit, for more than 1 year last past, has been in substantial competition in commerce between and among the various States of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other preparations recommended for the treatment of asthma, hay fever, and kindred diseases, and of atomizers or nebulizers for use in connection therewith.

PAR. 2. The preparation "Breatheasy" and the atomizer or nebulizer used in connection therewith are manufactured by said respondent and are sold and distributed by said respondent through distributors and drug stores located in the various States of the United States.

PAR. 3. Said respondent, in the course and conduct of its said business as hereinbefore set out in paragraphs 1 and 2, has been and now is engaged in extensive advertisement of its said products as a means of furthering and aiding in the interstate sale and distribution of "Breatheasy" and the atomizer or nebulizer for use in connection therewith, and as media of such advertising it has been and now is using various newspapers of interstate circulation, and broadcasts over radio stations having interstate reception. Said respondent also issues booklets and circulars describing the said product "Breatheasy."

Said respondent in its said advertisements of the preparation "Breatheasy" and the atomizer or nebulizer used in connection therewith, manufactured and distributed by it, has made and is now making various false, deceptive, and misleading statements concerning said products. Among the statements which said respondent has used and is now using in its advertisements in newspapers and over the radio and in its booklets and circulars distributed with its said products, are the following:

WANTED: A distributor for a nationally known remedy for asthma. Would rather have somebody that has had experience in similar lines, or who is an asthmatic. This does not require a great deal of capital and is a money maker.

FOR ASTHMA

"Breatheasy"

(trade mark)

THE GREATEST DISCOVERY

Created by a physician to successfully cure his own asthma, "Breatheasy" is now sold on money-back guarantee

REMEMBER

There is only one

Remedy for

ASTHMA

And that Remedy is

Breatheasy

Complaint

Breatheasy is a creation of a physician, who himself suffered from asthma, and was developed until now it gives absolute, instant and complete relief. For asthmatics who seek relief, they will find this remedy their "doctor" ever ready to relieve them.

BREATHEASY means exactly what the name implies. It is the one, sure asthmatic relief available today. In working its wonders, BREATHEASY gives a sense of well-being, a return to vigorous, buoyant health. BREATHEASY was developed by a physician who suffered from asthma, and, in striving for relief, he evolved this marvelous remedy. If YOU suffer from asthma or if any of your friends are afflicted with the symptoms stop in at the West End Drug Store, First and Monroe, and ask to have this thoroughly marvelous treatment demonstrated. Remember, there is no charge.

Asthmatics everywhere hail the BREATHEASY method as the one remedy that can be relied upon.

During the use of "Breatheasy," no diet is necessary. You may eat anything you may desire.

In truth and in fact, "Breatheasy" is not a remedy for and it does not cure asthma. In any treatment for asthma the proper diet is essential, as mucus-forming foods are injurious in cases of asthma.

Respondent in its said advertising has created and is now creating upon the public the false impression and erroneous belief that "Breatheasy" is a reliable and dependable remedy and cure for asthma, hay fever, and kindred diseases, and that in the use of the same it is not necessary to follow any particular diet. In fact, "Breatheasy" is not a reliable and dependable cure for asthma, hay fever, or kindred diseases.

PAR. 4. The use by the said respondent, Pascal Company, Inc., of the foregoing false, deceptive, and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous and untrue belief that "Breatheasy" is in truth and in fact a remedy for and will cure asthma, hay fever, and kindred diseases, and that in using the same it is not necessary to follow any particular diet. Acting in such erroneous belief, the consuming public, and especially that portion of the public suffering from asthma, hay fever, or kindred diseases, have been induced and are now induced to purchase "Breatheasy" in preference to other preparations designed for the treatment of asthma, hay fever, and kindred diseases, and offered for sale by manufacturers, retail dealers, and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade is unfairly diverted to respondent from such manufacturers, retail dealers, or distributors of other preparations for treating asthma, hay fever, and kindred diseases, who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

PAR. 5. Said false, deceptive, and misleading representations of said respondent, contained in its advertisements, 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, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, MODIFIED 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 15th day of October 1936, issued and on October 20, 1936, served its complaint in this proceeding upon the respondent, Pascal Company, Inc., 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 and the filing of the respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before Henry M. White, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Clarence L. Gere, attorney for the respondent; and said testimony and other 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 other evidence, and briefs in support of the complaint and in opposition thereto, no oral argument having been heard, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pascal Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1014 American Bank Building, Second Street at Madison, in the city of Seattle, within the State of Washington. Said respondent is now, and has been since July 19, 1936, engaged

in the manufacture and sale of a preparation known as "Breatheasy" for the treatment of asthma, hay fever, and kindred diseases, and of an atomizer or so-called "nebulizer" for administering the preparation "Breatheasy," and in the distribution thereof in commerce between and among the various States of the United States. It causes said "Breatheasy" and the "nebulizer" when sold by it to be transported to purchasers thereof located in the State of Washington and in various States of the United States other than the State of Washington. There is now, and has been for more than 1 year last past, a constant current of trade and commerce by respondent in said "Breatheasy" and said "nebulizer" between and among the various States of the United States. In the course and conduct of its said business, respondent is now, and since July 19, 1936, has been, in substantial competition in commerce between and among the various States of the United States with sundry other corporations, and with partnerships, firms, and individuals engaged in the interstate sale and distribution of other preparations recommended for the treatment of asthma, hay fever, and kindred diseases, and of atomizers or "nebulizers" for use in connection therewith, which said preparations are useful in the treatment of said diseases.

PAR. 2. The preparation "Breatheasy" and the atomizer or "nebulizer," used in connection therewith, are manufactured by said respondent and are sold and distributed by said respondent through distributors and drug stores located in the various States of the United States.

PAR. 3. The respondent, in the course and conduct of its said business has been, and now is, engaged in extensive advertising of its said products as a means of furthering and aiding in the interstate sale and distribution of "Breatheasy" and the atomizer or "nebulizer" for use in connection therewith, and as media of such advertising it has been, and now is, using various newspapers of interstate circulation and broadcasts over radio stations having interstate transmission. Said respondent also issues and distributes booklets and circulars describing the said preparation "Breatheasy."

PAR. 4. The respondent, in its said advertisements of the preparation "Breatheasy" and the atomizer or "nebulizer" used in connection therewith manufactured and distributed by it, has made, and is now making, various statements regarding the efficacy of said preparation known as "Breatheasy" in the treatment of asthma, hay fever, and kindred diseases. Among the statements which said respondent has used, and is now using, in its advertisements in news-

papers and over the radio, and in its booklets and circulars distributed with its said products are the following:

For ASTHMA

"Breatheasy"

(trademark)

THE GREATEST DISCOVERY

Created by a physician to successfully cure his own asthma, "Breatheasy" is now sold on money-back guarantee

REMEMBER

There is only one

Remedy for

ASTHMA

And that Remedy is

Breatheasy

Breatheasy is a creation of a physician who himself suffered from asthma, and was developed until now it gives absolute, instant and complete relief. For asthmatics who seek relief, they will find this remedy their "doctor," ever ready to relieve them.

BREATHEASY is beneficial, according to authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, in serum rashes, urticaris (hives) and other skin diseases of the erythematous and eczematous types, in hay fever, in inflammation of the nose, throat, tonsils, larynx, and lungs, and in neuralgia and neuritis. This by no means completes the list, but it suffices to show the enormous value of this substance elaborated by the adrenal glands and what may happen if they are deficient.

BREATHEASY means exactly what the name implies. It is the one, sure asthmatic relief available today. In working its wonders **BREATHEASY** gives a sense of well-being, a return to vigorous, buoyant health. **BREATHEASY** was developed by a physician who suffered from asthma, and in striving for relief, he evolved this marvelous remedy. If YOU suffer from asthma or if any of your friends are afflicted with the symptoms, stop in at the West End Drug Store, First and Monroe, and ask to have this thoroughly marvelous treatment demonstrated. Remember, there is no charge.

Asthmatics everywhere hail the **BREATHEASY** method as the one remedy that can be relied upon.

During the use of "Breatheasy," no diet is necessary. You may eat anything you may desire.

Doctors had the only relief

for

ASTHMA

thirty years ago * * * but they did not know how to use it. Finally a physician who was an asthmatic, took the remedy and discovered how it could be used to give absolute, instant and complete relief. He called it **BREATHEASY**—Write today for complete information.

STOP

Suffering from

ASTHMA

"Breatheasy"

(Trade Mark)

740

Findings

Introduces a new medicament of scientific formula which applies synthetic adrenal gland extract vaporized thru the

"Breatheasy"

NEBULIZER

"Vapor, not a spray"

Now available, with money-back guarantee.

ASTHMA

"Breatheasy"

(Trade Mark)

with

SPECIAL NEBULIZER

is your best answer

for

ASTHMA

Supplies adrenal deficiency which is the prime cause of Asthma, thru special Nebulizer that delivers 10 times the vapor (not spray) possible with ordinary means. Not habit forming, not a drug.

All asthmatics will find BREATHEASY the one, sure relief available on the market today. Write for full complete details. There is no obligation.

Of course you know that epinephrin is the only specific remedy for asthma and hay fever, and that it has been in the hands of the medical profession for the past twenty years. Only two things prevented its coming into popular use for all sufferers at all times. They were, its high cost and the difficulty of its administration, we have overcome both of these obstacles in BREATHEASY.

The use of BREATHEASY in the treatment of asthma will conclusively prove to you that at last asthmatic sufferers have found the one, sure relief for this painful affliction.

That no other person, firm or corporation has any right to manufacture or in any manner deal in this vaporizer or any imitation thereof.

BREATHEASY

Gives you swift, sure relief

for

ASTHMA

All asthmatics will find BREATHEASY the one, sure relief on the market today. Write for full, complete details. There is no obligation.

PAR. 5. The respondent corporation is owned by Dr. Benjamin S. Paschall and other members of his family. Dr. Paschall is a physician and chief chemist of the respondent corporation. The respondent is engaged in the business of making pharmaceuticals and its principal product is epinephrin. The product epinephrin, together with the "nebulizer," an apparatus for administering the epinephrin, constitutes the commodity sold to the public in interstate commerce by the respondent under the trade name of "Breatheasy." The respondent maintains a laboratory in which the product epinephrin is manufactured. The product epinephrin is a solution of epinephrin hydrochlorides, at least 2½ percent, put up in physio-

logical salt solution containing traces of carminatives and preservatives of chemically pure grade. Its structure is racemic.

PAR. 6. Epinephrin may be obtained in two ways, namely, by synthetically building it up in the laboratory, and also by extracting it from the glands of animals. The epinephrin sold by the respondent is obtained synthetically. The epinephrin is put into the "nebulizer" and by means of the "nebulizer" is breathed into the lungs of the user. The epinephrin is not injected into the user by means of a hypodermic needle. The "nebulizer" sold and distributed by the respondent is an instrument which turns liquid into vapor and is the means by which the user takes the medicine into the body. The "nebulizer" is manufactured by the respondent for use in connection with its product epinephrin and the epinephrin, together with the "nebulizer," constitutes the commodity sold as "Breatheasy." The chemical ingredients used by respondent in manufacturing its epinephrin are purchased by the respondent in the open market for use in respondent's laboratory. Epinephrin contains the same properties as adrenaline and is synthetic adrenaline. The preparation "Breatheasy" is sold by the respondent for the purpose of treatment of asthma, hay fever, and kindred diseases. Adrenaline has been constantly used by the medical profession in the treatment of asthma for 30 years and has been customarily administered to the patient hypodermically.

PAR. 7. True asthma is defined as "A condition of shortness of breath caused by the constriction of the bronchial muscles and by the exudation of mucous into the narrow bronchial passages, the reason for which is a reflex due to the ingestion or inhalation of substances to which the patient is hypersensitive." There are many various forms of asthma or physical conditions which are generally classified by the medical profession as asthma. The basic causes of the ailments classified by the medical profession as asthma are not yet known to the medical profession, and asthma may result from many varying causes.

PAR. 8. There is no specific cure for asthma generally recognized by the medical profession. "Breatheasy" is not a cure for asthma nor is it a cure for hay fever. Asthma may be, and often is, cured when the cause of the asthma is known and eliminated. The elimination of the cause of asthma may sometimes be produced by surgery and by other methods, but it cannot be eliminated by "Breatheasy." "Breatheasy" as well as many other remedies containing adrenaline, may in some cases temporarily relieve asthma. "Breatheasy" does not constitute a treatment for asthma, and its use will not bring about or restore vigorous, buoyant health.

PAR. 9. "Breatheasy" will not give "absolute, instant, and complete relief" to sufferers from asthma and is not a sure relief for persons suffering with asthma. The use of "Breatheasy" is not harmless in all cases, and there are cases where its use would be distinctly dangerous. The use of "Breatheasy" is not beneficial in the treatment of chronic bronchitis, heart disease, cardiac distress, gastric ulcer, inflammation of the nose, throat, tonsils, larynx, lungs, neuralgia, or neuritis, and of urticaris (hives) except in very rare instances.

PAR. 10. In many cases of asthma, proper diet is very important and may become the means of effecting a cure. Many persons suffer from asthma due to being allergic to certain foods. In such cases diet is essential as only by refraining from using the particular food to which the sufferer is allergic may a cure be effected. In such cases diet is essential and "Breatheasy" will not give relief in these cases independent of the proper diet. In many of such cases "Breatheasy" should not be used at all. Epinephrin is no less dangerous to the user because it is taken by means of a "nebulizer" than it would be if taken by means of a hypodermic injection.

PAR. 11. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraph 4, are false and misleading. They have had, and do now have, the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that "Breatheasy" is in truth and in fact a remedy for, and will cure, asthma, hay fever, and kindred diseases, and that in the use of the same it is not necessary to follow any particular diet, and to induce such purchasing public to purchase "Breatheasy" in preference to other preparations designed for the treatment of asthma, hay fever, and kindred diseases and offered for sale by manufacturers, retail dealers, and distributors. The result of such false, deceptive, and misleading representations on the part of said respondent is to unfairly divert trade to said respondent from such manufacturers, retailers, or distributors of other preparations for treating asthma, hay fever, and kindred diseases, who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Pascal Company, Inc., are to the prejudice of the public and 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."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of Clarence L. Gere, counsel for respondent, to modify the order to cease and desist issued in this proceeding on September 8, 1937, or in the alternative to reopen the case for further hearing on question of fact, and the Commission having considered said motion and the record herein and being now fully advised in the premises.

It is ordered, That the motion to modify the order to cease and desist issued herein on September 8, 1937, be, and the same is hereby granted, and the said order is hereby modified to read:

It is ordered, That, the respondent, Pascal Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the preparation now known as, and sold under the name "Breatheasy," or any preparation, under whatever name sold, composed of the same or similar ingredients and possessing similar therapeutic properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that—

(a) Said preparation is a cure or remedy for asthma, hay fever, or kindred diseases;

(b) Said preparation can be successfully used without following any particular form of diet;

(c) Said preparation is a harmless remedy which will return the user to vigorous, buoyant health;

(d) Said preparation has a therapeutic or beneficial value in the treatment of chronic bronchitis, heart diseases, cardiac distress, gastric ulcer, serum rashes, and other skin diseases of the erythematous and eczematous types, inflammation of the nose, throat, tonsils, larynx, and lungs, and in neuralgia and neuritis; or that said preparation has any therapeutic or beneficial value in the treatment of urticaris (hives), except in very rare instances; or that said preparation has any beneficial value in the treatment of asthma other than to afford temporary relief in certain cases;

(e) Said preparation is the one sure relief available for the treatment of asthma;

740

Order

(f) Said preparation is a "doctor" ever ready to relieve asthmatics;
(g) and from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation unless and until said representations are true in fact.

It is further ordered, That the respondent, Pascal Company, Inc., 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
GOLDEN PEACOCK, INC.

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

Docket 3156. Complaint, June 18, 1937—Decision, Feb. 16, 1938

Where a corporation engaged in sale and distribution of its "Golden Peacock Bleach Cream" and "Miracream" facial preparations for bleaching and removing, as asserted, blemishes and disorders of the skin, to purchasers in other States and in District of Columbia, in substantial competition with those engaged in offering and selling in commerce, as aforesaid, compounds or preparations for use in treatment of some ailments, disorders, and conditions of the skin for which it recommended its aforesaid preparations, and including many who sell and distribute in commerce similar preparations without misrepresenting the properties or therapeutic efficacy thereof—

- (a) Represented, in radio broadcasts and advertisements in newspapers and periodicals of interstate circulation, that its said "Peacock" cream constituted an amazing new discovery, in the perfection of which 10 years was spent and in the development of which 30 eminent doctors and skin specialists worked, and that it contained costly refined ingredients from Spain and France which acted in a peculiar way on the outside layer of the skin and completely revitalized it and changed it in color and texture, and that no ordinary cream or lotion could bleach skin white and keep it white; and
- (b) Represented, as aforesaid, that said creams, as the case might be, were new and different, and would remove freckles, blotches, tan, and blackheads, and every slight blotch, and result in the coming, in place thereof, of alluring alabaster clearness and a skin like ivory, flawless and soft, and bring out the clear look of youth;

Facts being said products did not contain refined ingredients which would revitalize the skin and change its color and texture as above set forth, were not new discoveries or developed as aforesaid, would not produce an ivory or soft and flawless skin or remove, under all conditions and in all cases, blotches, freckles, tan, deep-seated discolorations, etc., over night, or in any period of time, irrespective of the cause of the imperfections or conditions, and would not nourish, revitalize or rejuvenate the skin, and had not been indorsed by leading medical authorities;

With capacity and tendency to confuse, mislead, and deceive members of the public into the mistaken and erroneous belief that its aforesaid preparations were different from other creams or ointments offered in commerce, and were perfected by eminent doctors and skin specialists during a period of years, and that they had been indorsed by leading medical authorities and beauty specialists, and had the property to nourish and rejuvenate the skin and were active, effective treatments for all discolorations, blotches, and disorders and skin blemishes, no matter from what cause, and to induce members of the purchasing public to buy and use said preparations because of the erroneous and mistaken beliefs engendered as aforesaid, and unfairly to divert trade to it from its competitors, to their substantial injury:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Richard H. Rhodes, of Paris, Tenn., 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 Golden Peacock, 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 thereto would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Golden Peacock, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its factory and principal place of business located at Paris, in said State. Said respondent corporation is now, and for more than 1 year last past has been, engaged in advertising, selling, and distributing toilet preparations including several designated as "Golden Peacock Bleach Cream" and "Miracream." It now causes, and for more than 1 year last past has caused, said preparations, when sold, to be shipped from its place of business in Paris, Tenn., to the purchasers thereof, some located in the State of Tennessee, and others located in various other States of the United States and in the District of Columbia.

Respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of facial creams and other preparations similar to those sold by it in commerce 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 as described in paragraph 1 hereof, in soliciting the sale, and selling, its preparations designated as "Golden Peacock Bleach Cream" and "Miracream," respondent now represents, and for more than 1 year last past has represented, in radio broadcasts having an interstate circulation, in letters, pamphlets, newspapers, magazines, circulars, wrappers, and other forms of advertising media, as follows:

An amazing new discovery. It is called "Golden Peacock Bleach Cream" and marks one of the most important skin discoveries in years. Ten years were

spent in perfecting it. Some thirty eminent doctors and skin specialists worked in its development.

It contains costly refined ingredients from Spain and France which act in a peculiar way on the outer layer of the skin—completely revitalizing it and changing it in color and texture to a child-like whiteness and texture.

But no ordinary cream or lotion * * * can bleach skin white and keep it white. You must use for this purpose a genuine bleach cream—Golden Peacock.

Smooth it on your skin tonight. Next morning notice how muddy sallowness has given way to unblemished whiteness * * * all imperfections that rob your true loveliness vanish too.

Give us 1 night to prove its effect; see freckles fade, blotches, tan, blackheads go.

Here's a chance to see this miracle of an ivory skin *almost over night* worked on your own face.

Do you want to see every freckle disappear from your face; every slight blotch leave; and in their place see alluring alabaster clearness come? A skin like ivory; flawless and soft.

Bring out * * * clear look of youth.

It's new! It's different! Just spread a little Miracream over your face and neck. It disappears into your skin like "magic", where it does its work fast and sure instead of staying on top like old-time sticky night bleaches that look messy and untidy * * * at night; after washing your face, your skin will be at least one shade lighter. Within 5 days you'll be tickled with the lovely white beauty Miracream gives you.

PAR. 3. In truth and in fact, the toilet preparations "Golden Peacock Bleach Cream" and "Miracream" do not contain costly refined ingredients imported from France and Spain which revitalize the skin and change its color and texture to a childlike whiteness and texture. Said preparations are not new discoveries developed after years of experimentation by eminent doctors and skin specialists. The use of said preparations will not produce or cause an ivory skin and will not make skin soft and flawless. The use of said preparations will not remove blotches, freckles, tan, pimples, liver spots, sallowness, deep-seated discolorations, imperfections, and blemishes overnight or in any other period of time and said preparations are not competent and effective treatments for the above-named conditions of the skin. Said preparations have not been endorsed by leading medical authorities and beauty specialists. Said products will not bleach skin white in all cases and will not keep skin white in all cases. Neither of said products nourishes, revitalizes, or rejuvenates the skin.

PAR. 4. The representations of respondent, as aforesaid, are false and grossly exaggerated, and have had, and do have, the capacity and tendency to confuse, mislead, and deceive members of the public into the mistaken and erroneous beliefs that respondent's products designated "Golden Peacock Bleach Cream" and "Miracream" are

different from other creams or ointments in existence and were perfected by eminent doctors and skin specialists during a period of years; that the preparations have been endorsed by leading medical authorities and beauty specialists; that said preparations have the property to nourish and rejuvenate the skin; and are effective treatments for all discolorations, blotches, skin disorders, skin defects, sallowness, liver spots, and skin blemishes, no matter from what caused. The said representations of respondent have had, and do have, the tendency and capacity to induce members of the public to buy and use said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade unfairly to respondent from competitors engaged in the sale of face creams and cosmetics similar to the preparations sold by respondent in commerce among and between the various States of the United States.

There are among the competitors of respondent, many who sell and distribute in commerce similar face creams and preparations who do not misrepresent the properties or qualities or therapeutic virtues, functions, uses, or effects of their said competing products.

PAR. 5. The above alleged acts and practices of the respondent are all to the prejudice and injury 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 the 18th day of June 1937, issued, and on the 21st day of June 1937, served its complaint in this proceeding upon the respondent, Golden Peacock, Inc., charging it with the use of unfair competition in commerce in violation of said act. After the issuance of said complaint, and filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before Robert S. Hall an examiner of the Commission theretofore duly designated by it, no testimony or other evidence being introduced by Richard H. Rhodes attorney for the respondent; and said testimony and other 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 other evidence in support of the allegations of the complaint, brief of counsel for the Commission, no brief having been filed by the respondent or oral argument having been heard; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Golden Peacock, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its factory and principal place of business located at Paris in said State. Respondent is now, and since 1928 has been, engaged in selling and distributing in commerce toilet preparations including facial creams designated as "Golden Peacock Bleach Cream" and "Miracream" designed and represented by respondent for the alleged purpose of bleaching and removing blemishes and disorders of the human skin.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent causes the said products, when sold, to be transported from its place of business in Paris, Tenn., to the purchasers thereof located at various points in the several States of the United States other than the State of Tennessee and in the District of Columbia.

Respondent is now, and has been since 1928, engaged in substantial competition with other corporations and with firms, partnerships, and individuals, engaged in offering for sale and selling in commerce between and among the several States of the United States and in the District of Columbia compounds or preparations for use in the treatment of ailments, disorders, and conditions of the skin for which the respondent recommends and sells its preparations.

Respondent sells its said products, "Golden Peacock Bleach Cream" and "Miracream" direct to the ultimate consumers and to the general public and to druggists who sell to the trade.

PAR. 3. In the course and conduct of its said business as described in paragraphs 1 and 2 hereof, in soliciting trade and selling its preparations designated as "Golden Peacock Bleach Cream" and "Miracream," respondent represented in radio broadcasts and in advertisements in newspapers and magazines having an interstate circulation as follows:

An amazing new discovery. It is called "Golden Peacock Bleach Cream" and marks one of the most important skin discoveries in years. Ten years

were spent in perfecting it. Some thirty eminent doctors and skin specialists worked in its development.

It contains costly refined ingredients from Spain and France which act in a peculiar way on the outer layer of the skin—completely revitalizing it and changing it in color and texture.

But no ordinary cream or lotion * * * can bleach skin white and keep it white. You must use for this purpose a genuine bleach cream—Golden Peacock.

Smooth it on your skin tonight. Next morning notice how muddy sallowness has given way to unblemished whiteness * * * all imperfections that rob your true loveliness vanish too.

Give us 1 night to prove its effect; see freckles fade, blotches, tan, black-heads go.

Here's a chance to see this miracle of an ivory skin *almost over night* worked on your own face.

Do you want to see every freckle disappear from your face; every slight blotch leave; and in their place see alluring alabaster clearness come? A skin like ivory; flawless and soft.

Bring out * * * clear look of youth.

It's new! It's different! Just spread a little Miracream over your face and neck. It disappears into your skin like "Magic", where it does its work fast and sure instead of staying on top like old time sticky night bleaches that look messy and untidy * * * at night; after washing your face, your skin will be at least one shade lighter. Within 5 days you'll be tickled with the lovely white beauty Miracream gives you.

PAR. 4. In truth and in fact the said toilet preparations, "Golden Peacock Bleach Cream" and "Miracream" set out and described in paragraphs 2 and 3 hereof, do not contain refined ingredients which revitalize the skin and change its color and texture to a child-like whiteness and texture. Said preparations are not new discoveries developed after years of experimentation by eminent doctors and skin specialists. The use of said preparations will not produce or cause an ivory skin and will not make skin soft and flawless. The use of said preparations will not remove under all conditions and in all cases blotches, freckles, tan, pimples, liver spots, sallowness, deep-seated discolorations, imperfections, and blemishes over night or in any period of time irrespective of the cause of said imperfections or conditions. Said preparations are not competent and effective treatments for the above-named conditions of the skin in all cases or under all circumstances or under all conditions. Said preparations have not been endorsed by leading medical authorities. Said preparations will not bleach the skin white in all cases and will not keep it white in all cases. Said preparations will not nourish, revitalize, or rejuvenate the skin.

PAR. 5. The representations of respondent set out and described in paragraph 3 hereof are false and grossly exaggerated and have had and do have the capacity and tendency to confuse, mislead and

deceive members of the public into the mistaken and erroneous beliefs that respondent's preparations designated "Golden Peacock Bleach Cream" and "Miracream" are different from other creams or ointments offered for sale in commerce and were perfected by eminent doctors and skin specialists during a period of years; that the preparations have been endorsed by leading medical authorities and beauty specialists; that said preparations have the property to nourish and rejuvenate the skin and are active, effective treatments for all discolorations, blotches, disorders, skin defects, sallowness, liver spots, and skin blemishes no matter from what cause.

PAR. 6. There are among the competitors of respondent many corporations, partnerships, and persons who sell and distribute in commerce face creams and preparations similar to "Golden Peacock Bleach Cream" and "Miracream" and other preparations sold by respondent, who do not misrepresent the properties or therapeutic efficacy of their products.

PAR. 7. The above described acts and practices of the respondent have had and do have the tendency and capacity to induce members of the purchasing public to buy and use said preparations because of the erroneous and mistaken beliefs engendered as above set out; and the tendency and capacity unfairly to divert trade to the respondent from its competitors in said commerce. Thereby, substantial injury has been, and is, being done by the respondent to competitors in commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Golden Peacock, 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 respondent, testimony, other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has

752

Order

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, Golden Peacock, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its toilet preparations "Golden Peacock Bleach Cream" and "Miracream," or any other preparations composed of substantially the same ingredients as said preparations, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That the use of said preparations or any of them:

- (a) Will nourish, revitalize, and rejuvenate the skin;
- (b) Will produce or cause a soft, flawless, ivory skin;
- (c) Will bleach the skin white and keep it white;
- (d) Will remove blotches, freckles, tan, pimples, liver spots, sallowness, deepseated discolorations, and imperfections from the skin.

2. That said preparations or any of them:

- (a) Contain refined ingredients which revitalize the skin and change its color and texture to a child-like whiteness and texture;
- (b) Are new discoveries, or that they, or any of them, were or are preparations developed after years of experimentation by eminent doctors and skin specialists;
- (c) Have been endorsed by leading medical authorities.

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
ABRAHAM SOHN AND BENJAMIN SOHN, DOING BUSI-
NESS AS SOHN BROS.

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

Docket 3199. Complaint, Aug. 10, 1937—Decision Feb. 16, 1938

Where two individuals engaged in the manufacture of mattresses made by them with new covers or "sheeting" or "drilling," and from cotton filling from old mattresses secured from dealers in such products, and in the sale of such mattresses, with their new covers and with appearance of new products made from materials which had never been used, to retailers at prices much lower than those of the necessarily much more costly new products with all new material, and, as thus engaged, in substantial competition with others engaged in manufacture and sale of mattresses—

Sold, as aforesaid, their new-appearing products with no labels, markings, or designations thereon, or in connection therewith, to indicate that they were in fact made from old, used, discarded, and second-hand mattresses, to retailers for resale to public without disclosure by latter of aforesaid facts;

With tendency and capacity to mislead and deceive many retailers and substantial portion of purchasing public into erroneous belief that said mattresses, made as aforesaid, were new products made from new materials, and with result, as direct consequence of such mistaken and erroneous belief, that number of the consuming public purchased considerable volume of their said products and trade was unfairly diverted to them from competitors engaged in manufacture and sale of new mattresses in commerce throughout the various States; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. George Foulkes for the Commission.

Mr. Charles Cohn and *Mr. Harold N. Blitstein*, of Chicago, Ill., 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 Abraham Sohn, an individual, and Benjamin Sohn, an individual, 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, Abraham Sohn and Benjamin Sohn, are individuals doing business under the name of Sohn Bros., with their principal place of business located at 1320 Roosevelt Road, Chicago, Ill. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing mattresses from old cotton and other materials which they obtain from old, used, discarded, and second-hand mattresses and from other sources and of selling the same to retailers located in the various States of the United States. Respondents cause, and have caused, said mattresses, when sold, to be transported from their place of business in Chicago to the aforesaid purchasers thereof located in the State of Illinois and to other of the aforesaid purchasers located in various other States of the United States. In the course and conduct of their business respondents are now, and have been, in substantial competition with other individuals, corporations, and firms likewise engaged in the manufacture and sale of mattresses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, described in paragraph 1 hereof, respondents have bought and still buy second-hand, old, used, and discarded mattresses, cotton and other used materials. The materials obtained from said second-hand, old, used, and discarded mattresses and the other used materials are combed with a machine and then used by respondents in the manufacture of mattresses which are covered with new covering and are sold by the respondent to retailers who resell the same to the purchasing public.

PAR. 3. The aforesaid mattresses manufactured from old, used, discarded, and second-hand materials, as described in paragraph 2 herein, have the appearance of new mattresses manufactured from materials which have never been used, and said mattresses are sold by respondents to retailers without any label, marking, or designation on or about said mattresses to indicate that they are in fact manufactured from old, used, discarded, and second-hand materials which have been made over by respondents into mattresses. Said mattresses sold to retailers by respondents are resold by such retailers to the public without disclosing the fact that such mattresses have been manufactured from old, used, discarded, and second-hand materials.

The cost to respondents of obtaining said old, used, discarded, and second-hand materials and manufacturing the same into mattresses is much less than the cost to manufacturers of manufacturing new mattresses, and respondents are thereby able to sell said mattresses at substantially lower prices than manufacturers of new mattresses can sell their products.

PAR. 4. The acts and practices of respondents, as hereinabove set forth, had and now have a tendency and capacity to, and do, induce many retail dealers and many of the purchasing public to purchase said mattresses manufactured from old, used, and discarded materials in the mistaken belief that they are purchasing new mattresses manufactured from new and unused materials. As a result, trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the manufacture and sale of mattresses and who truthfully label, mark, and designate the same. As a consequence thereof substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts, practices, and representations of respondents have been and are now all to the prejudice of the purchasing public and of respondents' competitors, as aforesaid, and have been and are now 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 August 12, 1937, issued and served its complaint in this proceeding upon respondents, Abraham Sohn, an individual, and Benjamin Sohn, an individual, doing business as Sohn Bros., 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Charles Cohn, attorney for the respondent, Abraham Sohn, and Harold N. Blitstein, attorney for the respondent, Benjamin Sohn; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission in the said complaint and answer thereto, testimony and other evidence, and brief in support of the allegations of the complaint, respondents having filed no briefs and no request having been made for oral argument; and the Commission having duly considered the same, and be-

ing now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Abraham Sohn and Benjamin Sohn, are individuals who, for some time last past have been engaged in the business of manufacturing mattresses under the trade name and style "Sohn Bros.," with their principal office and place of business located at 1320 Roosevelt Road, Chicago, Ill.

Respondents manufacture their product from material obtained from old, used, discarded, and second-hand mattresses, and from other sources. Respondents have caused said mattresses, when sold, to be transported from their place of business in Chicago to retail purchasers located in the State of Illinois and to other retail purchasers located in various other States of the United States.

In the course and conduct of their business, respondents have been in substantial competition with other mattress manufacturing concerns who are likewise engaged in the manufacture and sale of mattresses in commerce among and between various States of the United States.

PAR. 2. The larger part of respondents' business has consisted of manufacturing mattresses from old and previously used mattresses. Respondents, however are equipped to make mattresses from new materials. Respondents made new mattresses only when receiving orders for the same. New mattresses were not manufactured in quantities for the purpose of sale.

Respondents purchased old, previously used mattresses from which they obtained cotton fillings. These purchases were made from dealers in such merchandise, who make a business of collecting and selling old mattresses. Respondents purchased their old mattresses from the dealers either in the form of old mattresses or in bales of cotton obtained by the dealers from old mattresses. When the old mattresses were received by respondent at their plant, the mattresses were placed in a machine called a "picker." The "picker" operates in such a manner as to comb or separate the filling of the mattress. After the contents of the mattress have been separated, the respondents stuff the same into new mattress covers.

The mattress covers, known in the trade as "sheeting" or "drilling," and the old cotton and other materials obtained from old, previously used mattresses, are compressed by a machine in such a manner as to give the mattress form and shape.

Respondents sold the finished product to retailers, who resold the same to the purchasing public.

PAR. 3. The mattresses manufactured by respondents from old, used, discarded, and second-hand materials have the appearance of new mattresses manufactured from materials which have never been used.

All the covers, otherwise known in the trade as "sheeting" or "drilling," used by respondent in the manufacture of said mattresses, are new, and are purchased by respondent from dealers of such merchandise, and the purchasing public in buying such a mattress, unless informed by retailers, did not know that the contents of the mattress were obtained from old, previously used mattresses, since inspection by purchasers of the contents cannot be accomplished unless the covering material is cut and the contents examined. The mattresses were sold by respondents to retailers without any labels, markings or designation on or about said mattresses to indicate that they were in fact manufactured from old, used, discarded, and second-hand materials which respondents had made over into mattresses. Retailers to whom respondents sold the mattresses resold them to the public without disclosing the fact that the mattresses were manufactured from old, used, discarded, and second-hand materials.

The cost to respondents of manufacturing mattresses from old and previously used materials were substantially lower than the cost to respondents' competitors of manufacturing mattresses from new materials. Respondents purchased old cotton obtained from old and previously used mattresses at about one-half the prevailing price of new cotton. Consequently, respondents were able to, and did, sell mattresses made from old materials at a price substantially lower than the prices at which manufacturers of mattresses could sell mattresses made from new materials. Respondents sold their mattresses at prices ranging from \$2.50 to \$2.75 per mattress. New mattresses made from new materials and of the same type as respondents' mattresses, that is, in the same general cost class, were sold for about \$4.50 by respondents' competitors.

The use of new coverings, sheeting, and drilling, in the manufacture of mattresses, and the failure of respondents to properly label, tag, or otherwise indicate on the mattresses that the contents of the mattresses were old and previously used filling materials, is deceptive and leads purchasers to believe that the mattresses are new and manufactured out of new materials.

The acts and practices of respondents as hereinabove set forth had the tendency and capacity to mislead and deceive many retail dealers and a substantial portion of the purchasing public into the erroneous belief that said mattresses manufactured from old, discarded, and previously used mattress materials were new mattresses made from new materials.

760

Order

As a direct result of this mistaken and erroneous belief, a number of the consuming public purchased a considerable volume of respondents' mattresses with the result that trade has been unfairly diverted to respondents from concerns engaged in the manufacture and sale of new mattresses in interstate commerce throughout the various States of the United States.

As a result thereof, 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.

CONCLUSION

The aforesaid acts and practices of respondents, Abraham Sohn and Benjamin Sohn, individuals doing business as Sohn Bros., are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and brief in support of the complaint, respondents having filed no brief and no request having been made for oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved 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, Abraham Sohn and Benjamin Sohn, individuals doing business as Sohn Brothers, or under any other trade name, their representatives, agents, employees, successors, or assigns, in connection with the offering for sale, sale, and distribution of mattresses in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, through failure to affix or attach tags or labels thereto clearly and conspicuously showing that such mattresses are composed, in whole or in part, of second-hand or used materials, or through any other means or device,

Order

26 F. T. C.

that mattresses made from second-hand or used materials, in whole or in part, are composed of new materials.

It is further ordered, That the respondents shall within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

ELMER SUSSMAN, TRADING AS DIAMOND BROKERAGE
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3272. Complaint, Nov. 23, 1937—Decision, Feb. 16, 1938

Where an individual engaged in sale and distribution of diamonds, diamond rings, watches, and other jewelry, in commerce among the various States and in the District of Columbia; in advertising his said products through price lists, catalogs, and other advertising material published, issued, and circulated through the mails to his customers and prospective customers in the various States and in said District—

- (a) Represented that said products were composed of a grade and quality superior to grade and quality possessed by them, and their prices as being in excess of the customary retail prices at which said products usually sold, through such statements, among others of similar tenor, as \$900.00 LADIES DIAMOND SOLITAIRE, 2 carats, 98% perfect blue white set in all platinum * * * specially priced.-----\$150," "\$700.00 MAN'S (GENTLEMEN'S) DIAMOND SOLITAIRE, 2 $\frac{1}{8}$ carats, exceptionally brilliant and perfect * * * now-----\$350," etc., facts being such and other articles and items of merchandise thus listed and described did not possess retail values or prices represented, or closely approximating those represented, and were not of the carat, weight, or degree of perfection thus held out;
- (b) Represented that he was liquidating a stock of merchandise secured from bankrupt sales, banks, estates, and individuals at a fraction of the original cost, through such statements as "Now liquidating a distressed stock of diamond rings at a fraction of their original cost," and "* * * the greatest diamond values ever offered in the northwest * * *," and "These bargains are made possible through our constant effort to secure fine quality diamond jewelry from bankrupt stocks, individuals, banks, estates, and distressed sources," facts being he was not liquidating a distressed stock, as aforesaid set forth, at a fraction of the original cost of such rings, nor did his stock represent greatest value ever offered in northwest; and so-called bargains offered were not purchased from bankrupt stocks, etc., from which he obtained only an infinitesimal part of his stock, with balance purchased in usual channels from which competitors secured their merchandise;
- (c) Represented that various well-known makes of watches, "Value up to \$60. OUR PRICES \$10 to \$30," were "latest round, square or rectangular styles in yellow or white gold, 9, 15, 17, and 21 jewels," etc., and "fully guaranteed," facts being watches offered and described by him as above indicated were not newest style, as represented, but were, in most instances, second-hand and obsolete models; and
- (d) Represented, through letterheads, circulars, order blanks, and general business stationery, and through newspaper and magazine advertisements, that he was a diamond broker, facts being he was not such a broker, but merely a dealer in diamonds, diamond rings, watches and other jewelry;

Complaint

26 F. T. C.

With effect of misleading substantial number of purchasers and prospective purchasers into erroneous and mistaken beliefs that his said products were composed of superior materials and were of superior value, or were products which ordinarily retail, in the usual course of trade, for prices closely approximating those listed as being usual retail value or price of said merchandise, that he was liquidating a distressed stock of diamond rings and other merchandise at a fraction of the original cost, that the products were secured from bankrupt stocks, individuals, banks, estates, and distressed sources, and that watches sold were latest models and new merchandise, and of the value represented, and that the diamonds sold were 100 percent perfect and of the full carat weight represented, and that he was a diamond broker, and with result, as consequence of erroneous and mistaken beliefs induced by his said acts, that a substantial part of the purchasing public bought substantial quantity of his products, and of thereby unfairly diverting trade to him from competitors engaged in like and similar businesses and who truthfully represent their products and business status; to the substantial injury of 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. S. Brogdyne Teu, II for the Commission.

Stinchfield, Mackall, Crouse, McNally & Moore, 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 Elmer Sussman, an individual trading as Diamond Brokerage 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 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, Elmer Sussman, is an individual trading as Diamond Brokerage Company, and having his principal place of business in the city of Minneapolis, State of Minnesota. He is now, and for more than 1 year last past has been, engaged in the sale and distribution of diamonds, diamond rings, watches, and other jewelry in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said products are sold respondent transports or causes the same to be transported from his principal place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof

located in other States of the United States and in the District of Columbia.

There is now and has been at all times mentioned herein a constant current of trade and commerce in said above described products sold by respondent 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, partnerships, firms, and corporations engaged in the business of manufacturing, selling, and distributing diamond rings, pins, watches, and other jewelry, and likewise engaged in competition with distributors of diamond rings and pins, watches and other jewelry in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, in soliciting the sale, and in the selling, of said products, and for the purpose of creating a demand on the part of the consuming public therefor, has advertised through the media of price lists, catalogs and other advertising matter published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him.

PAR. 4. Many articles and items of merchandise listed in said price lists, catalogs, and other advertising matter published and distributed by respondent are described and represented as possessing retail values or prices, carat weight, and degrees of perfection which they do not possess.

PAR. 5. Representative of the advertisements wherein respondent's products are described as possessing retail values or prices, carat weight, and degrees of perfection which they do not possess are the following:

1. \$900.00 LADIES' DIAMOND SOLITAIRE, 2 carats, 98% perfect blue white set in all platinum distinctively paved with 14 large diamonds, specially priced-----\$450.

2. \$700.00 MAN'S (GENTLEMEN'S) DIAMOND SOLITAIRE, 2½ carats, exceptionally brilliant and perfect, set in heavy handsome 14 K yellow gold setting, now-----\$350.

3. \$250.00 LADY'S DIAMOND SOLITAIRE, 1 carat blue white slightly imperfect, set in attractive 14 K white or yellow gold, 6 blue white side diamonds, now-----\$125.

In truth and in fact, said articles and items of merchandise listed in said price lists, catalogs, and other advertising matter, including

Complaint

26 F. T. C.

the articles referred to in subdivisions (1), (2), and (3) hereinabove do not possess retail values or prices described or represented and do not possess retail prices or values closely approximating said represented prices. Said articles and items of merchandise are not of the carat weight or degree of perfection represented in respondent's price lists, catalogs, and other advertising matter and are not substantially of the quality and character therein represented.

PAR. 6. The catalogs, price lists, newspaper and magazine articles, and other printed matter of respondent, and herein referred to, contain other misleading and false statements and representations, of which the following is representative:

Now liquidating a distressed stock of diamond rings at a fraction of their original cost.

In this column you will find the greatest diamond values ever offered in the northwest. These bargains are made possible through our constant effort to secure fine quality diamond jewelry from bankrupt stocks, individuals, banks, estates, and distressed sources.

WALTHAM, HAMILTON, BULOVA, ELGIN, GRUEN WATCHES FOR LADIES and MEN; latest round, square, or rectangular styles in yellow or white gold, 9-15-17 and 21 jewels; also pocket watches in 17 and 21 jewel railroad watches. All watches fully guaranteed. Values up to \$60.

OUR PRICES \$10 to \$30.

In truth and in fact, respondent was not, and is not, liquidating a distressed stock of diamond rings at a fraction of their original cost. His stock does not represent and has not represented the greatest values ever offered in the northwest. The alleged bargains offered by respondent were not purchased from bankrupt stocks, individuals, banks, estates, and distressed sources. Further, in truth and in fact, the respondent obtains only an infinitesimal part of his stock from the above enumerated sources. The remainder of respondent's stock is purchased in the usual channels from whence his competitors secure their stock of merchandise.

The watches offered for sale by respondent and described above are not the newest style as represented by respondent, but in most instances are second-hand and obsolete models of watches.

PAR. 7. The respondent, in soliciting the sale of, and in selling, his commodities, and for the purpose of creating a demand on the part of the consuming public for said commodities, now causes, and for more than 1 year has caused, himself to be represented through his letterheads, circulars, order blanks, and general business stationery as well as newspaper and magazine advertisements as a diamond broker.

In truth and in fact the respondent is not a diamond broker, but merely a dealer in diamonds, diamond rings, watches, and other jewelry.

PAR. 8. There are among the competitors of respondent manufacturers and distributors of like and similar products who refrain from advertising or representing through their catalogs and other advertising media, and through fictitiously advertised prices, or in any other manner, that the merchandise offered for sale by them has a merit, origin, and value that it does not have, or that they have a business status which they do not have.

PAR. 9. The foregoing false and misleading statements and representations on the part of the respondent have a tendency and capacity to, and do, mislead a substantial number of purchasers and prospective purchasers into the erroneous beliefs that:

1. The said products are composed of superior materials, and are of superior value, and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices represented as being the usual retail value or price of said merchandise;

2. Respondent is liquidating a distressed stock of diamond rings and other merchandise at a fraction of their original cost;

3. The said products were secured from bankrupt stocks, individuals, banks, estates, and distressed sources;

4. The watches sold by respondent are the latest models and new merchandise, and possess the values represented;

5. Diamonds sold by respondent are 100 percent perfect, and are the full carat weight represented; and

6. Respondent is a diamond broker.

As a result of such erroneous and mistaken beliefs induced by the aforesaid misrepresentations on the part of the respondent, a substantial portion of the purchasing public has purchased a substantial quantity of respondent's products, thereby unfairly diverting trade to the respondent from those competitors engaged in like and similar businesses referred to. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, 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.

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 23, 1937, issued, and on November 26, 1937, served its complaint in this proceeding upon respondent, Elmer Sussman, an individual trading as Diamond Brokerage Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

On January 13, 1938, respondent filed his answer to the Commission's complaint, in which answer he admitted all the material allegations of the complaint to be true and stated that he waived hearing on the charges set forth in the said complaint and that without further evidence or intervening procedure the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged 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 now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Elmer Sussman, is an individual trading as Diamond Brokerage Company, and has his principal place of business in the city of Minneapolis, State of Minnesota. He is now, and for more than 1 year last past has been, engaged in the sale and distribution of diamonds, diamond rings, watches and other jewelry in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When respondent sells his products, he transports or causes them to be transported from his place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now and has been at all times mentioned herein a constant current of trade and commerce in said above-described products sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the conduct of his business, is now and has been, in substantial competition with other individuals, and with

767

Findings

partnerships, firms, and corporations engaged in the sale and distribution, or in the manufacture, sale, and distribution of diamond rings, watches and other jewelry.

PAR. 4. The respondent, in soliciting the sale, and in the selling of his products, and for the purpose of creating a demand on the part of the consuming public therefor, has advertised through the media of price lists catalogs and other advertising matter published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia.

In the ways and means aforesaid, respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him. Many articles and items of merchandise listed in respondent's price lists, catalogs and other advertising matter published and distributed by him are described and represented as possessing retail values or prices, carat weight, and degrees of perfection which they do not possess. Representative of the claims and representations made in respondent's advertisements wherein his products are described as possessing retail values or prices, carat weight, and degree of perfection which they do not possess are the following:

\$900.00 LADIES DIAMOND SOLITAIRE, 2 carats, 98% perfect blue white set in all platinum distinctively paved with 14 large diamonds specially priced-----\$450.

\$700.00 MAN'S (GENTLEMEN'S) DIAMOND SOLITAIRE, 2¼ carats, exceptionally brilliant and perfect, set in heavy handsome 14 K yellow gold setting, now-----\$350.

\$250 LADY'S DIAMOND SOLITAIRE, 1 carat blue white slightly imperfect, set in attractive 14 K white or yellow gold, 6 blue white side diamonds, now-----\$125.

The articles and items of merchandise listed in the price lists, catalogs and other advertising matter do not possess retail values or prices described or represented and do not possess retail prices or values closely approximating the represented prices. The articles and items of merchandise are not of the carat, weight, or degree of perfection represented in respondent's price lists, catalogs and other advertising matter and are not substantially of the quality and character therein represented.

PAR. 5. The respondent has made other misleading and false claims and representations in his catalogs, price lists, newspaper and magazine advertisements and other printed matter, of which the following is representative:

Now liquidating a distressed stock of diamond rings at a fraction of their original cost.

Findings

26 F. T. C.

In this column you will find the greatest diamond values ever offered in the northwest. These bargains are made possible through our constant effort to secure fine quality diamond jewelry from bankrupt stocks, individuals, banks, estates, and distressed sources.

WALTHAM, HAMILTON, BULOVA, ELGIN, GRUEN WATCHES FOR LADIES and MEN; latest round, square or rectangular styles in yellow or white gold, 9-15-17 and 21 jewels; also pocket watches in 17 and 21 jewel railroad watches. All watches fully guaranteed. Value up to \$60.

OUR PRICES \$10 to \$30

The respondent was not, and is not, liquidating a distressed stock of diamond rings at a fraction of their original cost. His stock does not represent, and has not represented, the greatest value ever offered in the northwest. The so-called bargains offered by respondent were not purchased from bankrupt stocks, individuals, banks, estates, and distressed sources. The respondent obtains only an infinitesimal part of his stock from the above sources. The remainder of respondent's stock is purchased in the usual channels from which his competitors secure their stock of merchandise.

The watches offered for sale by respondent and described *supra* are not the newest style as represented by respondent. In most instances, they are second-hand and obsolete models of watches.

PAR. 6. In soliciting the sale of, and in selling his commodities and for the purpose of creating a demand on the part of the purchasing public for his commodities, the respondent now causes, and for more than 1 year has caused, himself to be represented through his letterheads, circulars, order blanks and general business stationery, as well as newspaper and magazine advertisements as a diamond broker.

The respondent is not a diamond broker, but merely a dealer in diamonds, diamond rings, watches, and other jewelry.

PAR. 7. The use by the respondent of the false and misleading statements and representations set out herein has a tendency and capacity to, and does mislead a substantial number of purchasers and prospective purchasers into the erroneous and mistaken beliefs that the products are composed of superior materials and are of superior value, or are products which ordinarily retail in the usual course of trade for prices closely approximating the prices listed as being the usual retail value or price of said merchandise; that respondent is liquidating a distressed stock of diamond rings and other merchandise at a fraction of their original cost; that the products were secured from bankrupt stocks, individuals, banks, estates, and distressed sources; that the watches sold by respondent are the latest models and new merchandise, and possess the values represented; that diamonds sold by respondent are 100 percent perfect and are the

787

Order

full carat weight represented; and that the respondent is a diamond broker.

PAR. 8. As a result of the erroneous and mistaken beliefs induced by the acts of the respondent, a substantial part of the purchasing public has purchased a substantial quantity of respondent's products, thereby unfairly diverting trade to the respondent from those competitors engaged in like and similar businesses and who truthfully represent the products offered for sale and sold by them, and their business status.

As a consequence thereof, substantial injury has been, and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Elmer Sussman, an individual trading as Diamond Brokerage Company, are 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."

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 respondent, in which answer respondent admits all the material allegations of the complaint to be true and states that he waives hearing on the charges set forth in the said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and its conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Elmer Sussman, an individual trading as Diamond Brokerage Company, or under any other trade name, his representatives, agents and employees, in connection with the offering for sale, sale, and distribution of diamonds, diamond rings, watches, and other jewelry in interstate commerce or in the

District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing that said products of respondent are composed of materials of a grade and quality superior to that actually contained;

2. Representing that fictitious prices in excess of the customary retail prices at which said products of respondent are customarily sold are the usual and customary retail prices for said products;

3. Representing that respondent is liquidating a stock of merchandise secured from bankrupt sales, banks, estates, and individuals at a fraction of the original cost, when said merchandise was purchased in the usual merchandise marts in the usual course of trade;

4. Representing that respondent's watches are the latest models, unless this is a fact;

5. Representing that respondent's diamonds possess a greater degree of perfection or a greater carat weight than they actually possess;

6. Representing that respondent is a diamond broker when such is not the fact.

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

Syllabus

IN THE MATTER OF

JOSEPH COMINSKY, TRADING AS WAVERLEY TAILORS,
MAYFAIR CLOTHING COMPANY, AND BARCLAY
CLOTHING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3193. Complaint, Aug. 3, 1937—Decision, Feb. 17, 1938*

Where an individual engaged, under trade name including word "Tailors" and other names, in offer and sale of ready-made suits, overcoats, and topcoats for men, through traveling salesmen and agents, to purchasers in various other States, in substantial competition with others engaged in sale and distribution of such ready-made articles in interstate commerce, including many selling their clothing through salesmen or agents and who have not adopted acts, practices, and methods as below set forth, and including (1) many who, as manufacturers of such garments, rightly represent themselves as such, (2) others who, as purchasers of such products dealt in by them, do not represent that they manufacture same, and (3) many who rightfully represent their said suits, overcoats, and topcoats for men as tailored according to the individual measurements of the purchaser from material of the color, weave, grade, quality, and texture selected from samples displayed, and (4) many who sell such garments made in stock sizes and do not represent same as made to purchaser's individual measurements—

- (a) Represented, through his said agents and representatives and otherwise, that orders solicited and received, as aforesaid, were forwarded to him at his principal place of business in New York City, and that said place of business was a tailoring establishment, facts being he was not a tailor or manufacturer of clothing, and none of his said ready-made suits, overcoats, and topcoats were made by him, but were manufactured by others;
- (b) Represented, as aforesaid, through order blanks supplied his said agents with this trade name thereon and directions for taking measurements regarded, usually, as essential to tailoring of suit, overcoat, or topcoat to customer's individual measure, and through the display of such blanks and the taking of such measurements, and through statements and conduct of his said agents, that the ready-made garments, sale of which was being thus solicited, were tailored to individual measurements of purchaser, and made use of such expressions as "Tailored-to-Fit," "Made-to-Measure," and "Custom-Made," facts being the particular garments involved had been previously manufactured without regard to individual measurements of purchaser to whom eventually sold, and were "ready-made," and were not tailored to fit, made to measure, custom made, or made to order, as represented, but, as aforesaid, were the ready-made variety or stock type, and altered, when deemed necessary, to conform partially to measurements shown on order blanks; and
- (c) Represented and implied, as aforesaid, to prospective purchasers that he would make for and deliver to them made-to-measure or tailor-made garments from material of the color, weave, quality, and texture selected by purchasers from samples exhibited by said salesmen or agents, facts being

Complaint

26 F. T. C.

suits and other garments sent to customers, in many instances, were not made from materials corresponding to samples as displayed to them by his said sales agents and representatives, and selected by the purchaser, but, in many instances, were furnished in materials substantially inferior in quality, grade, and texture to that of sample displayed and selected;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers into mistaken and erroneous beliefs that said individual was a manufacturer of men's clothing, garment ordered would be made to individual measurements of purchaser and tailored to fit, made to measure, custom made, or made to order, as understood by public, and, as ordered, would be made from material, color, weave, grade, quality, and texture selected by purchaser from samples exhibited by salesmen or agent, and into purchase of his said suits, overcoats, and topcoats in and on account of such beliefs, and with result, as a consequence thereof, that substantial trade in interstate commerce was unfairly diverted to him from competitors who do not use similar acts and practices in connection with the sale of their said products; to their injury and that of the public:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Benjamin F. Steinberg, 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 Joseph Cominsky, an individual doing business under the trade names Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing 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 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, Joseph Cominsky, is an individual, having his principal office and place of business located at 678 Broadway, in the city of New York, in the State of New York. Respondent, for more than 2 years last past, has been, and still is, engaged in the business of selling men's ready-made suits, overcoats, and topcoats, and in offering said articles of men's clothing for sale and selling the same in commerce between the State of New York and the several States of the United States, and in the District of Columbia. When said articles of clothing are sold, respondent transports, or causes the same to be transported, from his 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, and in the District of Columbia. There has been for more than 2 years last past, and still is, a constant current of trade and commerce in said articles of clothing thus sold and distributed by respondent, between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than 2 years last past has been, in substantial competition with other individuals and with partnerships, corporations, and firms engaged in the manufacture, or in the sale and distribution, of like and similar articles of men's clothing in commerce 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 aforesaid, the respondent, by and through sales agents and representatives, sells and has sold men's ready-made suits, overcoats, and topcoats directly to the persons by whom such suits, overcoats, and topcoats are to be worn. Respondent furnishes and has furnished to his sales agents and representatives order blanks, bearing one of his trade names, which set forth directions for taking measurements usually regarded as essential to the tailoring of a suit, overcoat, or topcoat to the individual measure of a customer. 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 that the men's ready-made suits, overcoats, and topcoats sold by respondent are tailored to the individual measurements of the purchasers thereof. Respondent also, through said sales agents and representatives and otherwise, represents to his customers and prospective customers, that the men's ready-made suits, overcoats, and topcoats sold and offered for sale by him are "Tailored-to-Fit," "Made to Measure," and "Custom-Made." Further, respondent represents, through said sales agents and representatives and otherwise, that orders so solicited and received are forwarded to said respondent at his principal place of business, in the city of New York, State of New York, which said place of business respondent and his said sales agents and representatives represent to be a tailoring establishment. Respondent further represents that said orders, when received by him, are filled according to said measurements, and of a cloth whose grade and texture is represented to be the same as the samples displayed by said sales agents and representatives and as selected by the customer.

PAR. 3. The statements and representations of respondent set forth in paragraph 2 hereof, and others similar thereto, have the capacity

Complaint

26 F. T. C.

and tendency to deceive purchasers and prospective purchasers of respondent's said articles of clothing into the false and erroneous beliefs:

(a) That respondent is a tailor or manufacturer;

(b) That the men's ready-made suits, overcoats, and topcoats sold and distributed by respondent are "Tailored-to-Fit," "Made to Measure," "Custom-Made," or "Made to Order";

(c) That said men's ready-made suits, overcoats, and topcoats are made in accordance with measurements submitted by said sales agents and representatives, and of a cloth whose grade and texture is the same as the samples displayed by such sales agents and representatives and as selected by said customers.

PAR. 4. In truth and in fact, respondent, trading under the various trade names hereinabove set forth, is not a tailor or manufacturer of clothing. None of the men's ready-made suits, overcoats, and topcoats sold by respondent are made by respondent, but they are made by other manufacturers. The said men's suits, overcoats, and topcoats sold and distributed by him were and are not "Tailored to Fit," "Made to Measure," "Custom Made," or "Made to Order," as represented, but were and are of the ready-made variety or stock type, and are altered, when deemed necessary, to partially conform to the measurements shown on the order blanks. Further, in many instances, the men's suits, overcoats, and topcoats sent to customers did not and do not correspond to the samples displayed to said customers by said sales agents and representatives, and as selected by said customers. Nor are said men's suits, overcoats, and topcoats made in accordance with measurements submitted by respondent's said sales agents and representatives, or of a cloth whose grade and texture is the same as that of the samples displayed by said respondent's sales agents and representatives, and as selected by the customers. In many instances, said garments are furnished in materials substantially inferior in quality, grade, and texture to that of the sample displayed and selected by the purchasers.

PAR. 5. There are, among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture the men's suits, overcoats, and topcoats which they sell, and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the men's suits, overcoats, and topcoats in which they deal, and which they resell, who do not represent that they manufacture said men's suits, overcoats, and topcoats. There are also, among said competitors, many who rightfully represent that the men's suits, overcoats, and topcoats which they sell are tailored according to the individual measurements of the pur-

chasers thereof, of a cloth whose grade and texture is the same as that of the samples displayed by them and by their sales agents and representatives; and others of said competitors who sell men's suits, overcoats, and topcoats made in stock sizes, and who do not represent that the men's suits, overcoats, and topcoats sold by them are made to the individual measurements of the purchasers.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 3 hereof, and into the purchase of respondent's said suits, overcoats, and topcoats in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from those competitors referred to in paragraph 5 as herein described. As a consequence thereof, substantial injury is done by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 7. Said 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.

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 3, 1937, issued, and, on August 4, 1937, served its complaint in this proceeding upon respondent Joseph Cominsky, trading as Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing 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 Commission by order duly entered herein extended the respondent's time for filing answer to January 22, 1938, on which date the respondent filed an answer to the complaint wherein he admitted all of the material allegations of the complaint to be true and stated that the Commission might, without further evidence or other intervening procedure, issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, which said answer was duly filed in the office of the Commission. Thereafter, this 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 now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph Cominsky is an individual engaged in the business of offering for sale, and selling, ready-made suits, overcoats, and topcoats for men, through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing. His office and principal place of business is located at 678 Broadway, New York, N. Y. Respondent has been trading and doing business under the names Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing Company.

Respondent in the usual course of such business has constantly engaged in interstate commerce, selling and shipping such clothing from his place of business in New York, N. Y., to purchasers located in various other States of the United States.

In the operation of his business as aforesaid, respondent comes into substantial competition with others engaged in selling and distributing ready-made suits, overcoats, and topcoats for men, in interstate commerce. Among such competitors are many who likewise sell such clothing through salesmen or agents, and who have not adopted the acts, practices, and methods in the sale thereof used by the respondent in the sale of his clothing as hereinafter described.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent, by and through sales agents and representatives, sells ready-made suits, overcoats, and topcoats for men directly to the persons by whom such suits, overcoats, and topcoats are to be worn. Respondent furnishes to his sales agents and representatives order blanks, bearing one of his trade names, which set forth directions for taking measurements usually regarded as essential to the tailoring of a suit, overcoat, or topcoat to the individual measure of a customer. 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 to such customers and prospective customers that the ready-made suits, overcoats, and topcoats for men sold by respondent are tailored to the individual measurements of the purchaser thereof. Respondent also, through said sales agents and representatives and otherwise, represents to his customers and prospective customers, that the ready-made suits, overcoats, and topcoats

for men sold and offered for sale by him are "Tailored-to-Fit," "Made-to-Measure," and "Custom-Made," and implies to prospective purchasers of his clothing that he will make for, and deliver to, purchasers of his clothing made-to-measure or tailor-made garments made from material of the color, weave, quality, and texture selected by purchasers from the samples exhibited by his salesmen or agents.

In many instances, the garments delivered by the respondent to purchasers are not made-to-measure or tailor-made garments, as that term is understood by the purchasing public, but are "ready-made" or "hand-me-down" garments, having been previously manufactured without regard to the individual measurements of the purchaser to whom the garment is eventually sold.

Respondent represents, through said sales agents and representatives and otherwise, that orders so solicited and received are forwarded to the respondent at his principal place of business in the city of New York, which said place of business respondent and his sales agents and representatives represent to be a tailoring establishment. Respondent further represents that said orders when received by him are filled by making a garment according to the individual measurement of the purchaser from a material of the color, weave, grade, quality, and texture selected by the purchaser from samples exhibited by said agents and representatives.

PAR. 3. The statements and representations of respondent set forth in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to deceive purchasers and prospective purchasers of respondent's said articles of clothing into the mistaken and erroneous belief that the respondent is a manufacturer of men's clothing; that the garment ordered will be made to the individual measurement of the purchaser; that such garment will be "Tailored-to-Fit," "Made-to-Measure," "Custom-Made," or "Made-to-Order" as those terms are understood by the public; and that the garment ordered will be made from material of the color, weave, grade, quality, and texture selected by the purchaser from samples exhibited by salesmen or agents of the respondent.

PAR. 4. In truth and in fact, respondent, trading under the various trade names hereinabove set forth, is not a tailor or manufacturer of clothing. None of the ready-made suits, overcoats, and topcoats for men sold by respondent are made by respondent, but they are made by other manufacturers. The said suits, overcoats, and topcoats for men sold and distributed by him were and are not "Tailored-to-Fit," "Made-to-Measure," "Custom-Made," or "Made-to-Order," as represented, but were and are of the ready-made variety or stock type, and are altered, when deemed necessary, to partially conform to the

measurements shown on the order blanks. In many instances, the suits, overcoats, and topcoats for men sent to customers are not made from materials corresponding to the samples displayed to said customers by said sales agents and representatives, and as selected by said purchasers. Nor are said suits, overcoats, and topcoats for men made in accordance with individual measurements of the purchasers submitted by respondent's said sales agents and representatives. In many instances, said garments are furnished in materials substantially inferior in quality, grade, and texture to that of the sample displayed and selected by the purchasers.

PAR. 5. There are, among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture suits, overcoats, and topcoats for men which they sell, and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase suits, overcoats, and topcoats for men in which they deal, and which they resell, who do not represent that they manufacture said suits, overcoats, and topcoats for men. There are also, among said competitors, many who rightfully represent that the suits, overcoats, and topcoats for men which they sell are tailored according to the individual measurements of the purchasers thereof from material of the color, weave, grade, quality, and texture selected by purchasers from samples displayed; among said competitors are many who sell suits, overcoats, and topcoats for men made in stock sizes, and who do not represent that the suits, overcoats, and topcoats for men sold by them are made to the individual measurements of the purchasers.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the mistaken and erroneous beliefs described in paragraph 3 hereof, and into the purchase of respondent's said suits, overcoats, and topcoats for men in and on account of such beliefs. As a consequence thereof, substantial trade in interstate commerce is unfairly diverted to the respondent from his competitors who do not use similar acts and practices in connection with the sale of their said products in said commerce, to the injury of such competitors and the public.

CONCLUSION

The aforesaid acts and practices of the respondent Joseph Cominsky, trading as Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing Company, 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

777

Order

of 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 answer filed herein on January 22, 1938, by respondent, admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent Joseph Cominsky, an individual trading as Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing Company, or under any other name or style, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of ready-made suits, overcoats and topcoats for men in interstate commerce and in the District of Columbia; do forthwith cease and desist from directly or indirectly representing:

1. That respondent manufactures the suits, overcoats and topcoats sold and distributed until he actually owns and operates, or directly and absolutely controls, the tailoring establishment, factory, or plant wherein such clothing is made;

2. That the ready-made suits, overcoats and topcoats sold by him are tailored-to-fit, made-to-measure, custom-made, or made-to-order, unless and until his said garments are actually cut and made to the individual measurements of the purchasers;

3. That the garments sold by respondent will be made from the material selected by the purchasers from samples submitted by his salesmen or agents, unless and until the garments sold by him are made from materials of the color, weave, quality, and texture selected by such purchasers.

It is further ordered, That the 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 the manner and form in which he has complied with this order.

IN THE MATTER OF
BUNTE BROTHERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1811. Complaint, Jan. 17, 1936¹—Decision, Feb. 19, 1938

Where a corporation engaged in manufacture and sale of "break and take," or "draw" or "deal" assortments of candy, sale and distribution of which, affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise substantial number of purchasers and consumers of such type of candy, and particularly of so-called "break and take" assortments, and appearance of which "break and take," "draw," or "deal" assortments in the markets of manufacturers of "straight" merchandise has been followed by marked decrease in sale of such "straight" goods, due to gambling or lottery feature connected with other—

Sold to wholesalers and retailers (1) "break and take" assortments, together with explanatory display cards for retailers' use, composed of number of chocolate-covered penny candies of uniform size and shape, together with number of larger pieces, to be given as prizes to those securing by chance one of a relatively few of said uniform pieces, enclosed colored centers of which differed from that of majority, and to purchaser of last of said uniform pieces in assortment, and (2) "draw" or "deal" assortments composed of number of packages of candy of varying size, together with punchboard or push card, as case might be, for sale in accordance with explanatory legend thereon and under a plan by which chance purchaser received, for nickel paid, one of said packages, of a value in excess of said sum, or nothing, dependent upon success or failure in punching of certain numbers or punching of last number in each of certain sections into which board was divided;

So packed and assembled that such various assortments were and might be displayed, distributed, and sold by the numerous retail dealer purchasers thereof to consuming public by lot or chance, in accordance with aforesaid or similar plans, and sold, as packed, as aforesaid and without alteration or rearrangement, and with knowledge and intent that such candy should and would thus be resold to purchasing public as aforesaid by retail dealers therein; contrary to public policy and in competition with many who do not make and sell such lottery assortments but sell, in competition therewith, their "straight" merchandise, and with many who regard such sale and distribution by lot or chance as morally bad and as encouraging gambling, and especially among children, and as injurious to industry in question through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed that same can be resold to public by lot or chance;

¹ Amended and supplemental.

Complaint

With result that retailers, finding such "break and take" or "draw" or "deal" candy more salable, purchased from it and others employing similar methods, trade was diverted to it and such others from aforesaid competitors, able to compete on even terms only by giving same or similar devices to retailers, some competitors began sale and distribution to public by lot or chance to meet competition of manufacturers selling such candy, in constant demand, and there was diversion of trade to it from its said competitors and a restraint upon and a detriment to the freedom of fair and legitimate competition in industry concerned; to the prejudice and injury of the public and competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Mr. Leroy Krein and *Mr. Samuel G. Clawson*, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit on May 1, 1930, issue its complaint herein charging and alleging that respondent herein is and has been guilty of 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, and

Whereas, This Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest:

Now, therefore, Acting in the public interest, pursuant to the provisions of the act of September 26, 1914, aforesaid, the Federal Trade Commission charges that Bunte Brothers, Inc. has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business located in the city of Chicago, State of Illinois. It is now and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and causes the said products, when so sold, to

be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in other States of the United States at their respective places of business; and there is now and has been for several years last past a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers 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. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various packages nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of pieces of chocolate-covered candies of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said chocolate-covered candies in the following manner:

The majority of said chocolate-covered candies in said assortment have centers of the same color but a small number of said chocolate-covered candies have centers of a different color. The said pieces of candy of uniform size, shape, and quality in said assortment retail at the price of 1 cent each but the purchasers who procure one of 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 of candy. The purchaser of the last piece of chocolate-covered candy of uniform size, shape, and quality in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers with said assortment of candy, a display card, to be used by the retailer in offering said merchandise for sale to the public, which display card

bears a legend or statement informing the prospective purchaser which color of the said colored center candies contained in said assortment entitles the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive one of the said larger pieces of candy free of charge.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of 1-pound boxes of assorted chocolates, together with a device commonly called a "punchboard." The said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5 cents each and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The punches on said board are arranged in three sections, and the purchaser of the last punch in the first and second section each receive two 1-pound boxes of candy and the purchaser of the last punch on the board receives four 1-pound boxes of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number in one of the sections or on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5 cents. 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 boxes of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. 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 plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy; (b) a box or boxes of candy.

The use by respondent of said method of the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's

competitors as hereinabove alleged. Said methods, 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.

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 1, 1930, issued and served its complaint upon the respondent, Bunte Brothers, Inc. Thereafter on January 17, 1936, the Federal Trade Commission issued and served an amended and supplemental complaint upon said respondent, charging that respondent had been and was using unfair methods of competition in commerce in violation of the provisions of said act. On February 8, 1936, the respondent filed its answer to said amended and supplemental complaint and, subsequent to the filing of said answer, testimony and other evidence in support of the allegations of the amended and supplemental complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Leroy Krein, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and said testimony and other 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 amended and supplemental complaint and answer thereto, testimony and other evidence, and brief in support of the complaint and in opposition thereto (oral arguments of counsel aforesaid having been waived), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bunte Brothers, Inc., is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in Chicago, Ill. Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers, and to retail dealers, located in all the States of the United States, and causes its said products when so sold to be transported from its principal place of business in Chicago, Ill. to

purchasers thereof in the State of Illinois and in all the other States of the United States at their respective places of business. And there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In so carrying on said business respondent is, and has been, engaged in active competition with other corporations, and with partnerships and individuals engaged in the manufacturing of candy, and in the sale and distribution thereof in commerce 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 the respondent has sold in commerce between and among the various States of the United States, to wholesale and retail dealers, certain packages or assortments of candy composed of a number of pieces of chocolate-covered candies of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy were to be given as prizes to purchasers of said chocolate-covered candies, in substantially the following manner:

The majority of said chocolate-covered candies in said assortment had centers of the same color, but a small number of said chocolate-covered candies had centers of a different color. The said pieces of candy of uniform size and shape in said assortment retailed at the price of 1 cent each, but the purchasers who procured one of the said candies having a center of a color different from the majority of said candies were entitled to receive, and were to be given free of charge, one of the said larger pieces of candy. The purchaser of the last piece of said chocolate-covered candy of uniform size and shape in said assortment was entitled to receive, and was to be given free of charge, one of the said larger pieces of candy. The aforesaid purchasers of said candy who procured a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortment, thus procured one of the said larger pieces of candy wholly by lot or chance.

Respondent furnished to said wholesale and retail dealers with said assortment of candy a display card to be used by the retail dealer in offering said merchandise for sale to the public, which display card bore a legend or statement informing purchasers and prospective purchasers which color of the said colored center candies contained in said assortment entitled the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser would receive one of the said larger pieces of candy free of charge.

The sale and distribution of said assortment involved the use of a lottery scheme, a game of chance, or a gift enterprise when said

assortment was sold and distributed to the ultimate consumers thereof. The respondent manufactured, sold, and distributed several assortments involving the above-described sales plan or principle, but varying in detail. One such assortment was described by respondent as "Mascot Bar Assortment," another such assortment was described by respondent as "Santa Claus Bar Assortment," and still another assortment was described by respondent as "Jar Bar Assortment." The evidence offered shows, and the Commission finds, that on or about April 1, 1934, the respondent discontinued the sale and distribution of assortments similar to those just above described to purchasers located in States other than the State of Illinois.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent was, and is, selling and distributing in commerce between and among the various States of the United States several other assortments of candy so packed and assembled as to involve the use of a lottery scheme, game of chance, or gift enterprise when sold or distributed to the ultimate consumers thereof. Such assortments were and are shipped or transported by respondent from its place of business in Chicago, Ill., to the purchasers thereof in all of the States of the United States at their respective points of location. Such assortments are composed of a number of packages of candy of varying sizes, together with a device commonly called a "punchboard." The said packages of candy are distributed to the consuming public by means of said punchboard in the following manner:

The said punchboard has a number of indicated holes, and in each hole a slip of paper bearing a printed number or legend is secreted. Sales are 5 cents each, and when a punch is made from said board one of the printed slips bearing a number or legend is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing customers and prospective customers as to which numbers receive a package of candy, and the size thereof. The punches on said board are arranged in sections, and the purchaser of the last punch in each section receives a specified package of candy. A purchaser who does not qualify by obtaining one of the numbers or legends calling for one of the packages of candy, or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from said board. The packages of candy are each worth more than 5 cents, and a purchaser who obtains one of the numbers calling for a package of candy receives the same for the price of 5 cents. The numbers on said board are effectively

concealed from purchasers and prospective purchasers until a punch or selection has been made and the printed slip of paper separated from the board. The packages of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

The respondent is and has been distributing several assortments involving the same principle but varying in detail. Some of the assortments are composed of packages of candy and other articles of merchandise to be given as prizes to purchasers selecting particular numbers or legends, and some of the assortments contain a device commonly called a "push card" rather than a punchboard, but the candy and other merchandise distributed by push cards involve the same plan or method as the punchboard.

PAR. 4. Candy assortments involving the lot or chance feature, as described in paragraph 2, are generally referred to in the candy trade or industry as "break and take" assortments. Assortments of candy as described in paragraph 3 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without any lot or chance features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" assortments. These terms will be used hereafter in these findings to distinguish the separate types of assortments.

PAR. 5. The wholesale dealers or jobbers to whom respondent sells, or has sold, its assortments resell, or have resold, same to retail dealers. Respondent also sells, and has sold, its assortments direct to retail dealers. Numerous retail dealers purchase, and have purchased, the assortments described in paragraphs 2 and 3 above either from respondent or from wholesale dealers or jobbers who in turn have purchased said assortments from the respondent, and such retail dealers have, and do, display said assortments for sale to the public as packed by the respondent, and the candy contained in the majority of said assortments is, or has been, sold and distributed to the consuming public by means of said "break and take" sales plan or method, or by means of the punchboards or push cards, in the manner above described.

PAR. 6. All sales made by respondent, whether to wholesalers or jobbers, or to retail dealers, are, and have been, absolute sales, and respondent retains and has retained no control over said assortments after they are delivered to the wholesale dealer or jobber, or retail dealer. The assortments are, and have been, assembled and packed in such manner that they are, and have been, used and may be used by retail dealers for distribution to the purchasing public by lot or chance without alteration or rearrangement.

In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers, and to retail dealers direct, of the assortments of candy described in paragraphs 2 and 3, respondent had, and now has, knowledge that the said candy was, and is, to be resold to the purchasing public by retail dealers by lot or chance, and it has packed, and does pack, such candy in the way and manner described, so that without alteration, addition, or rearrangement thereof, it would be, and may be, resold to the public by lot or chance by said retail dealers.

PAR. 7. There are in the United States many manufacturers of candy who do not manufacture and sell "break and take," "draw," or "deal," assortments of candy, and who sell their "straight" merchandise in interstate commerce in competition with the "break and take," "draw," or "deal," candy, and manufacturers of "straight" merchandise have noted a marked decrease in the sales of their products whenever or wherever the "break and take," "draw," or "deal," assortments have appeared in their market. This decrease in the sale of "straight" merchandise is due to the gambling or lottery feature connected with the "break and take," "draw," or "deal," candy.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "break and take," "draw," or "deal," candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," "draw," or "deal," 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, particularly the "break and take" assortments.

PAR. 8. The sale and distribution of candy by the methods described herein is the sale and distribution of candy by lot or chance, and constitutes a lottery or gaming device. Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds, that many competitors regard such sale and distribution as morally bad, and as encouraging gambling, especially among children, and as injurious to the candy industry because it results in the merchandising of a chance or lottery instead of candy, and has provided retail merchants with a means of violating the laws of the several States. Because of these reasons some competitors of respondent refuse to sell candy so packed that it can be resold to the public by lot or chance. These competitors are thereby put to a disadvantage in competition. The retailers, finding that they can dispose of more candy by the "break and take" method, and that they

can dispose of more candy by the "draw" or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted from said competitors to respondent and others using similar methods. 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" candy show a marked decrease.

The sale and distribution of candy by lot or chance provides an easy means of disposing of such products. 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 have begun the sale and distribution of candy 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. As stated previously in these findings, the respondent sells its merchandise in all States of the United States, and while the annual volume of business of the respondent was not shown exactly, an officer of the respondent testified, and the Commission finds, that the respondent's annual volume of "break and take" assortments was substantial, and its annual volume of business of "draw" or "deal" assortments is, and has been, substantial.

PAR. 10. The Commission finds that the sale and distribution in interstate commerce of assortments of candy so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell the same to the consuming public by lot or chance, are contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Bunte Brothers, 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 amended and supplemental complaint of the Commission, the answer of respondent, testimony and other evidence

taken in support of the allegations of the complaint and in opposition thereto before Miles J. Furnas, an examiner of the Commission, theretofore duly designated by it, and brief of counsel for the Commission, and brief of counsel for the respondent (oral argument 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, Bunte Brothers, Inc., a corporation, its officers, directors, agents, representatives, and employees, in the offering for sale, sale, and distribution of candy and candy products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing to wholesale dealers and jobbers for resale to retail dealers, and to retail dealers direct, 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 retail and wholesale dealers and jobbers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortments to the public;

3. Packing or assembling in the same packages or assortments of candy for sale to the public at retail pieces of candy of uniform size and shape, 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 purchaser procuring a piece of candy having a center of a particular color;

4. Supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy, together with a device commonly called a "punchboard," or a device commonly called a "push card," for use, or which may be used, in distributing or selling said candy to the public at retail; and

5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," or a device commonly called a "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 is 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.

Order

26 F. T. C.

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.

Mr. Freer dissented to the inclusion of certain words in the Commission's order to cease and desist in this case, involving a respondent located within the Seventh Circuit, because the United States Circuit Court of Appeals for the Seventh Circuit in the case of A. McLean & Son—Docket 2264—had stricken from the order in said previous case these words and substituted others for them.

Complaint

IN THE MATTER OF

LES PARFUMS D'ISABEY, INC.

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

Docket 3149. Complaint, June 11, 1937—Decision, Feb. 19, 1938

Where a corporation engaged in sale and distribution of toilet water and perfumes, compounded in the United States through blending with alcohol vehicle, perfume concentrate, imported as such, or made, by company from which it purchased, from the essential oil or flower essence, aromatic chemicals, and animal products imported by such company—

Represented, through use of such words as "Isabey Parfums d'Isabey, Parfums d'Isabey 'Isabey—Paris'," on labels attached to containers and cartons of its said products, that same were made or compounded in France, notwithstanding fact its said perfumes, purchased by it as above set forth, were, as aforesaid, actually compounded in the United States and were not products made or compounded in France or in any other foreign country, or imported;

With effect of misleading and deceiving a substantial part of purchasing public into erroneous and mistaken belief that said representations were true, and that perfumes in question were imported into United States from Paris, France, and with result that public, acting under mistaken and erroneous beliefs induced by such false, deceptive, and misleading statements and representations, purchased substantial volume of its said products as and for the preferred imported, and particularly preferred French, perfumes, and trade was unfairly diverted to it from competitors engaged in manufacture and distribution, or in sale and distribution, of perfumes who truthfully describe their products and represent country or source or origin thereof; to the substantial injury of competition in 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. S. Brogdyne Teu, II for the Commission.

Mr. John H. Glaccum of Munn, Anderson & Liddy, 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 Les Parfums d'Isabey, Inc., a corporation, organized and doing business by virtue of and under the laws of the State of New York, hereinafter referred to as respondent, has been, and is now, using unfair methods

of competition in commerce, as "commerce" is defined in the 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:

PAR. 1. Respondent Les Parfums d'Isabey, Inc., is a New York corporation, having its principal office and place of business located at 312 East Thirty-second Street, city of New York, State of New York. The respondent has been for more than 1 year last past engaged in the sale and distribution of perfumes to retail dealers purchasing for resale. In the course and conduct of its business respondent offers said products for sale and sells the same in commerce between the State of New York and the several States of the United States and in the District of Columbia. When the said products are sold, respondent transports or causes the same to be transported from its place of business in the State of New York to purchasers thereof located in the States of the United States other than the State of New York and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of, or in the sale and distribution of, like and similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent in soliciting the sale of and in selling its products, and for the purpose of creating a demand on the part of the consuming public for said commodities, has advertised its commodities through the media of price lists and other printed matter published, issued, and circulated through the United States mails to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it.

PAR. 4. The said price lists and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning its products. For example, certain of the perfumes have printed on the carton thereof or on the labels thereof the following words and phrases:

Isabey parfums d'Isabey, parfums d'Isabey
Isabey-Paris

Complaint

while on the bottle or container of the perfume appear these words—"le muguet isabey."

The aforementioned representations and descriptions in the French language appearing on the aforesaid articles and their containers serve to lead the purchasers and prospective purchasers into the erroneous and mistaken belief that the commodities so described and referred to are manufactured in France.

PAR. 5. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes which are manufactured or compounded in foreign countries, especially in France, and then imported into the United States.

PAR. 6. In truth and in fact, the aforesaid articles are not manufactured in France or any other foreign country, but are domestic products made or compounded in the United States.

PAR. 7. There are among the competitors of the respondent manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective products. There are also among the competitors of respondent manufacturers and distributors of like and similar products who refrain from advertising or representing through their price lists and other printed matter that the merchandise offered for sale by them has a value, merit, or origin that it does not have.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that the various articles of perfumes hereinabove set out and described in paragraph 4 are manufactured in France and imported from that country into the United States.

PAR. 9. The aforesaid false and misleading statements and representations on the part of respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken belief. As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses referred to in paragraph 7. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Such methods, acts, and prac-

tices 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 11, 1937, issued, and on June 12, 1937, served its complaint in this proceeding upon respondent Les Parfums d'Isabey, 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 other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by John H. Glaccum, attorney for the respondent, 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. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Les Parfums d'Isabey, Inc., is a corporation organized and doing business under the laws of the State of New York. Its principal office and place of business are at 245 Fifth Avenue, New York, N. Y. Its shipping point is at 318 East Thirty-second Street, New York, N. Y. It is engaged in the sale and distribution of perfume and toilet water.

PAR. 2. Respondent's products are distributed from its aforesaid place of business to retailers located throughout the United States. When orders are received for respondent's products it causes such products to be shipped from its place of business in New York, N. Y., to the purchasers thereof located at various points in the various

States of the United States other than the State of New York. Since the date of its incorporation, 3 or 4 years ago, the respondent, Les Parfums d'Isabey, Inc., has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. At all times since respondent entered into said business it has been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution, or in the manufacture, sale, and distribution of perfumes in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. The respondent has advertised and now advertises its products by means of labels attached to the containers and cartons in which respondent's products are packed and sold and by use of other means. On the labels appear certain words and phrases purported to be descriptive of the product and its source or country of origin. The following is representative of the statements and representations made on the labels attached to the containers and cartons of respondent's products:

Isabey Parfums d'Isabey, Parfums d'Isabey "Isabey—Paris."

All of the above set out statements and representations appearing on the containers and cartons in which respondent's products are packaged and sold are in the French language.

PAR. 5. The respondent purchases the perfumes which it sells and distributes under the false and misleading labels above described from the George Silver Import Company (now Roure-Dupont, Inc.). The George Silver Import Company imports essential oil or flower essence, aromatic chemicals, and animal products which are blended in various proportions depending upon the formula of the specific odor desired. Sometimes these ingredients are imported separately in bulk. Sometimes these ingredients are blended before being imported. When they are blended, they are referred to in the trade as perfume concentrate. The George Silver Import Company imports either the perfume concentrate already blended in the proper proportion for the odors desired or it imports separately the necessary ingredients of the completed perfume concentrate. After the ingredients have been blended so as to form the perfume concentrate, it is still necessary to compound or blend this concentrate with an alcohol vehicle.

All of the perfumes purchased by the respondent from the George Silver Import Company are actually compounded in the United States. As stated above, in some instances ingredients are imported

separately, then blended, so as to form perfume concentrate, and subsequently compounded with the alcohol vehicle. In other instances, the perfume concentrate made up of the same ingredients which are sometimes imported separately is imported and subsequently compounded with the alcohol vehicle. Perfume concentrate as made up of the various ingredients before the addition of the alcohol vehicle is not ready for use as a perfume by members of the general purchasing public and cannot satisfactorily be used for such purpose. A perfume concentrate is not a perfume within the generally understood meaning of that term as used by the purchasing public. A perfume, as that term is understood by the public generally and by the trade, is a compound of a perfume concentrate and an alcohol vehicle. A perfume is not made or compounded until the alcohol or other agent of application has been united with the concentrate.

The Commission finds that there exists in the minds of the purchasing public a preference for imported perfumes and a particular preference for perfumes made in and imported from France.

PAR. 6. The use by respondent of the statements and representations, as set out hereinabove, in which its products are packaged and sold has had and now has the capacity and tendency to and does mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that said representations are true and that the said perfume is imported into the United States from Paris, France.

Acting under the mistaken and erroneous beliefs induced by the false, deceptive and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to the respondent from its competitors engaged in the manufacture and distribution, or in the sale and distribution of perfumes, who truthfully describe said perfume and truthfully represent the country or source of origin of their products. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Les Parfums d'Isabey, Inc., 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 the Act of Con-

799

Order

gress, 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 other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein and oral argument having been requested, 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, Les Parfums d'Isabey, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of perfumes in interstate commerce, or in the District of Columbia, do forthwith cease and desist from directly or through implication:

Representing, through the use of such words as "Les Parfums d'Isabey," or through the use of any foreign words or phrases, or through any other means or device, or in any manner, that perfumes compounded, bottled, and packaged in the United States are made or compounded in France or in any other foreign country, or are imported.

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

**FIORET SALES COMPANY, INC., AND MURRAY W. MORIN
AND IRVING UNTERMAN, INDIVIDUALLY AND AS OF-
FICERS OF FIORET SALES 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 3164. Complaint, June 29, 1937—Decision, Feb. 19, 1938

Where a corporation engaged in sale and distribution of toilet water and perfumes, compounded in the United States through blending with alcohol vehicle, perfume concentrate, imported as such, or made, by company from which it purchased, from the essential oil or flower essence, aromatic chemicals, and animal products imported by such company—

Represented that its said products were made or compounded in France or imported, through use, on labels attached to containers and cartons of its products, of such words, phrases, and legends as "Les Parfums des Jardine de Fioret, Paris, New York," "le Parfum. et l'ensemble de sa presentation ont ete crees en France par Les Parfums des Jardine de FIORET a Paris. Ils sont la propriete exclusive de FIORET, INC., pour les Etats Unis de l'Amerique ou ils sont completes COUTES CONTREFACONS seront rigoureusement poursuivies. FIORET, INC., New York. Paris BOTTLED IN U. S. A.," notwithstanding fact its said perfumes, purchased by it as above set forth, were, as aforesaid, actually compounded in the United States and were not products made or compounded in France, or in any other foreign country, or imported;

With effect of misleading and deceiving a substantial part of purchasing public into erroneous and mistaken belief that said representations were true, and that perfumes in question were imported into United States from Paris, France, and with result that public, acting under mistaken and erroneous beliefs induced by such false, deceptive, and misleading statements and representations, purchased substantial volume of its said products as and for the preferred imported, and particularly preferred French, perfumes, and trade was unfairly diverted to it from competitors engaged in manufacture and distribution, or in sale and distribution, of perfumes who truthfully describe their products and represent country or source or origin thereof; to the substantial injury of competition in commerce:

Heid, 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. S. Brogdyne Teu, II, for the Commission.

Mr. John H. Glaccum of Munn, Anderson & Liddy, 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 Commis-

808

Complaint

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Fioret Sales Company, Inc., a New York corporation, and Murray W. Morin and Irving Unterman, individuals and officers of Fioret Sales Company, Inc., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and it appearing to said Commission that the 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, Fioret Sales Company, Inc., is a corporation organized and doing business under the laws of the State of New York, having its principal place of business at 312 East Thirty-second Street, city of New York, State of New York. Respondents, Murray W. Morin and Irving Unterman, are respectively president and secretary and treasurer of Fioret Sales Company, Inc. Respondents are now and have been for more than 1 year last past engaged in the manufacture and in the sale and distribution of perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business respondents are now and have been in substantial competition with other individuals, partnerships, firms, and corporations likewise engaged in the business of manufacturing and selling perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. When said products are sold respondents transport or cause same to be transported 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, and in the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade in commerce in said products so sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents, in soliciting the sale and in the selling of their products, and for the purpose of creating a demand on the part of the consuming public for said commodities, have advertised their products through the media of price lists and other printed matter published, issued, and circulated through the United States mails to their customers and prospective customers in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondents make and have made to the general public false and misleading statements with reference to the commodities offered for sale by them.

PAR. 5. The said price lists and other printed matter published and distributed by respondents as aforesaid contain misleading descriptions and representations concerning their products. For example, certain of the perfumes have printed on the carton thereof the following words and phrases:

Les Parfums des Jardins
de
Fioret
Paris New York

The above language appears on the display part of the carton in which respondents' perfumes are sold.

On the back of the display carton in which respondents' perfumes are sold appears the following in French:

le Parfum.
et l'ensemble de sa presentation
ont et crees en France par
Les Parfums des Jardins
de FIORET a Paris
Ils sont la propriete exclusive
de FIORET, INC.
pour les Etats Unis d'Amerique
ou ils sont completes
TOUTES CONTREFACONS seront
rigoureusement poursuivies
FIORET, INC.
New York
Paris
BOTTLED IN U. S. A.

PAR. 6. The aforementioned representations and descriptions appearing on the aforesaid articles and their containers by labels with the above set out words printed thereon serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the commodities so described and referred to are manufactured in France.

PAR. 7. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes which are manufactured or compounded in foreign countries, especially in France, and then imported into the United States.

PAR. 8. In truth and in fact, the aforesaid articles are not manufactured in France or any other foreign country, but are domestic products made or compounded in the United States.

PAR. 9. There are among the competitors of respondents manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective products.

There are also among the competitors of respondents manufacturers and distributors of like and similar products who refrain from advertising or representing, through their price lists and other printed matter, that the merchandise offered for sale by them has a value, merit, or origin that it does not have.

PAR. 10. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that:

(1) The various articles of perfumes hereinabove set out and described in paragraph 5 are manufactured in France and imported from that country into the United States.

PAR. 11. The aforesaid false and misleading statements and representations on the part of respondents have induced and still induce a substantial number of consumer purchasers of said products to buy the products offered for sale, sold, and distributed by the respondents on account of the aforementioned mistaken and erroneous belief. As a result thereof trade has been diverted from those competitors of respondents engaged in similar businesses. As a consequence thereof substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 12. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Such methods, 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.

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 29, 1937, issued, and on June 30, 1937, served its complaint in this proceeding upon respondent Fioret Sales Company, Inc., a corporation and respondents Murray W. Morin and Irving Unterman, individually, and as officers of respondent Fioret Sales Company, Inc., 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 other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by John H. Glaccum, attorney for the respondents, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and said testimony and other 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 other evidence, briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Fioret Sales Company, Inc., is a corporation organized and doing business under the laws of the State of New York. Its principal office and place of business are at 245 Fifth Avenue, New York, N. Y. Its shipping point is at 312 East Thirty-second Street, New York, N. Y. It is engaged in the sale and distribution of perfumes and toilet waters.

Respondents Murray W. Morin and Irving Unterman are respectively, president and secretary and treasurer of respondent Fioret Sales Company, Inc.

PAR. 2. Respondent's products are distributed from its place of business to retailers located throughout the United States. When orders are received for respondents' said products they cause them to be shipped from their place of business at New York, N. Y., to the purchasers thereof located at various points in the various States of the United States other than the State of New York. Since the date of incorporation, 2 or 3 years ago, the respondent, Fioret Sales Company, Inc., under, by, and through the direction of respondents Murray W. Morin and Irving Unterman, has maintained a course of trade in said products in commerce in and among the various States of the United States and in the District of Columbia.

PAR. 3. At all times since respondents entered into said business they have been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution, or manufacture, sale, and distribution of perfumes in commerce,

Findings

among and between the several States of the United States and in the District of Columbia.

PAR. 4. The respondents have advertised and now advertise their products by means of labels attached to the containers and cartons in which respondents' products are packaged and sold. On the labels appear certain words and phrases purported to be descriptive of the product and its source or country of origin. The following is representative of the statements and representations made on the labels attached to the containers and cartons of respondents' products:

Les Parfums des Jardine
de
Fioret
Paris New York

On the back of the display carton in which respondents' perfumes are packaged and sold appears the following:

le Parfum
et l'ensemble de sa presentation ont
ete crees en France par Les Parfums
des Jardins
de FIORET a Paris
Ils sont la propriete exclusive
de FIORET, INC.
pour les Etats Unis de 'Amerique
ou ils sont completes

COUTES CONTREFACONS seront rigoureusement poursuivies

FIORET, INC.

New York

Paris

BOTTLED IN U. S. A.

Substantially all of the above set out statements and representations appearing on the containers and cartons in which respondents' products are packed and sold are in the French language.

PAR. 5. The respondents purchase the perfumes which they sell and distribute under the false and misleading labels above described from the George Silver Import Company (now Roure-Dupont, Inc.). The George Silver Import Company imports essential oil or flower essence, aromatic chemicals, and animal products which are blended in various proportions depending upon the formula of the specific odor desired. Sometimes these ingredients are imported separately in bulk. Sometimes these ingredients are blended before being imported. When they are blended, they are referred to in the trade as perfume concen-

trate. The George Silver Import Company imports either the perfume concentrate already blended in the proper proportion for the odors desired or it imports separately the necessary ingredients of the completed perfume concentrate. After the ingredients have been blended so as to form the perfume concentrate, it is still necessary to compound or blend this concentrate with an alcohol vehicle.

All of the perfumes purchased by the respondents from the George Silver Import Company are actually compounded in the United States. As stated above, in some instances ingredients are imported separately, then blended, so as to form perfume concentrate, and subsequently compounded with the alcohol vehicle. In other instances, the perfume concentrate made up of the same ingredients which are sometimes imported separately is imported and subsequently compounded with the alcohol vehicle. Perfume concentrate as made up of the various ingredients before the addition of the alcohol vehicle is not ready for use as a perfume by members of the general purchasing public and cannot satisfactorily be used for such purpose. A perfume concentrate is not a perfume within the generally understood meaning of that term as used by the purchasing public. A perfume, as that term is understood by the public generally and by the trade, is a compound of a perfume concentrate and an alcohol vehicle. A perfume is not made or compounded until the alcohol or other agent of application has been united with the concentrate.

There exists in the minds of the purchasing public a preference for imported perfumes and a particular preference for perfumes made in and imported from France.

PAR. 6. The use by respondents of the statements and representations on the cartons and containers, as set out hereinabove, in which their products are packaged and sold has had, and now has the capacity and tendency to and does mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that said representations are true and that the said perfume is an imported perfume from Paris, France.

Acting under the mistaken and erroneous beliefs induced by the false, deceptive and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondents' products, with the result that trade has been unfairly diverted to the respondents from their competitors engaged in the manufacture, sale, and distribution, or in the sale and distribution of perfumes, who truthfully represent the country or source of origin of their products. As a consequence thereof, substantial injury has been, and is, being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

Order

CONCLUSION

The aforesaid acts and practices of the respondents, Fioret Sales Company, Inc., Murray W. Morin and Irving Unterman, individually, and as officers of the respondent, Fioret Sales Company, Inc., are to the prejudice of the public and to the respondents' 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 respondents, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein (oral argument not having been requested), 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, Fioret Sales Company, Inc., a corporation, its officers, representatives, agents, and employees, and Murray W. Morin and Irving Unterman, individually, and as officers of respondent Fioret Sales Company, Inc., in connection with the offering for sale, sale, and distribution of perfumes in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or through implication:

Representing, through the use of such words as "Les Parfums des Jardine de Fioret," or through the use of any foreign words or phrases, or through any other means or device, or in any manner, that perfumes manufactured or compounded in the United States are made or compounded in France or in any other foreign country, or are imported.

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

IN THE MATTER OF
ALPHA LABORATORY, INC.

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

Docket 2968. Complaint, June 29, 1937¹—Decision, Feb. 25, 1938

Where a corporation engaged in sale and distribution of certain so-called hygienic products for women, including its so-called "Va-Jel" and similar products, and certain device for use of former, in substantial competition with others engaged in offer and sale, in commerce among the various States, of so-called hygienic and other products used and useful for purposes for which it recommended its said products, and including many who sell and distribute, or manufacture and distribute, so-called feminine hygiene products in commerce without in any way misrepresenting effectiveness or efficacy thereof for such purposes, and including those offering medicines or preparations for use by women for hygienic, antiseptic, germicidal, and similar purposes without stating expressly or implying that their said products are invariably or uniformly effective for the purposes for which recommended, and those engaged in offer and sale in interstate commerce of medicines or other preparations, for use by women, and truthfully represented to public; in advertising its said product through printed pamphlets, leaflets, booklets, and other printed matter distributed among purchasers and prospective purchasers and through such matter placed in carton or container in which product was marketed, and through large window displays made use of by its agents in calling upon druggists and others interested in purchase of said product—

- (a) Represented that said "Va-Jel," sold with said device, as aforesaid, was effective as a contraceptive, and that it constituted a scientific prophylactic for feminine hygiene purposes and a protection against venereal diseases and acted both mechanically and as a germicide in preventing feminine hygienic troubles, facts being it was not effective as aforesaid claimed, did not constitute a scientific preparation, had no beneficial therapeutic use in so-called feminine hygiene, and had no therapeutic value whatever in treatment of ailments, ills, and diseases peculiar to women, and would not act as a preventive of diseases specified in either sex;
- (b) Represented that said preparation was prescribed by thousands of physicians and that it had the approval of the American Medical Association, American Birth Control League, and physicians generally, and that it was connected with aforesaid League, facts being product in question had never been approved for use by said Association, was not used or recommended for use by large number of well-known clinics, nor recommended by medical profession generally, and it was not connected with and did not cooperate in any manner with such League;

¹ Amended.

Complaint

- (c) Represented that preparation in question was not a patent or proprietary medicine, but an open formula, and that it and appliance or device in question might be used with safety and without deleterious effects by all women, facts being use of product and device was not harmless, as indiscriminate use thereof in many cases was capable of causing injuries and having deleterious effect upon user; and
- (d) Made use of and displayed its corporate name, containing word "Laboratory," in its advertisements and advertising matter, and represented that it owned and operated a laboratory, facts being it did not own, control, or operate any laboratory or place devoted to application of scientific principles in the making or preparation of its said products, and of which it was not the manufacturer;

With effect of misleading and deceiving purchasing public into erroneous belief that said representations were true and that purchasing public, as a consequence of mistaken and erroneous beliefs induced by such false and misleading statements and representations, bought substantial volume of its said products and trade was unfairly diverted to it from competitors engaged in sale and distribution of feminine hygiene products in commerce as aforesaid, or in manufacture, sale, and distribution thereof, and who truthfully represent the efficacy of their said products; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. L. Louis Karton, of Chicago, Ill., 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 Alpha Laboratory, 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 the 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. Respondent, Alpha Laboratory, Inc., is now, and has been for several years last past, 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 at 5908 North Clark Street in the city of Chicago and the State aforesaid.

Respondent has been engaged in the sale and distribution of certain so-called hygienic and other products for use by women, in com-

merce between the State of Illinois and the various other States of the United States and in the District of Columbia. It causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof in the various States of the United States other than the State of Illinois and in the District of Columbia.

In the course and conduct of said business, respondent has been and is in substantial competition with other individuals, partnerships, and corporations similarly engaged in offering for sale and selling in commerce among and between the various States of the United States so-called hygienic and other products intended and designed for use by women exclusively.

PAR. 2. In the course and conduct of its business, it has been and is the practice of respondent to offer for sale and sell for such use a product known and described as Va-Jel and similar products. Such products are sold principally to wholesale druggists, although when an order is received by respondent from any individual unit of the purchasing or consuming public, it is filled by respondent.

In the carton or container in which the said product is marketed, there is enclosed certain advertising literature in which the product is represented and described. Such advertising matter is also distributed by respondent among purchasers and prospective purchasers who inquire about the said product. It also employs and uses agents for the introduction of said product and promotion of its sale. They call upon druggists and install advertising window display and distribute other advertising matter including circulars, a booklet entitled "A Confidential Talk to Women" and matches, the latter of which contain on their cover certain legends. Such legends are "Let Va-Jel Scientific Prophylactic Open the Way for a Better, Happier Life for all Women. Doctors advise use of Va-Jel." On the inside of such cover of the matches appears the following: (sic) "Strike for Freedom. Va-Jel solves the Woman's Problem. Send this folder with self-addressed stamped envelope to Alpha Laboratory, Inc., Chicago, Illinois, for Free booklet 'A Confidential Talk to Women.' Va-Jel has no substitute."

As inducements to the purchase of Va-Jel, respondent represents that use of such product will prevent conception; that it is a protection against venereal diseases. As a further inducement for the purchase of its product Va-Jel, respondent has represented its cooperation with the American Birth Control League using such language as signifies and implies the close connection between respondent and such League. It also represents that it has received approval of the product Va-Jel by the American Medical Association and by physicians generally, and that it is generally dispensed and pre-

scribed by thousands of physicians. It further represents that respondent is well known to the medical profession for its high class pharmaceutical products. Respondent further represents that the product Va-Jel is not a patent or proprietary medicine but rather an open formula which is given to physicians whenever they request it.

In truth and in fact the use of respondent's said product neither uniformly nor invariably prevents conception, nor the contraction of venereal diseases. It is neither a scientific prophylactic which opens the way to a better and happier life for all women, nor does it solve the woman's problem. The product Va-Jel has not received the approval of The American Medical Association, nor of any officer, medium, or agency thereof. It has not been dispensed and prescribed by thousands of physicians, and respondent is not known in the medical profession for the high class of its pharmaceutical products. There is no connection, direct or indirect, between the respondent and The American Birth Control League. The product of respondent is a patent or proprietary medicine. It is not an open formula as the words are generally understood since ingredients of the product are not declared or disclosed.

PAR. 3. Respondent represents in its corporate name and in the sale of its products that it owns and operates a laboratory and uses and displays such name containing the word "laboratory" in its advertisements and advertising matter. In truth and in fact respondent does not own, control, or operate any laboratory and does not own, operate, or control any place devoted to the application of scientific principles in the making or preparation of said products. Respondent is not the manufacturer of the products it sells but purchases said products from others.

PAR. 4. There are now and for several years last past have been individuals, partnerships, and corporations who have been offering for sale and selling in interstate commerce medicines or preparations of various kinds for use by women in so-called feminine hygiene, antiseptic, germicidal and for similar uses without stating expressly or implying or importing in their representations that their products or any of them are invariably or uniformly effectual. There are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce medicines or other preparations which they truthfully represent will prevent the contraction of venereal diseases by women when used in accordance with directions.

PAR. 5. The aforesaid practices of respondent have had and have the capacity and tendency to mislead and deceive wholesale dealers, retail dealers and their customers, the consuming or purchasing public,

Findings

26 F. T. C.

into the erroneous beliefs that Va-Jel is invariably and uniformly effective in preventing conception and is likewise a preventive of venereal diseases, and that all other representations of the respondent hereinbefore stated in paragraph 2 are true, and into the purchase of such product in reliance upon such erroneous beliefs or one or more of them.

The aforesaid practices have also had and have the capacity and tendency to divert trade to respondent from the competitors mentioned in paragraph 4 hereof, as a result of which respondent has been doing and is doing substantial injury to such competitors in the course of such competition.

PAR. 6. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, 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.

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 29, 1937, issued and, on July 1, 1937, served its amended complaint in this proceeding upon respondent Alpha Laboratories, 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 amended complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Taggart, attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it. Thereafter, on October 21, 1937, the respondent, submitted an amended answer to the complaint, in which answer respondent admitted all of the material allegations of the amended complaint to be true and stated that it waived hearings on the charges set forth in said amended complaint and that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the amended complaint. The Commission, by order entered herein, substituted said amended answer dated October 21, 1937, in lieu of the original answer to the amended complaint filed on July 19, 1937. Thereafter

the proceeding regularly came on for final hearing before the Commission on said amended complaint, amended answer dated October 21, 1937, and testimony and other evidence; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Alpha Laboratory, Inc., 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 at 325 West Huron Street, in the city of Chicago and the State aforesaid.

Respondent is now, and for the past several years has been, engaged in the sale and distribution of certain so-called hygienic products for use by women. It causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof located at points in the various States of the United States other than the State of Illinois and in the District of Columbia.

In the course and conduct of said business, respondent has been and is in substantial competition with other corporations and with individuals, partnerships, and corporations similarly engaged in offering for sale and selling in commerce among and between the various States of the United States so-called hygienic and other products used and useful for the purpose for which respondent recommends that its said product be used.

The respondent advertises the product to the public through printed pamphlets, leaflets, booklets, and other printed matter which it distributes among purchasers and prospective purchasers. The advertising matter in addition to being distributed generally is placed in the carton or container in which the said product is marketed. Respondent as an advertising medium also employs agents who call upon druggists and others interested in the purchase of the product and make representations in addition to those in the printed matter and install large window displays.

In one of said booklets, called "A Confidential Talk to Women," and on the cover of pocket matches the following statements appear:

Let Va-Jel scientific prophylactic open the way for a better happier life for all women.

Doctors advise use of Va-Jel.

Va-Jel solves the womens problem.

Send this folder with self-addressed stamped envelope to Alpha Laboratory, Inc., Chicago, Ill., for free booklet.

As further inducements to the purchasing public, respondent represents in its advertising and otherwise, directly and by implication, that the use of Va-Jel will prevent pregnancy; and that it is a protection against venereal diseases; that respondent works in cooperation with the American Birth Control League, using such language as signifies and implies a close connection between respondent and such League. It also represents that it has received approval of the product Va-Jel by the American Medical Association and by physicians generally, and that it is generally dispensed and prescribed by thousands of physicians. It further represents that respondent is well known to the medical profession for its high-class pharmaceutical products.

PAR. 2. It has been and is the practice of respondent, to offer for sale and sell to the purchasing public for such use as is herein set out a product known as Va-Jel and similar products. Va-Jel is a jelly consisting of glycerine, gum tragacanth, lactic acid, phenol, and some scent. It is applied through a pipe, tube, or applicator, inserted by hand in the vagina and the tube squeezed to force the jelly up into the vagina.

The use of the product as directed will not prevent conception. A contraceptive jelly such as that sold by the respondent is only effective when used to function with an occlusive device placed in the vagina at the opening of the cervix. The secretions that flow from the cervix and in the vagina during intercourse prevent the jelly alone from acting as an occlusive. No occlusive device is supplied with respondent's product. A contraceptive jelly is further rendered ineffective because the vaginal secretion has an acidity or alkalinity which not only varies between different women but also varies in the same person from week to week and from month to month which may or may not render such a jelly ineffective depending upon the degree of acidity or alkalinity which may be present at a given time. The respondent's product has not sufficient germ destroying power to isolate and destroy the male sperm.

The product is not a scientific prophylactic and has no beneficial use therapeutically in so-called feminine hygiene. The preparation has no therapeutic value whatever in the treatment of ailments, ills, and diseases peculiar to women and will not act as a preventative of venereal disease in either sex.

The use of the product with the applicator is not harmless as in many cases the indiscriminate use of the product and the applicator is capable of causing injuries and might have a deleterious effect upon the female using it.

The product has never been approved for use by the American Medical Association and is not used or recommended for use by a

large number of well known clinics and is not recommended by the medical profession generally. The respondent is not connected with and does not cooperate in any manner with the American Birth Control League.

PAR. 3. Respondent represents in its corporate name and in the sale of its products that it owns and operates a laboratory, and it uses and displays such name containing the word "laboratory" in its advertisements and advertising matter. In truth and in fact respondent does not own, control or operate any laboratory and does not own or control any place devoted to the application of scientific principles in the making or preparation of said products. Respondent is not the manufacturer of the products it sells but purchases said products from others.

Many of the respondent's competitors who sell and distribute, or manufacture, sell, and distribute so-called feminine hygiene products in commerce, do not in any way misrepresent the effectiveness of their products or their efficacy for feminine hygienic purposes.

PAR. 4. The use by respondent of the representations set forth above has had and now has the capacity and tendency to and does mislead and deceive the purchasing public into the erroneous belief that said representations are true. As a consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the purchasing public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from its competitors engaged in the business of selling and distributing feminine hygiene products in said commerce, or in the manufacture, and in the sale and distribution of feminine hygiene products in said commerce, who truthfully represent the efficacy of their products. 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 the District of Columbia.

PAR. 5. There are now and for several years last past have been individuals, partnerships, and corporations who have been offering for sale and selling in interstate commerce medicines or preparations of various kinds for use by women for hygienic, antiseptic, germicidal and for similar purposes without stating expressly or implying or importing in their representations that their products are invariably or uniformly effective for the purposes for which they are recommended. There are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce medicines or other preparations for use by women which are truthfully represented to the public.

Order

26 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent Alpha Laboratories, Inc. 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and the amended answer of respondent, dated October 21, 1937, in which answer respondent admits all the material allegations of the complaint to be true and states that the Commission may, without the taking of further testimony or any other intervening procedure, enter and issue its findings as to the facts an order to cease and desist; 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, Alpha Laboratory, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of Va-Jel and similar products sold under the name of Feminine Hygiene Products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the use of said preparation alone or in conjunction with an appliance will prevent conception;
2. Representing that said preparation is a scientific prophylactic for feminine hygienic purposes, and is a protection against venereal disease;
3. Representing that said preparation acts two ways in preventing feminine hygienic troubles, mechanically and as a germicide;
4. Representing that the preparation is prescribed by thousands of physicians and that it has the approval of the American Medical Association, American Birth Control League, and physicians generally, that the respondent is connected with the American Birth Control League;

5. Representing that the preparation is not a patent or proprietary medicine, but an open formula;

6. Representing that the said preparation and appliance may be used with safety and without deleterious effects by all women;

7. Representing that respondent owns or operates a laboratory in which the product is manufactured or that it owns or operates any establishment devoted to the application of scientific principles in the making or preparation of said product;

8. Representing that respondent is noted on account of the manufacture and sale of high-class pharmaceutical products;

9. Making other representations of similar import and of like character to those made as above set forth.

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
GOLF BALL MANUFACTURERS' ASSOCIATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUBSECS. 2 (a), 2 (d), AND 2 (f) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3161. Complaint, Aug. 18, 1937¹—Decision, Feb. 25, 1938

Where (1) an unincorporated trade association, membership of which consisted of manufacturers and wholesalers of golf balls, in competition with one another and with nonmembers likewise thus competitively engaged, but for the matters and things below set forth, (2) the officers of said association, and (3) member manufacturers thereof, who owned and controlled practically all of the factories engaged in the production of golf balls in the United States and produced most of the golf balls sold and distributed in this country; and (1) an unincorporated association, members of which consisted of approximately 1,500, out of some estimated 2,500, professional golfers engaged in retail sale of golf balls and golf equipment throughout the country and, as thus engaged, in competition with one another and with nonmember retailers likewise thus competitively engaged, but for the matters and things hereinbelow set forth, (2) the officers thereof, and (3) the members thereof, constituting a group so large and influential in the trade as to be able, by themselves and in cooperation with aforesaid members of said manufacturers' association, to control and influence the flow of trade and channels of distribution in golf balls throughout the country, as well as the prices at which, and the terms and conditions under which, nonmember retailers of such articles buy and resell the same;

In pursuance, concertedly, of a common course of action and undertaking, in which they had combined and united and which was directed to enforcing, fixing and maintaining, throughout the United States, certain monopolistic prices, policies, sales methods, and trade practices, and, generally, a policy and practice designed to and tending to monopolize the sale and distribution of golf balls in themselves, and in the accomplishment of which, to the substantial or potential injury of some of such manufacturers, wholesalers, and retail dealers and of ultimate purchasers and consumers of such products, they held official and unofficial meetings of their associations and members, discussed policies and practices as aforesaid, adopted, agreed upon, and issued bulletins, circulars, letters, price lists, etc., announcing such policies, etc., and the imposition thereof upon all affected thereby, obtained promises and assurances of cooperation from one another, exchanged information, and acted concertedly to control resale markets and to require, coercively, recalcitrant manufacturers, wholesalers, and retailers to conform to practices and methods in question—

(a) Entered into and carried out contracts and agreements directed to the maintenance of uniform wholesale prices to be exacted by manufacturers of golf balls, as between members of said professional association and other nonmember dealer purchasers, with respect to balls of equal grade and

¹ Amended and supplemental.

quality, and made it a policy and practice to require that all manufacturers and wholesalers, as aforesaid, observe such provisions; and

- (b) Fixed, as a policy and practice, prices for resale of such products by non-member retailers, and persuaded, coerced, and compelled such dealers to refrain, abstain, and desist from selling golf balls at less than designated price, and supervised and investigated practices and policies of retail dealers in golf balls, and acted concertedly to maintain resale prices agreed upon; and

Where said association of professional golfers, its officers, members, etc.—

- (c) Required, coerced, or persuaded said member manufacturers and wholesalers to enter into contracts with said professional association for the payment of monies to it for the privilege of causing the letters "PGA" to be imprinted on golf balls sold it; and
- (d) Required, as a policy and practice, all manufacturers and wholesalers, selling their products to its members to refrain and abstain from giving, allowing, or granting, in any way or manner, any rebate, discount, royalty, or refund, in any manner or form, to nonmember retailer purchasers, and acted concertedly and coercively to require conformance of recalcitrant manufacturers and wholesalers; and

Where such manufacturers' association, its officers, members, etc.—

- (e) Granted unlawful discriminations in price through payment of monies to aforesaid golfers' association for privilege of causing letters "PGA" to be printed on golf balls sold to said last organization, and for partial redistribution to members thereof, or through discounts, commensurate with designated percentage of such payments and in lieu thereof, direct to members on their purchases, and not allowed, in any manner or form, to nonmember retail dealer purchasers; and
- (f) Made payments as aforesaid, to said professional association, not made available on proportionally equal terms to all other customers competing with members of said professional association in distribution of balls of like grade and quality, for use, in part, in advertising, promoting, and creating a preference on the part of the purchasing public for golf balls having letters "PGA" imprinted thereon, and for the promotion of the interests and welfare of the members, to the disadvantage of the non-member retail golf ball dealers;

With capacity and tendency to, and effect of—

- (1) Monopolizing, in members of said manufacturers' association, business of manufacturing and selling golf balls to retailers of the United States, and monopolizing, in members of said professional association, retail sale of such products to consumers therein;
- (2) Fixing and maintaining prices at, and conditions under, which golf balls are sold by manufacturers and wholesalers thereof and by retailers thereof to consumers;
- (3) Bringing about an unlawful discrimination in prices at which such articles of same grade and quality are sold by manufacturers and wholesalers to retailers therein, and of substantially increasing cost to such retailer purchasers of said articles;
- (4) Unreasonably lessening, eliminating, restraining, stifling, hampering, and suppressing competition in the golf ball trade and industry, and depriving 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

Syllabus

26 F. T. C.

industry, and of otherwise operating as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry;

- (5) Suppressing, eliminating, and discriminating against small business enterprises which are or have been engaged, or desire to engage, in manufacturing, selling, or distributing golf balls, and of obstructing and preventing the establishment of new distributors of golf balls; and
- (6) Suppressing and eliminating all price competition among manufacturers and wholesalers in sale of such articles, and among retail dealers engaged in resale thereof, and of hampering and interfering with the natural flow of trade in commerce of golf balls to and through the various States, and of injuring competitors by unfairly diverting business and trade from them, depriving them thereof and otherwise driving or freezing them out of business, and of prejudicing and injuring manufacturers, wholesalers, and retailers and others who do not conform to their program or methods, or who do not desire to conform to them, but are compelled to do so by their concerted action as herein set forth; and

With dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create monopoly thereof in the hands of aforesaid associations, officers, and members; and

Where said professional association, its officers, etc.—

- (g) Induced and received such unlawful discrimination in price or allowance in connection with purchase of golf balls in interstate commerce, through concerted action as aforesaid, and through the formulation, adoption, and administration of policy and practice requiring payment of monies, or discount direct, as above set forth, for the privilege of imprinting letters "PGA" on golf balls sold to members;
- (h) Induced and received payments contracted for as aforesaid, and not made available on proportionally equal terms to all other customer competitors of such manufacturer members, to be used by such professional association for the purpose of promoting and creating a preference on the part of the purchasing public for golf balls having letters "PGA" imprinted thereon over balls of equal grade, quality and value offered and sold by retail competitors; and
- (i) Knowingly induced and received such discriminations in price, as aforesaid set forth, on purchases of golf balls made by them;

With the result that the general effect of the policies and practices requiring systematic discriminations in price for golf balls of like grade and quality between customers in the same class, as hereinabove set forth, had been, or might be, substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution thereof, and to injure, destroy, and prevent competition between and among manufacturers, wholesalers, and retailers of golf balls, and deprive purchasing public of advantages in price, service, and other considerations which might be received and enjoyed under conditions of normal and unobstructed or free and fair competition in said trade and industry, and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry:

Held, That such acts and practices had a dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create monopoly thereof in the hands of said associations, their officers and members, and constituted unfair methods of competition in commerce in

violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, and that their said acts and practices in granting unlawful discriminations or paying, or contracting to make, payments for the promotion of said "PGA" balls and interests as hereinabove set forth, or in inducing or receiving any such discriminations or payments, as aforesaid constituted a violation of the provisions of Sections 2 (a), 2 (d) and 2 (f) of an Act of Congress approved October 15, 1914, as amended by an act approved June 19, 1936.

Before *Mr. William C. Reeves*, trial examiner.

Mr. John Darsey for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for Golf Ball Manufacturers' Association and its officers, with whom appeared *Arthur, Dry & Dole*, of New York City for Mr. Edward C. Conlin, vice president of said association, and *Lewis & Kelsey*, of New York City, for Mr. William T. Brown, secretary and treasurer thereof.

Lewis & Kelsey, of New York City, for A. G. Spalding and Brothers.

Reeves, Todd, Ely & Beaty, of New York City, for John Wana-maker, Inc.

Cook, Smith, Jacobs & Beake, of Detroit, Mich., for L. A. Young Golf Company.

Mr. Frank M. Slough, of Cleveland, O., for Worthington Ball Company.

Mr. Thomas Freeman, Jr., and *Mr. W. R. Brown*, of Chicago, Ill., for Wilson Sporting Goods Company.

Arthur, Dry & Dole, of New York City, for U. S. Rubber Products Company.

Kenefick, Cooke, Mitchell, Bass & Letchworth, of Buffalo, N. Y., for Dunlop Tire & Rubber Company.

Mr. Alan N. Mann, of New York City, for Acushnet Process Company.

Mr. Arthur J. W. Hilly, of New York City, for Professional Golfers Association of America and its officers and members.

AMENDED AND SUPPLEMENTAL 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 Act), and pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (The Clayton Act), as amended by "An Act to amend Section 2 of the act entitled "An Act to supplement

Complaint

26 F. T. C.

existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 as amended (U. S. C. Title 15, Sec. 13), and for other purposes" (The Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondents hereinabove designated have been and are using unfair methods of competition in commerce as "commerce" is defined in said Federal Trade Commission Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest; and the Federal Trade Commission having reason to believe that the said respondents have violated and are now violating the provisions of Subsection "a", Subsection "d" and Subsection "f" of Section 2 of said Clayton Act as amended, hereby issues its amended and supplemental complaint against said respondents, stating its charges as follows:

Count 1

PARAGRAPH 1. The respondent, Golf Ball Manufacturers' Association, hereinafter for convenience referred to as "Manufacturers' Association," is an unincorporated trade association, with an office at 105 Nassau Street, in the city of New York, N. Y. Its officers are, or were in 1936, respondents Lawrence B. Icely, Edward C. Conlin, and William T. Brown, president, vice-president, and secretary-treasurer, respectively. Its membership consists of manufacturers and wholesalers of golf balls. The "Manufacturers' Association" is a nonprofit organization created for the purpose of promoting the welfare and interests of its membership.

PAR. 2. Respondent A. G. Spalding and Brothers, is a corporation organized and existing by virtue of the laws of the State of New Jersey, with its main office and principal place of business located at 105 Nassau Street, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent John Wanamaker, Inc., is a corporation organized and existing by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at Chestnut Street, in the city of Philadelphia, Pa. It is, and for several years last past has been, engaged in the manufacture, purchase, and sale of golf balls.

Respondent L. A. Young Golf Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan, having an office and place of business located at 6545 St. Antoine Street, in the city of Detroit, Mich. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Worthington Ball Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio with an office and place of business located at Elyria, Ohio. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Wilson Sporting Goods Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 3037 Powell Avenue, in the city of Chicago, Ill. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent U. S. Rubber Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 1790 Broadway, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Dunlop Tire and Rubber Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office located at 500 5th Avenue, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Acushnet Process Company, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and place of business located in the city of New Bedford, Mass. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

The above named respondents do not constitute the entire membership of the respondent "Manufacturers' Association" but are representative members thereof. All members of the respondent "Manufacturers' Association" are made parties respondent herein as a class of which those specifically named are representative of the whole. For convenience the above named respondents will hereinafter be referred to as members of the "Manufacturers' Association."

PAR. 3. The respondent members of the "Manufacturers' Association" cause their golf balls when sold to be transported to purchasers thereof located in the various States of the United States. They are in competition among themselves, except in so far as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers and wholesalers of golf balls, who sell and distribute their said products in the various States of the United States, and who, in the ordinary course of their business, seek the same cus-

tomers that are sought by the respondent members of the "Manufacturers' Association." These nonmember manufacturers and wholesalers also cause their golf balls to be shipped and transported from the various points of manufacture and sale in certain States through and into other States of the United States. They are also in competition among themselves and with respondent members of the "Manufacturers' Association" except in so far as their said competition has been hindered, lessened, restricted, or restrained or potential competition forestalled as a result of the use of the practices and methods by the parties respondent hereinafter described. The respondent "Manufacturers' Association" and its officers are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent members of the "Manufacturers' Association" and nonmember manufacturers and wholesalers of golf balls, and also directly affect the competition in the sale of golf balls, between and among retail dealers located in the various States of the United States engaged in the retail sale of said products.

PAR. 4. The respondent, Professional Golfers' Association of America, hereinafter for convenience referred to as "PGA," is an unincorporated trade association, with an office at 14 East Jackson Boulevard, in the City of Chicago, Ill. The officers of said respondent "PGA" are, or were in 1936, respondents George R. Jacobus, president; Jack B. Mackie, treasurer; and Tom Walsh, secretary. Respondent "PGA" is a nonprofit association organized and created for the purpose of promoting the game of golf and the general welfare and interests of its members who are engaged in the sale of golf balls and golf equipment.

Its membership consists of approximately 1,500 of an estimated total of 2,500 professional golfers who are engaged in the retail sale of golf balls and golf equipment throughout the country. Among the members of said respondent "PGA" are respondents C. M. Irwin, Tom Kerrigan, Joe Bradley, Jim Dante, Jack Fox, Jack Hagen, John Inglis, R. C. MacDonald, Alex Main, and Jack Forrester, all individuals, engaged in the retail sale of golf balls and golf equipment. The above named members of said respondent "PGA" do not constitute the entire membership thereof but are representative members thereof. All members of respondent "PGA" are also made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are hereinafter for convenience collectively referred to as respondent members of "PGA."

The respondent members of "PGA" are in competition with one another in the retail sale of golf balls to consumers in the various localities in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the practices and methods of the parties respondent hereinafter specifically described and set forth. There are numerous other retailers of golf balls who are nonmembers of respondent "PGA" who are engaged in the sale of such products to consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent members of "PGA," except insofar as such competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the use of the practices and methods of the parties respondent hereinafter described. All or nearly all of respondent members of "PGA" and their competitors above mentioned are engaged in purchasing golf balls from manufacturers or wholesalers thereof which are transported from one State to and through other States to them as a result of such purchases and in reselling the same to customers located in the various trade areas in which they respectively operate. All of said respondent members of "PGA" are engaged in unfair methods, as hereinafter set forth, which directly and substantially affect competition among themselves, and between themselves and other retail dealers, and among the manufacturers and wholesalers of said products.

PAR. 5. The respondent members of the "Manufacturers' Association" own and control practically all of the factories engaged in the production of golf balls in the United States and produce most of the golf balls sold and distributed in this country. They are able to and do determine and control the prices and terms at which and conditions under which golf balls are sold and distributed by manufacturers and wholesalers throughout the United States. The respondent members of "PGA" constitute a group of retailers of golf balls so large and influential in the trade as to be able by themselves and in cooperation with respondent members of the "Manufacturers' Association" to control and influence the flow of trade and channels of distribution in golf balls throughout the country, as well as the prices at which, and the terms and conditions under which non-member retailers of golf balls buy and resell such products.

PAR. 6. The parties respondent named herein have within the past several years agreed and conspired, combined and confederated together and with others, and have united in and pursued a common

and concerted course of action and undertaking, among themselves and with others, to adopt, follow, carry out, enforce, fix, and maintain throughout the United States, certain monopolistic prices, policies, sales methods, and trade practices, hereinafter described, which the said parties respondent have agreed to and adhered to themselves and which they have attempted to and have, by coercion and compulsion imposed upon manufacturers, wholesalers, and retail dealers who were not permitted to be or did not desire to be members of either of the respondent associations, and others, to the substantial or potential injury of some of such manufacturers, wholesalers and retail dealers and of ultimate purchasers and consumers of golf balls.

PAR. 7. The said monopolistic prices, sales methods, policies, and trade practices referred to in the preceding paragraph and which were so adopted, fixed, and put into effect are as follows:

1. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who sell their said products to the members of respondent "PGA" enter into a purported license agreement with respondents, A. G. Spalding and Brothers, and U. S. Rubber Products Company permitting them to manufacture golf balls in accordance with a process on which the said respondents profess to have obtained a patent.

2. A policy and practice of requiring that all golf balls manufactured under the aforesaid purported license agreements be sold in accordance with uniform price lists attached thereto and made a part thereof.

3. A policy and practice of requiring as a condition precedent to the sale of golf balls to respondent members of "PGA" that manufacturers and wholesalers of golf balls enter into purported license agreements or contracts with the respondent "PGA" providing for the payment of a royalty to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on the golf balls so sold.

4. A policy and practice of causing, permitting, and allowing the respondent "PGA" to remit and pass along to its members a designated percentage of the royalties paid by manufacturers and wholesalers to respondent "PGA" under the aforesaid purported license agreements.

5. A policy and practice of causing, permitting, and allowing the respondent "PGA" to use the funds derived from the payment of royalties under the aforesaid purported license agreements for the purpose of promoting and creating a preference on the part of the purchasing public for golf balls having the letters "PGA" imprinted thereon to golf balls of equal quality and value offered for sale and sold by retail competitors of the respondent members of "PGA."

6. A policy and practice of requiring that manufacturers and wholesalers of golf balls bearing the letters, "PGA" refrain and abstain from selling the same to any persons or parties other than members of respondent "PGA."

7. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who manufacture and sell balls under the aforesaid purported license agreements maintain uniform prices with those quoted in the price lists attached to and made a part of the aforesaid license agreements in the sale of their golf balls of equal grade and quality to those bearing the letters "PGA" to retail purchasers who are nonmembers of respondent "PGA."

8. A policy or practice of granting, giving, or allowing members of the respondent "PGA" a discount on purchases of golf balls commensurate with the designated percentage of the aforesaid royalties to be received by them in lieu of said designated percentage.

9. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" refrain and abstain from giving, allowing, or granting, in any way or manner any rebate, discount, royalty, or refund in any manner or form to retail purchasers who are not members of respondent "PGA."

10. A policy and practice of persuading, coercing, and compelling retail dealers in golf balls who are not members of respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by the parties respondent herein.

11. Generally, a policy and practice designed to and tending to monopolize the manufacture, sale, and distribution of golf balls in the parties respondent herein.

PAR. 8. For the purpose of making such sales practices, policies, and pricing methods effective, and of requiring compliance therewith and observance thereof by all manufacturers, wholesalers, and retail dealers in golf balls throughout the United States, the parties respondent herein, acting through their officers, directors, committees, and individually, in furtherance of and in pursuance of the general plan, undertaking, conspiracy, and policy, have collectively as groups or individually done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said respondent associations and their members at which the policies and practices hereinabove described were discussed, adopted, and agreed to, and issued bulletins, circulars, letters, price lists, and other printed matter, and

Complaint

26 F. T. C.

distributed the same among the members of said respondent associations and others, announcing the adoption of the policies, practices, and requirements referred to and the imposition of the same upon all affected thereby.

3. Caused practically all members of the respondent "Manufacturers' Association" to enter into purported license agreements with respondents, A. G. Spalding and Brothers, and U. S. Rubber Products Company to manufacture their golf balls in accordance with a patented process professed to be owned by said respondents and to cause the golf balls so manufactured to be sold in accordance with uniform price lists attached to and made a part of said purported license agreements.

4. Caused all manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" to enter into purported license agreements or contracts with respondent "PGA" providing for the payment of royalties to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on their golf balls.

5. Caused, permitted, and allowed the respondent "PGA" to remit and pass along to its members a designated percentage of the royalties paid by the manufacturers and wholesalers to the respondent "PGA" under the aforesaid purported license agreements.

6. Caused, permitted, and allowed the respondent "PGA" to use the funds derived from the payment of royalties under the aforesaid purported license agreements for the purpose of promoting the interests and welfare of its members to the disadvantage of retail dealers in golf balls who are not members of said respondent "PGA."

7. Respondent members of the "Manufacturers' Association" have and do refuse to sell golf balls manufactured under the aforesaid purported license agreements to parties and persons who are not members of the respondent "PGA."

8. Respondent members of the "Manufacturers' Association" maintain uniform prices with those quoted in the price lists attached to and made a part of the aforesaid license agreements in the sale of their golf balls of equal grade and quality to those manufactured and sold under said purported license agreements.

9. Respondent members of the "Manufacturers' Association" grant, give, and allow members of respondent "PGA" a discount on purchases of golf balls commensurate with the designated percentage of the aforesaid royalties to be received by them in lieu of said percentage of royalties.

10. Respondent members of the "Manufacturers' Association" refuse and refrain from giving, allowing, or granting in any way or

manner any rebate, discount, royalty, or refund in any manner or form to retail purchasers who are not members of respondent "PGA."

11. The parties respondent herein have persuaded, coerced, and compelled retail dealers in golf balls who are not members of the respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by them.

12. Respondents generally have sought and have obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies, and pricing methods hereinabove described.

13. The parties respondent generally have exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies and methods referred to.

14. The parties respondent generally have supervised and investigated the practices and policies of retail dealers in golf balls, and have acted concertedly to maintain certain resale prices agreed upon, to control resale markets and to coercively require recalcitrant manufacturers, wholesalers, and retail dealers to conform to such practices and methods.

PAR. 9. The capacity, tendency, and effect of said plan, agreement, combination, conspiracy, undertaking, policies, and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1 To monopolize in the respondent members of the "Manufacturers' Association" the business of manufacturing and of selling golf balls to retail dealers in the United States.

2. To monopolize in the respondent members of "PGA" the retail sale of golf balls to consumers in the United States.

3. To fix and maintain the prices at and conditions under which golf balls are sold by manufacturers and wholesalers thereof.

4. To fix and maintain the prices at and conditions under which golf balls are sold by retail dealers to consumers.

5. To bring about an unlawful discrimination in the prices at which golf balls of the same grade and quality are sold by manufacturers and wholesalers to retail dealers therein.

6. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the golf-ball trade and industry 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; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

Complaint

26 F. T. C.

7. To substantially increase the cost to retail purchasers of golf balls.

8. To suppress, eliminate, and discriminate against small business enterprises which are or have been engaged or desire to engage in manufacturing, selling, or distributing golf balls.

9. To obstruct and prevent the establishment of new distributors of golf balls.

10. To suppress and eliminate all price competition among manufacturers and wholesalers in the sale of golf balls and among retail dealers engaged in the resale thereof.

11. To hamper and interfere with the natural flow of trade in commerce of golf balls to and through the various States of the United States; and to injure the competitors of individual respondents by unfairly diverting business and trade from them, depriving them thereof and otherwise driving or freezing them out of business.

12. To prejudice and injure manufacturers, wholesalers, and retailers and others who do not conform to respondents' program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

PAR. 10. The above alleged acts and things done by the parties respondent have a dangerous tendency unduly to hinder competition in the golf-ball trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition 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.

Count 2

PARAGRAPH 1. Paragraphs 1 to 9 inclusive of count 1 hereof are hereby adopted and made a part of this charge as fully as if set out herein verbatim.

PAR. 2. The parties respondent herein named have conspired and confederated together to bring about and have brought about and made effective a policy and system whereby respondent members of the Manufacturers' Association discriminate and have discriminated in price between different purchasers of golf balls of like grade and quality, in violation of Section 2a of an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes."

The aforesaid discriminations in price between different purchasers of golf balls of like grade and quality were and are effected through the concerted action of the parties respondent herein through the formulation, adoption, and administration of a policy and practice of requiring the payment of purported royalties to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," a percentage of which purported royalties to be passed along to the member purchaser with the knowledge and consent of the respondent members of the "Manufacturers' Association"; or a policy or practice of requiring that the respondent members of the "Manufacturers' Association" give members of respondent "PGA" a discount or rebate on the purchase prices quoted to the retail trade on golf balls of like grade and quality; or a policy or practice requiring that the respondent members of the "Manufacturers' Association" quote and sell members of respondent "PGA" golf balls of like grade and quality to those offered and sold the nonmember retail dealers at a price less than that at which they are sold to nonmember retail purchasers.

PAR. 3. The respondent members of the "Manufacturers' Association" have contracted for the payment of, and have made payments of money to the respondent "PGA" to be used by said respondent "PGA" for the purpose of promoting the welfare and interest of their customers who are members of said respondent "PGA" in violation of Section 2d of said Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes."

The aforesaid payments of money are effected through the payment of purported royalties to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," and the said payments consist of that percentage of said purported royalties which is not passed along to the respondent member purchasers of golf balls but is retained by the respondent "PGA" and used by it for the benefit and promotion of the welfare of its respondent members. The said payments of money are not available, and are not made to any customers of the respondent members of the "Manufacturers' Association" who are not members of the respondent "PGA."

PAR. 4. The respondent members of the respondent "PGA" have knowingly induced said respondent members of the "Manufacturers' Association" to discriminate in price as charged in paragraph 2 of

Findings

26 F. T. C.

count 2 of this complaint, and have knowingly received such discriminations in price on purchases of golf balls made by them, in violation of Section 2f of the said act entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes."

PAR. 5. The general effect of the policies and practices requiring the systematic discriminations in price for golf balls of like grade and quality between customers in the same class as set forth in paragraphs 2 and 4 hereof has been or may be substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution of golf balls, and to injure, destroy, and prevent competition between and among manufacturers, wholesalers, and retailers of golf balls and to deprive the purchasing public of advantages in price, service, and other considerations which might be received and enjoyed under conditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

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 Act), and pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), as amended by "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914 as amended (U. S. C. Title 15, Sec. 13), and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission, on August 18, 1937, issued, and subsequently served, its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Federal Trade Commission Act, and with acts and practices in violation of Subsections 2 (a), 2 (d), and 2 (f) of Section 2 of said Clayton Act as amended.

After the issuance and service of said amended complaint, respondents filed their answers thereto, making general denial of the substantial allegations of the complaint. Subsequently all the respondents

petitioned the Federal Trade Commission for permission to withdraw said answers and to file in lieu thereof substitute answers to the complaint, in which substitute answers respondents admitted, for the purposes of this proceeding only, all the material allegations of said complaint except the facts alleged in paragraph 7, Subsections 1 and 2, and paragraph 8, Subsection 3, of count 1, and the same allegations as adopted and made a part of paragraph 1 of count 2 of the amended complaint—all of which allegations were severally denied. Pursuant to permission granted by the Commission, said original answers were withdrawn by said respondents and said substitute answers were filed in lieu thereof. Said respondents also consented therein that the Commission might proceed to make its findings of fact without further proceedings and that an order might issue and be served upon the respondents requiring them to cease and desist from the unfair methods of competition alleged in the complaint. The said Commission having duly considered the above 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, Golf Ball Manufacturers' Association, hereinafter for convenience referred to as "Manufacturers' Association," is an unincorporated trade association, with an office at 105 Nassau Street, in the city of New York, N. Y. Its officers are respondents Lawrence B. Icely, Edward C. Conlin, and William T. Brown, president, vice-president, and secretary-treasurer, respectively. Its membership consists of manufacturers and wholesalers of golf balls. The "Manufacturers' Association" is a nonprofit organization created for the purpose of promoting the welfare and interests of its membership.

PAR. 2. Respondent A. G. Spalding and Bros., is a corporation organized and existing by virtue of the laws of the State of New Jersey, with its main office and principal place of business located at 105 Nassau Street, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent John Wanamaker, Inc., is a corporation organized and existing by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at Chestnut Street, in the city of Philadelphia, Pa. It is, and for several years last past has been, engaged in the manufacture, purchase, and sale of golf balls.

Respondent L. A. Young Golf Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan,

having an office and place of business located at 6545 St. Antoine Street, in the city of Detroit, Mich. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Worthington Ball Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio with an office and place of business located at Elyria, Ohio. It is, and for several years last past has been engaged in the manufacture and sale of golf balls.

Respondent Wilson Sporting Goods Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 2037 Powell Avenue, in the city of Chicago, Ill. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent U. S. Rubber Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 1790 Broadway, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Dunlop Tire and Rubber Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office located at 500 5th Avenue, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Acushnet Process Company, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and place of business located in the city of New Bedford, Mass. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

The above-named respondents do not constitute the entire membership of the respondent "Manufacturers' Association" but are representative members thereof. All members of the respondent "Manufacturers' Association" were made parties respondent herein as a class of which those specifically named are representative of the whole. For convenience the above-named respondents will hereinafter be referred to as members of the "Manufacturers' Association."

PAR. 3. The respondent members of the "Manufacturers' Association" cause their golf balls when sold to be transported to purchasers thereof located in the various States of the United States. They are in competition among themselves, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers and wholesalers of golf balls, who sell and

distribute their said products in the various States of the United States, and who, in the ordinary course of their business, seek the same customers that are sought by the respondent members of the "Manufacturers' Association." These nonmember manufacturers and wholesalers also cause their golf balls to be shipped and transported from the various points of manufacture and sale in certain States through and into other States of the United States. They are also in competition among themselves and with respondent members of the "Manufacturers' Association" except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition forestalled as a result of the use of the practices and methods by the parties respondent hereinafter described. The respondent "Manufacturers' Association" and its officers are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent members of the "Manufacturers' Association" and nonmember manufacturers and wholesalers of golf balls, and also directly affect the competition in the sale of golf balls, between and among retail dealers located in the various States of the United States engaged in the retail sale of said products.

PAR. 4. The respondent, Professional Golfers' Association of America, hereinafter for convenience referred to as "PGA," is an unincorporated trade association, with an office at 14 East Jackson Boulevard, in the city of Chicago, Ill. The officers of said respondent "PGA" are respondents George R. Jacobus, president; Jack B. Mackie, treasurer; and Tom Walsh, secretary. Respondent "PGA" is a nonprofit association organized and created for the purpose of promoting the game of golf and the general welfare and interests of its members who are engaged in the sale of golf balls and golf equipment.

Its membership consists of approximately 1,500 of an estimated total of 2,500 professional golfers who are engaged in the retail sale of golf balls and golf equipment throughout the country. Among the members of said respondent "PGA" are respondents C. M. Irwin, Tom Kerrigan, Joe Bradley, Jim Dante, Jack Fox, Jack Hagen, John Inglis, R. C. MacDonald, Alex Main, and Jack Forrester, all individuals, engaged in the retail sale of golf balls and golf equipment. The above-named members of said respondent "PGA" do not constitute the entire membership thereof but are representative members thereof. All members of respondent "PGA" were made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are hereinafter for convenience collectively referred to as respondent members of "PGA."

The respondent members of "PGA" are in competition with one another in the retail sale of golf balls to consumers in the various localities in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the practices and methods of the parties respondent hereinafter specifically described and set forth. There are numerous other retailers of golf balls who are nonmembers of respondent "PGA" who are engaged in the sale of such products to consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent members of "PGA," except insofar as such competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the use of the practices and methods of the parties respondent hereinafter described. All or nearly all of respondent members of "PGA" and their competitors above mentioned are engaged in purchasing golf balls from manufacturers or wholesalers thereof which are transported from one State to and through other States to them as a result of such purchases and in reselling the same to customers located in the various trade areas in which they respectively operate. All of said respondent members of "PGA" are engaged in unfair methods, as hereinafter set forth, which directly and substantially affect competition among themselves, and between themselves and other retail dealers, and among the manufacturers and wholesalers of said products.

PAR. 5. The respondent members of the "Manufacturers' Association" own and control practically all of the factories engaged in the production of golf balls in the United States and produce most of the golf balls sold and distributed in this country. The respondent members of "PGA" constitute a group of retailers of golf balls so large and influential in the trade as to be able by themselves and in cooperation with respondent members of the "Manufacturers' Association" to control and influence the flow of trade and channels of distribution in golf balls throughout the country, as well as the prices at which, and the terms and conditions under which non-member retailers of golf balls buy and resell such products.

PAR. 6. The parties respondent named herein have within the past several years agreed, combined, and united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, follow, carry out, enforce, fix, and maintain throughout the United States, certain monopolistic prices, policies, sales methods, and trade practices, hereinafter described, which the said parties respondent have agreed to and pursued to the sub-

stantial or potential injury of some of such manufacturers, wholesalers, and retail dealers and of ultimate purchasers and consumers of golf balls.

PAR. 7. The said monopolistic prices, sales methods, policies, and trade practices referred to in the preceding paragraph and which were so adopted, fixed, and put into effect are as follows:

1. A policy and practice of coercing, in connection with the sale of golf balls to respondent members of "PGA," manufacturers and wholesalers of golf balls to enter into contracts with the respondent "PGA" providing for the payment of monies to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on the golf balls so sold.

2. A policy and practice of causing, permitting and allowing the respondent "PGA" to remit and pass along to its members a designated percentage of the monies paid by manufacturers and wholesalers to respondent "PGA" under the aforesaid contracts.

3. A policy and practice of causing, permitting, and allowing the respondent "PGA" to use the funds derived from the payment of monies under the aforesaid contracts for the purpose of promoting and creating a preference on the part of the purchasing public for golf balls having the letters "PGA" imprinted thereon to golf balls of equal quality and value offered for sale and sold by retail competitors of the respondent members of "PGA."

4. The policy and practice of requiring that all manufacturers and wholesalers of golf balls who manufacture and sell balls under the aforesaid contracts observe the provisions of said contracts with respect to the maintenance of uniform prices as between members of the respondent "PGA" and other retail dealer purchasers who are nonmembers of respondent "PGA" in the sale of their golf balls of equal grade and quality.

5. A policy or practice of granting, giving, or allowing members of the respondent "PGA" a discount on purchases of golf balls commensurate with the designated percentage of the aforesaid payments to be received by them in lieu of said designated percentage.

6. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" refrain and abstain from giving, allowing, or granting in any way or manner any rebate, discount, royalty, or refund in any manner or form to retail purchasers who are not members of respondent "PGA."

7. A policy and practice of persuading, coercing, and compelling retail dealers in golf balls who are not members of respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by the parties respondent herein.

8. Generally, a policy and practice designed to and tending to monopolize the sale and distribution of golf balls in the parties respondent herein.

PAR. 8. For the purpose of making such sales practices, policies, and pricing methods effective, and of requiring compliance therewith and observance thereof by all manufacturers, wholesalers, and retail dealers in golf balls throughout the United States, the parties respondent herein, acting through their officers, directors, committees, and individually, in furtherance of and in pursuance of the general plan, undertaking, and policy, have collectively as groups or individually done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said respondent associations and their members at which the policies and practices hereinabove described were discussed, adopted, and agreed to, and issued bulletins, circulars, letters, price lists, and other printed matter, and distributed the same among the members of said respondent associations and others, announcing the adoption of the policies, practices, and requirements referred to and the imposition of the same upon all affected thereby.

3. Caused manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" to enter into contracts with respondent "PGA" providing for the payment of money to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on their golf balls.

4. Caused, permitted, and allowed the respondent "PGA" to remit and pass along to its members a designated percentage of the monies paid by the manufacturers and wholesalers to the respondent "PGA" under the aforesaid contracts.

5. Caused, permitted, and allowed the respondent "PGA" to use the funds derived from the payment of monies under the aforesaid contracts for the purpose of promoting the interests and welfare of its members to the disadvantage of retail dealers in golf balls who are not members of said respondent "PGA."

6. Respondent members of the "Manufacturers' Association" have observed the provisions of the aforesaid contracts with respect to the maintenance of uniform prices as between members of the "PGA" and others than members of the "PGA" in the sale of golf balls of equal grade and quality to those sold to members of the "PGA" under the provisions of said contracts.

7. Respondent members of the "Manufacturers' Association" have given and allowed members of respondent "PGA" a discount on

purchases of golf balls commensurate with the designated percentage of the aforesaid payments of money to be received by them in lieu of said percentage thereof.

8. Respondent members of the "Manufacturers' Association" refuse and refrain from giving, allowing, or granting in any way or manner any rebate, discount, royalty, or refund in any manner or form to retail dealer purchasers who are not members of respondent "PGA."

9. The parties respondent herein have persuaded, coerced, and compelled retail dealers in golf balls who are not members of the respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by them.

10. Respondents generally have sought and have obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies, and pricing methods hereinabove described.

11. The parties respondent generally have exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies and methods referred to.

12. The parties respondent generally have supervised and investigated the practices and policies of retail dealers in golf balls, and have acted concertedly to maintain certain resale prices agreed upon; to control resale markets and to coercively require recalcitrant manufacturers, wholesalers, and retail dealers to conform to such practices and methods.

PAR. 9. The capacity, tendency, and effect of said plan, agreement, undertaking, policies, and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1. To monopolize in the respondent members of the "Manufacturers' Association" the business of manufacturing and of selling golf balls to retail dealers in the United States.

2. To monopolize in the respondent members of "PGA" the retail sale of golf balls to consumers in the United States.

3. To fix and maintain the prices at and conditions under which golf balls are sold by manufacturers and wholesalers thereof.

4. To fix and maintain the prices at and conditions under which golf balls are sold by retail dealers to consumers.

5. To bring about an unlawful discrimination in the prices at which golf balls of the same grade and quality are sold by manufacturers and wholesalers to retail dealers therein.

6. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the golf ball trade and industry and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under con-

Findings

26 F. T. C.

ditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

7. To substantially increase the cost to retail dealer purchasers of golf balls.

8. To suppress, eliminate, and discriminate against small business enterprises which are or have been engaged or desire to engage in manufacturing, selling, or distributing golf balls.

9. To obstruct and prevent the establishment of new distributors of golf balls.

10. To suppress and eliminate all price competition among manufacturers and wholesalers in the sale of golf balls and among retail dealers engaged in the resale thereof.

11. To hamper and interfere with the natural flow of trade in commerce of golf balls to and through the various States of the United States; and to injure the competitors of individual respondents by unfairly diverting business and trade from them, depriving them thereof and otherwise driving or freezing them out of business.

12. To prejudice and injure manufacturers, wholesalers, and retailers and others who do not conform to respondents' program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

PAR. 10. The above alleged acts and things done by the parties respondent have a dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition 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.

PAR. 11. The parties respondent herein named have brought about and made effective a policy and system whereby respondent members of the "Manufacturers' Association" discriminate and have discriminated in price between different purchasers of golf balls of like grade and quality, in violation of Section 2a of the Clayton Act as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes."

The aforesaid discriminations in price between different purchasers of golf balls of like grade and quality were effected through the concerted action of the parties respondent herein through the formula-

tion, adoption, and administration of a policy and practice of requiring the payment of monies to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," a percentage of which monies to be passed along to the member purchaser with the knowledge and consent of the respondent members of the "Manufacturers' Association"; or a policy or practice of requiring that the respondent members of the "Manufacturers' Association" give members of respondent "PGA" a discount or rebate on the purchase prices quoted to the retail trade on golf balls of like grade and quality; or a policy or practice requiring that the respondent members of the "Manufacturers' Association" quote and sell members of respondent "PGA" golf balls of like grade and quality to those offered and sold the non-member retail dealers at a price less than that at which they are sold to nonmember retail purchasers.

PAR. 12. The respondent members of the "Manufacturers' Association" have contracted for the payment of, and have made payments of money to the respondent "PGA" to be used by said respondent "PGA" for the purpose of promoting the welfare and interest of their customers who are members of said respondent "PGA" in violation of Section 2 (d) of the Clayton Act as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes."

The aforesaid payments of money were effected through the payment of monies to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," and the said payments consist of that percentage of said monies which is not passed along to the respondent member purchasers of golf balls but is retained by the respondent "PGA" and used by it for the benefit, and promotion of the welfare of its respondent members. The said payments of money are not available, and are not made to any customers of the respondent members of the "Manufacturers' Association" who are not members of the respondent "PGA."

PAR. 13. The respondent members of the respondent "PGA" have knowingly induced said respondent members of the "Manufacturers' Association" to discriminate in price as aforesaid, and have knowingly received such discriminations in price on purchases of golf balls made by them, in violation of Section 2 (f) of the Clayton Act as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supple-

ment existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes."

PAR. 14. The general effect of the policies and practices requiring the systematic discriminations in price for golf balls of like grade and quality between customers in the same class as set forth in paragraphs 11 and 13 hereof has been or may be substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution of golf balls, and to injure, destroy, and prevent competition between and among manufacturers, wholesalers, and retailers of golf balls and to deprive the purchasing public of advantages in price, service, and other considerations which might be received and enjoyed under conditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

CONCLUSION

The aforesaid acts and practices of respondents have a dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition in commerce within the meaning of Section 5 of 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; and the acts and practices, set forth in paragraphs 11 to 14 inclusive, of the said respondents are in violation of Sections 2 (a), 2 (d) and 2 (f) of the Clayton Act as amended by an act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), 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 and the answers filed by the parties respondent herein on February 7, 1938, admitting with certain exceptions all the material allegations of the complaint for the purpose of this proceeding only, and waiving the taking of further evidence and other intervening procedure, 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," and Sections 2a, 2d and 2f 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" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes."

It is ordered, That the parties respondent herein, and their agents, representatives, servants, and employees in connection with the sale, offering for sale or purchase of golf balls in interstate commerce or in the District of Columbia, cease and desist from:

1. Entering into and carrying out any agreement or combination among themselves or among any of them, to fix and maintain uniform wholesale prices to be exacted by the manufacturers of golf balls, or their agents, servants, or representatives, from retail dealer purchasers thereof;

(It is not intended that the foregoing paragraphs shall abridge any lawful right of a licensor under a patent or a patent license agreement to apply to any lawful action taken under patents or license agreements relating thereto);

2. Fixing, enforcing, and maintaining, by agreement or combination among themselves, or among any of them, resale prices for golf balls;

(It is not intended that the provisions of the two preceding paragraphs shall abridge or preclude any lawful action with reference to prices which is permitted by the act commonly called the Miller-Tydings Act, namely, Title 8 of the Act of Congress approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes"; or any other then existing Federal Law.)

It is further ordered, That the respondent, Professional Golfers Association, its officers, members, agents, or representatives, cease and desist from:

1. Requiring, coercing, or persuading the respondent Golf Ball Manufacturers' Association, its officers, members, agents, or representatives, or any of them, or any other corporation, partnership, firm, or individual, to enter into any agreement or contract providing for or resulting in a difference in price in favor of members of the "PGA," through the payment of any monies, or any thing of value for the privilege of causing the letters "PGA" or any other

insignia or mark of like character to be imprinted on golf balls manufactured and sold by any of the respondent manufacturers or any other manufacturer, corporation, partnership, firm, or individual, directly or indirectly to the respondent "PGA" or any of its respondent members.

2. Entering into any combination, understanding or agreement among themselves, or among any of them, to hinder or prevent, by intimidation, coercion, withdrawal, or threatened withdrawal of patronage or custom, either expressed or implied, or promises or agreements to increase such patronage or custom, any person, firm, partnership, or corporation, or any agent or representative thereof, from selling or buying golf balls in interstate commerce, from or to whomsoever, or at whatsoever price or terms may be agreed upon between any seller or purchaser.

It is further ordered, That the respondent Golf Ball Manufacturers' Association, its officers, members, agents, or representatives, or any of them, in connection with the sale or offering for sale of golf balls in interstate commerce, cease and desist from:

1. Granting or giving the following unlawful discriminations in price, namely, the payment of anything of value to respondent Professional Golfers' Association, either as a royalty for the privilege of causing the letters "PGA" or any other insignia, brand or mark to be imprinted on golf balls sold to members of the respondent Professional Golfers Association or otherwise, which payment is, directly or indirectly, in whole or in part, passed along to or used for the benefit of the members of said Professional Golfers Association; or the making of any payment directly to such members in lieu of any such payment to the Professional Golfers Association.

2. Granting or giving any other price discrimination of substantially similar character to the respondent Professional Golfers Association or its members under substantially like circumstances and conditions in connection with the sale of golf balls of like grade and quality;

3. Paying or contracting to pay to the respondent Professional Golfers Association anything of value either as a royalty for the privilege of causing the letters "PGA" or any other insignia of like character to be imprinted on golf balls or otherwise, which payment is intended to be used or is in effect used, directly or indirectly, in whole or in part, for the purpose of advertising, promoting, or creating a preference on the part of the purchasing public for golf balls having the letters "PGA" or any other insignia, brand, or mark impressed thereon, unless such payments are made available on proportionally equal terms to all other customers competing with

824

Order

the members of the Professional Golfers Association in the distribution of golf balls of like grade and quality;

4. Otherwise granting to the respondent Professional Golfers Association any advertising or promotion allowances of substantially similar character, unless such payments are made available on proportionally equal terms to all other customers competing with the members of the Professional Golfers Association in the distribution of golf balls of like grade and quality;

(It is not intended that the provisions of the foregoing paragraphs (1) to (4) inclusive shall preclude lawful contributions made to promote the general welfare of the game of golf).

It is further ordered, That the respondent, Professional Golfers Association, its officers, members, representatives, agents, and employees, cease and desist from:

1. Inducing or receiving any discrimination in price or allowance in connection with the purchase of golf balls in interstate commerce which the manufacturers of golf balls are prohibited from giving under the provisions of paragraphs (1) to (4) inclusive immediately preceding this paragraph of this order;

2. Inducing or receiving any similar discrimination in price or allowance in the purchase of golf balls in interstate commerce under substantially like circumstances and conditions.

It is further ordered, That the parties respondent herein, within 60 days of the date of the service upon them of this order, file with the Commission reports in writing stating the manner and form in which they shall have complied with this order.

IN THE MATTER OF
UNITED WOOLEN MILLS

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

Docket 3312. Complaint, Jan. 25, 1938—Decision, Mar. 2, 1938

Where a corporation engaged in sale of men's suits and clothing, to purchasers in other States, in competition with others likewise engaged in sale and distribution of such products in commerce as aforesaid, and including many who distribute and sell such suits and clothing, not manufactured by them, and who do not in any way represent themselves as manufacturers thereof—
Adopted and used corporate and trade name including word "Mills," and represented, through such statements as "UNITED WOOLEN MILLS Tailors-to-Men", etc., displayed on letterheads, billheads, cards, invoices, labels, and newspaper advertising matter of interstate distribution, that it was the manufacturer of the garments sold in commerce by it, notwithstanding fact it did not manufacture said garments, as understood by trade and purchasing public generally, nor own and operate, or directly and absolutely control, any mill or mills making same;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such representation was true, and that it actually was the manufacturer of the garments sold by it, and with result, as direct consequence of mistaken and erroneous beliefs thus induced, that number of consuming public purchased substantial volume of its said suits and clothing as and from clothing manufacturer, for direct dealing with whom a substantial portion of wholesale and retail purchasers of such products has preference, as securing closer prices, superior quality, and other advantages not had through selling agency or middleman or anyone else, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of men's suits and clothing and who truthfully advertise and represent the nature and character of their business; to the substantial injury of 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. Karl Stecher for the Commission.

Mr. A. Leo Oberdorfer, of Birmingham, Ala., 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 Woolen Mills, 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. The respondent, United Woolen Mills, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal place of business at 315 North 19th Street in the city of Birmingham, State of Alabama. It is, and for more than 3 years last past has been, engaged in the sale of men's suits and clothing, in commerce between the various States of the United States. It causes said garments, when sold, to be shipped from its place of business in the State of Alabama to purchasers thereof located or residing in various States of the United States other than the State of Alabama. In the course and conduct of its business said respondent is, and has been, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution of men's suits and clothing in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, said respondent adopted as and for its corporate and trade name, the words "United Woolen Mills," under which to carry on its business, and which corporate and trade name it has used continuously for several years last past, and is now using, in soliciting the sale of and selling its said men's garments in commerce among and between the various States of the United States. Respondent has caused its said corporate and trade name, "United Woolen Mills," to appear on its letterheads, billheads, cards, invoices, labels, and newspaper advertising matter having interstate distribution.

The said letterheads, billheads, cards, invoices, labels affixed to said garments, and newspaper advertising matter distributed by respondent, as aforesaid, contain misleading representations and statements concerning its business status, of which the following is representative:

UNITED WOOLEN MILLS
Tailors-to-Men
315 North Nineteenth Street
Birmingham, Ala.

UNITED WOOLEN MILLS
(Trade-Mark)
Birmingham—Anniston

UNITED
WOOLEN
MILLS

Such statements as hereinabove set out serve as representations to the purchasing public that the respondent is the manufacturer of the garments which it sells in commerce as herein detailed.

PAR. 3. Respondent does not, in truth and in fact, make or manufacture the garments which it sells and distributes in commerce as herein detailed as those terms are understood by the trade and purchasing public generally, nor does it own and operate or directly and absolutely control any mill or mills wherein the garments sold by it are made or manufactured. The garments sold by respondent are made or manufactured in a mill or mills or factories which respondent does not own, operate, or control in any way.

PAR. 4. A substantial portion of the wholesale and retail purchasers of men's suits and clothing have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman or anyone else.

PAR. 5. Many of the respondent's competitors who distribute and sell men's suits and clothing do not manufacture products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 6. The false and misleading representation made by the respondent as aforesaid, through the use of the name "United Woolen Mills," that it is the manufacturer of the garments which it distributes and sells had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true and that the respondent is actually the manufacturer of the garments which it sells. As a direct consequence of the mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased a substantial volume of men's suits and clothing sold by the respondent with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling men's suits and clothing who truthfully advertise and represent the nature and character of their business. 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.

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 January 25, 1938, issued, and on January 27, 1938, served its complaint in this proceeding upon respondent, United Woolen Mills, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, briefs having been waived, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, United Woolen Mills, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal place of business at 315 North 19th Street in the city of Birmingham, State of Alabama. It is, and for more than 3 years last past has been, engaged in the sale of men's suits and clothing, in commerce between the various States of the United States. It causes said garments, when sold, to be shipped from its place of business in the State of Alabama to purchasers thereof located or residing in various States of the United States other than the State of Alabama. In the course and conduct of its business said respondent is, and has been, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution of men's suits and clothing in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, said respondent adopted as and for its corporate

and trade name the words "United Woolen Mills" under which to carry on its business, and which corporate and trade name it has used continuously for several years last past, and is now using, in soliciting the sale of and selling its said men's garments in commerce among and between the various States of the United States. Respondent has caused its corporate and trade name, "United Woolen Mills," to appear on its letterheads, billheads, cards, invoices, labels, and newspaper advertising matter having interstate distribution.

The said letterheads, billheads, cards, invoices, labels affixed to said garments, and newspaper advertising matter distributed by respondent, as aforesaid, contain misleading representations and statements concerning its business status, of which the following is representative:

UNITED WOOLEN MILLS
Tailors-to-Men
315 North Nineteenth Street
Birmingham, Ala.

UNITED WOOLEN MILLS
(Trade-Mark)
Birmingham—Anniston

UNITED
WOOLEN
MILLS

Such statements as hereinabove set out serve as representations to the purchasing public that the respondent is the manufacturer of the garments which it sells in commerce as herein detailed.

PAR. 3. Respondent does not, in truth and in fact, make or manufacture the garments which it sells and distributes in commerce as herein detailed as those terms are understood by the trade and purchasing public generally, nor does it own and operate or directly and absolutely control any mill or mills wherein the garments sold by it are made or manufactured. The garments sold by respondent are made or manufactured in a mill or mills or factories which respondent does not own, operate, or control in any way.

PAR. 4. A substantial portion of the wholesale and retail purchasers of men's suits and clothing have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman or anyone else.

PAR. 5. Many of the respondent's competitors who distribute and sell men's suits and clothing do not manufacture products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 6. The false and misleading representation made by the respondent as aforesaid, through the use of the name "United Woolen Mills," that it is the manufacturer of the garments which it distributes and sells had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true and that the respondent is actually the manufacturer of the garments which it sells. As a direct consequence of the mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased a substantial volume of men's suits and clothing sold by the respondent with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling men's suits and clothing who truthfully advertise and represent the nature and character of their business. 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.

CONCLUSION

The aforesaid acts and practices of the respondent, United Woolen Mills, 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 and the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914,

Order

26 F. T. C.

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 Woolen Mills, a corporation, its officers, representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of clothing for men, suits, pants, and overcoats in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "Mills" or any other word or phrase of similar import and meaning as part of its corporate name or in any other manner, or through any other means or device, that it is the manufacturer or maker of the products which it sells unless and until it actually owns and operates or directly and absolutely controls a plant or mill wherein said products are manufactured by it.

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.

Syllabus

IN THE MATTER OF
PRENDERGAST-DAVIES COMPANY, LTD.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2849. Complaint, June 20, 1936—Decision, Mar. 5, 1938

Where word "Distilleries," when used in connection with liquor industry and products thereof, had had and still had a definite significance and meaning to minds of wholesalers and retailers and to ultimate purchasing public as designating places where such liquors are made by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, and substantial portion of purchasing public preferred to buy spirituous liquors prepared and bottled by distilleries; and thereafter a corporation engaged as importer, wholesaler, and retailer of whiskies and other alcoholic beverages, in substantial competition with others similarly engaged—

- (a) Sold bottled whisky, labels on which described same as "Bottled in Scotland, MacNab Distilleries Limited, 266 Clyde St., Glasgow, Scotland. Head Office 11 Waterloo Place, London S. W. 1, England," and thereby represented to customers, and supplied to them means of representing to their retailer-vendees and to ultimate consuming public, that whisky thus contained was made in Scotland by aforesaid "Distilleries";

Notwithstanding fact said concern neither owned, operated, nor controlled any place or places where alcoholic liquors are produced by process of original and continuous distillation from mash, wort, or wash, and did not produce any whisky which went into bottles thus labeled, and whisky in question was made for it under agreement with English distillers, and there were no such distilleries at said Glasgow address; and

Where "Scotch Whisky" had long had and still had definite significance to minds of wholesalers, retailers, and ultimate purchasing public as meaning distinctive product of Scotland, there made, and a substantial portion of purchasing public preferred to buy Scotch whisky made in Scotland; and thereafter aforesaid importer, wholesaler, and retailer—

- (b) Sold whisky in bottles, aforesaid labels of which further represented same as "Sandy MacNab's Old Liqueur Scotch Whiskey, a blend of the finest aged Scotch Whiskey, Produce of Scotland—Bottled in Scotland, MacNab Distilleries Limited," etc., as above set forth, and thereby represented to customers, and supplied to them means of representing to own vendee-retailers and to ultimate consuming public, that whisky thus contained was a true Scotch Whisky, distinctive product of Scotland, and there made by the MacNab Distilleries;

Notwithstanding fact said liquor was not a distinctive product of Scotland, nor there made nor bottled, and was neither "Scotch Whisky" in fact nor in accordance with standards of identity for distilled spirits established by Federal Alcohol Administration;

With effect of misleading and deceiving dealers and purchasing public into erroneous beliefs that Scotch whisky sold by it was product of an actual distillery in Scotland and was a distinctive product of said country, there

Complaint

26 F. T. C.

made, and genuine Scotch whisky imported from Scotland, and of inducing dealers and purchasing public, in such beliefs, to buy said Sandy MacNab Scotch whisky, and thereby divert trade to it from competitors, among whom there are those who sell as Scotch whisky, whisky made and bottled in Scotland and distinctive product of that country and truthfully labeled as product of actual distilleries there located, and competitors who sell as blended, Scotch type whisky, mixture or blend made outside of Great Britain and do not falsely represent its place of distillation on labels attached to bottles in which liquor is sold and shipped, and with capacity and tendency so to mislead, deceive, and induce; 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. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. George J. Feldman, of Washington, D. C. and *Weissman & Maretz*, of New Haven, 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 Prendergast-Davies Company, Ltd., 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 New York, with its principal office and place of business at 601 West 26th Street, 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 an importer, wholesaler, and retailer of whiskies and other alcoholic beverages, purchasing, importing, and selling the same at both wholesale and retail in constant course of trade and commerce between 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 aforesaid alcoholic beverages when sold to be transported from its place of business aforesaid, into and through the various States of the United States to the purchasers thereof, located in other States of the United States and in the District of Columbia. In the course and conduct of its business aforesaid, respondent is now and has been, for more than 1 year last past, in substantial competition with other corporations and with individuals,

partnerships, and firms, engaged in the purchase, importation, and sale at wholesale and retail of whiskies and other alcoholic beverages in trade and 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 "Distilleries" 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 places 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 distilleries. Further, "Scotch Whiskey" for a long time has had and still has, a definite significance to the minds of wholesalers, retailers, and to the ultimate purchasing public, to wit: a distinctive product of Scotland, manufactured in Scotland, and a substantial portion of the purchasing public prefers to buy Scotch whiskey manufactured in Scotland.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has heretofore sold and is now selling, a whiskey in bottles with labels attached thereto containing the following representations, to wit:

Sandy MacNab's
Old Liqueur Scotch
Whiskey

A blend of the finest aged Scotch Whiskey
Produce of Scotland—Bottled in Scotland

MacNab Distilleries Limited

266 Clyde St.,
Glasgow, Scotland
Head Office

11 Waterloo Place,
London S. W. 1,
England

By the use of the aforesaid designation "Scotch Whiskey" on said labels, together with the phrases "MacNab Distilleries, Ltd.," "Bottled in Scotland" and the address "266 Clyde Street, Glasgow, Scotland" on the aforesaid labels in which it sells and ships the aforesaid whiskey, 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 whiskey in said bottles contained is a true Scotch whiskey, a distinctive product of Scotland and manufactured in Scotland by the MacNab Distilleries, Ltd., when as

a matter of fact the MacNab Distilleries, Ltd., is an English company with its principal office in the city of London, England, and does not own, operate, or control any place or places where alcoholic liquors are produced by the process of original and continuous distillation from mash, wort, or wash and does not produce or manufacture any whiskey or whiskies which go into the bottles so labeled as aforesaid; the so-called "Sandy MacNab Scotch Whiskey" is produced by W. H. Holt and Sons, Ltd., distillers of Chorlton-Cum-Hardy, England, under an agreement with the aforesaid MacNab Distilleries, Ltd., of London, England, and said whiskey is not a distinctive product of Scotland and is neither manufactured nor bottled in Scotland, and is neither "Scotch Whiskey" in fact, nor in accordance with the standards of identity for distilled spirits established by Article II of Regulation No. 5 of the Federal Alcohol Administration, effective May 1, 1936, duly enacted and promulgated pursuant to the authority of the Federal Alcohol Administration Act, 49 Stat. 977, approved August 29, 1935. There are no MacNab Distilleries at 266 Clyde Street, Glasgow, Scotland.

PAR. 4. There are among the competitors of respondent engaged in the sale of Scotch Whiskey, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals, who sell at wholesale and retail as Scotch whiskey, whiskey which is manufactured and bottled in Scotland and is a distinctive product of that country and which whiskey is truthfully labeled as the product of actual distilleries located in Scotland. There are also among the competitors of respondent as aforesaid, corporations, individuals, firms, and partnerships, who sell "blended Scotch Type Whiskey," a mixture or blend made outside of Great Britain and who do not falsely represent its place of distillation on the labels attached to the bottles in which such liquor is sold and shipped.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof for each of them have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the erroneous beliefs that the "Scotch Whiskey" by it sold is the product of an actual distillery located in Scotland, and that it is a distinctive product of Scotland, manufactured there, and is otherwise genuine Scotch whiskey, imported from Scotland and have the capacity and tendency and do induce dealers and the purchasing public acting in such beliefs to purchase the Sandy MacNab "Scotch Whiskey" sold by respondent, thereby diverting trade to respondent from its competitors who do not so misrepresent the Scotch whiskies and blended Scotch type whiskies by them sold 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 20, 1936 issued, and later served its complaint in this proceeding upon the respondent, Prendergast-Davies Company, Ltd., 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, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. This respondent 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 at 601 West 26th Street, in the city of New York, in said State. For more than 1 year last past it has been engaged in the business of an importer, wholesaler, and retailer of whiskies and other alcoholic beverages, purchasing, importing, and selling the same at both wholesale and retail in constant course of trade and commerce between 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 aforesaid alcoholic beverages when sold to be transported from its place of business aforesaid, into and through the various

States of the United States to the purchasers thereof, located in other States of the United States and in the District of Columbia. In the course and conduct of its business aforesaid, respondent is now and has been, for more than 1 year last past, in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the purchase, importation, and sale at wholesale and retail of whiskies and other alcoholic beverages in trade and 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 "Distilleries" 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 places 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 distilleries. Further, "Scotch Whiskey" for a long time has had and still has, a definite significance to the minds of wholesalers, retailers and to the ultimate purchasing public, to wit: a distinctive product of Scotland, manufactured in Scotland, and a substantial portion of the purchasing public prefers to buy Scotch whiskey manufactured in Scotland.

Pursuant to the authority conferred upon him by the act of August 29, 1935 (49 Stat. 977) the Federal Alcohol Administrator promulgated regulations No. 5, article II of which became effective as of May 1, 1936. Said article II establishes certain official standards of identity for distilled spirits, including Scotch whiskey. The standard of identity thus established is as follows:

"Scotch whiskey" is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of Great Britain regulating the manufacture of Scotch whiskey for consumption in Great Britain, and containing no distilled spirits less than three years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such mixture is "Blended Scotch whiskey" (Scotch whiskey—a blend). "Scotch whiskey" shall not be designated as "straight."

PAR. 3. In the course and conduct of its business as aforesaid, respondent has heretofore sold and is now selling, a whiskey in bottles with labels attached thereto containing the following representations, to wit:

Sandy MacNab's
Old Liqueur Scotch
Whiskey

Findings

A blend of the finest aged Scotch Whiskey
Produce of Scotland—Bottled in Scotland
MacNab Distilleries Limited

266 Clyde St.,
Glasgow, Scotland

Head Office
11 Waterloo Place,
London, S. W. 1,
England

By the use of the aforesaid designation "Scotch Whiskey" on said labels, together with the phrases "MacNab Distilleries, Ltd.," "Bottled in Scotland" and the address "266 Clyde Street, Glasgow, Scotland" on the aforesaid labels in which it sells and ships the aforesaid whiskey, 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 whiskey in said bottles contained is a true Scotch whiskey, a distinctive product of Scotland and manufactured in Scotland by the MacNab Distilleries, Ltd., when as a matter of fact the MacNab Distilleries, Ltd., is an English company with its principal office in the city of London, England, and does not own, operate, or control any place or places where alcoholic liquors are produced by the process of original and continuous distillation from mash, wort, or wash and does not produce or manufacture any whiskey or whiskies which go into the bottles so labeled as aforesaid; the so-called "Sandy MacNab Scotch Whiskey" is produced by W. H. Holt and Sons, Ltd., distillers of Chorlton-Cum-Hardy, England, under an agreement with the aforesaid MacNab Distilleries, Ltd., of London, England, and said whiskey is not a distinctive product of Scotland and is neither manufactured nor bottled in Scotland, and is neither "Scotch Whiskey" in fact, nor in accordance with the standards of identity for distilled spirits established by article II of regulations No. 5 of the Federal Alcohol Administration, effective May 1, 1936, duly enacted and promulgated pursuant to the authority of the Federal Alcohol Administration Act, 49 Stat. 977, approved August 29, 1935. There are no MacNab Distilleries at 266 Clyde Street, Glasgow, Scotland. At the time of the issuance of the complaint and for a long period of time thereafter, the company known as "MacNab Distilleries, Ltd.," did not own, operate, or control any distilleries whatever. All sale of "Sandy MacNab Scotch Whiskey" by respondent was discontinued in February 1937.

PAR. 4. There are among the competitors of respondent engaged in the sale of Scotch whiskey, as mentioned in paragraph 1 hereof,

Order

26 F. T. C.

corporations, firms, partnerships, and individuals, who sell at wholesale and retail as Scotch Whiskey, whiskey which is manufactured and bottled in Scotland and is a distinctive product of that country and which whiskey is truthfully labeled as the product of actual distilleries located in Scotland. There are also among the competitors of respondent as aforesaid, corporations, individuals, firms, and partnerships, who sell "blended Scotch Type Whiskey," a mixture or blend made outside of Great Britain and who do not falsely represent its place of distillation on the labels attached to the bottles in which such liquor is sold and shipped.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, and each of them have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the erroneous beliefs that the "Scotch Whiskey" by it sold is the product of an actual distillery located in Scotland, and that it is a distinctive product of Scotland, manufactured there, and is otherwise genuine Scotch whiskey, imported from Scotland, and have the capacity and tendency to and do induce dealers and the purchasing public acting in such beliefs to purchase the Sandy MacNab "Scotch Whiskey" sold by respondent, thereby diverting trade to respondent from its competitors who do not so misrepresent the Scotch whiskeys and blended Scotch type whiskeys by them sold, and thereby respondent does substantial injury to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Prendergast-Davies Company, Ltd., 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 and the answer filed herein on the 28th day of February 1938 by respondent, admitting all the material allegations of fact contained in the complaint to be true, waiving hearing on the charges set forth in the said complaint, and stating that without further evidence or other intervening pro-

cedure the Commission may issue and serve upon it findings as to the facts and conclusion drawn therefrom, and an order to cease and 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, Prendergast-Davies Company, Ltd., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of "Sandy MacNab" brand whiskey in interstate commerce or in the District of Columbia, do cease and desist from:

1. Representing, through the use of the word "Distilleries" in the trade or corporate name of the bottler of said "Sandy McNab" whiskey as shown on all stationery, advertising or labels attached to the bottles in which said "Sandy McNab" whiskey is sold and shipped, or in any other way by word or words of like import, (a) that said bottler is a distiller of the said "Sandy McNab" whiskey; or (b) that the said "Sandy McNab" whiskey is by said bottler manufactured through a process of distillation; or (c) that said bottler owns, operates, or controls a place or places where such "Sandy MacNab" whiskey is by said bottler 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 such bottler shall actually own, operate, or control such a place or places.

2. Representing that a product imported into this country and resold by said respondent, which product as of June 1936, was designated and labeled "Sandy MacNab Old Liqueur Scotch Whiskey" is either a blend of the finest aged Scotch whiskey or that it is a product of Scotland, or that there are in existence any distilleries known as "MacNab Distilleries," unless and until the corporation known as MacNab Distilleries, Ltd., shall actually own, operate, or control a place where, in a continuous process of distillation from mash, wort, or wash, spirits shall be by it produced by distillation and said spirits shall be distinctive products of Scotch manufacture in Scotland, in compliance with the laws of Great Britain regulating the manufacture of Scotch whiskey for consumption in Great Britain and containing no distilled spirits less than 3 years old; provided that if in fact such products by said distilleries so manufactured are mixtures of distilled spirits,

Order

26 F. T. C.

such mixture may be called "Blended Scotch Whiskey" or "Scotch Whiskey—a Blend."

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 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

TOSTO FOODS, INC., AND WILLIAM C. MITHOEFER

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

Docket 3290. Complaint, Jan. 3, 1933—Decision, Mar. 5, 1938

Where a corporation and an individual, vice president, secretary, and treasurer thereof, engaged in sale and distribution of salted peanuts to wholesalers, jobbers, and retailers, in competition with others similarly engaged in sale and distribution of salted nuts, confections, and candy—

Sold its so-called "Strange As It Seems" nuts, packed in individual, small, sealed, 5-cent cartons, within a few of which there were concealed, in accordance with notice on individual cartons thereof advising ultimate purchaser "You may find 5 cents, 25 cents, 50 cents, or \$1," some such sum, as determined through selection and breaking of carton, and thereby supplied to and placed in hands of others means of conducting lotteries in sale of their said product as displayed and sold by retail purchasers thereof, in accordance with such plan or game of chance and in violation of public policy of the common law and criminal statutes and contrary to that of the United States Government;

With result that many dealers in and ultimate purchasers of such products were attracted by element of chance involved in sale thereof, and thereby induced to buy same, thus packed and sold, in preference to nuts or candy of competitors who are not willing to and do not offer and sell their products so packed, assembled or otherwise arranged as to involve game of chance and refrain therefrom, and with tendency and capacity thereby to divert to themselves trade and custom from competitors who do not use same or equivalent method, and to exclude from said trade all aforesaid unwilling competitors and lessen competition therein and create a monopoly of said trade in themselves and in such other distributors as use same or an equivalent method, and to deprive purchasing public of benefit of free competition in said trade and eliminate or exclude therefrom, as case may be, all actual or potential competitors who do not adopt and use such methods:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski 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 the Tosto Foods, Inc., a corporation, and William C. Mithoefer, an individual, 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. Respondent, Tosto Foods, Inc., 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 at 307 East Twelfth Street, Cincinnati, Ohio. Respondent William C. Mithoefer is its vice president, secretary, and treasurer and has his business office at the same address as that of the corporate respondent. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of salted peanuts to wholesale dealers, jobbers, and retail dealers. Said respondents cause and have caused their said products, when sold, to be transported from their principal place of business in the city of Cincinnati, Ohio, to purchasers thereof in the State of Ohio and in other States of the United States at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondents in such salted peanuts between and among the various States of the United States. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of salted nuts, salted peanuts, peanut confections, and candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale and retail dealers salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Said salted peanuts are packed in individual, small, sealed cartons which retail to the ultimate consumer at 5 cents per carton. Said salted peanuts are designated by respondents as "Strange as It Seems." Sealed within a small number of individual cartons are 5 cents, 25 cents, 50 cents, or \$1, but the ultimate purchasers cannot ascertain which cartons contain one of the above-named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money thus procure the same wholly by lot or chance. The individual cartons of said salted peanuts have lithographed or printed thereon the following language: "You may find 5 cents, 25 cents, 50 cents, or \$1."

PAR. 3. The wholesale dealers and jobbers to whom respondents sell the said salted peanuts resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondents sell direct expose said salted peanuts for sale and sell same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has a capacity and tendency to induce purchasers thereof to purchase respondents' said products in preference to salted nuts, salted peanuts, peanut confections or candy offered for sale and sold by their competitors.

PAR. 4. The sale of said salted peanuts to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a sum of money. The use by respondents of said method in the sale of salted peanuts, and the sale of salted peanuts by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has a tendency unduly to hinder competition or create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the salted nut and peanut confection or candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, salted peanuts, and peanut confections or candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell their said products 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of salted nuts, salted peanuts, and peanut confections and candy are attracted by respondents' said method and manner of packing said salted peanuts, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said salted peanuts so packed and sold by respondents in preference to salted peanuts or candy offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents has the tendency and capacity because of said game of chance, to divert to respondents trade and custom

from their competitors who do not use the same or an equivalent method; to exclude from said trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said trade, and to tend to create a monopoly of said trade in respondents and in such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondents has the tendency and capacity to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 6. The aforementioned method, acts, and practices of respondents are all to the prejudice of the public and respondents' 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, 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 3, 1938, issued and served its complaint in this proceeding upon the respondents, Tosto Foods, Inc., and William C. Mithoefer, 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, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and substitute therefor a substitute answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission, on the said complaint and the substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Tosto Foods, Inc., 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 at 307 East Twelfth Street, Cincinnati, Ohio. Respondent William C. Mithoefer is its vice president, secretary, and treasurer and has his business office at the same address as that of the corporate respondent. Respondents act together and in cooperation with each other in doing the acts and things hereinafter found. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of salted peanuts to wholesale dealers, jobbers, and retail dealers. Said respondents cause and have caused their said products, when sold, to be transported from their principal place of business in the city of Cincinnati, Ohio, to purchasers thereof in the State of Ohio and in various States of the United States at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondents in such salted peanuts between and among the various States of the United States. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of salted nuts, salted peanuts, peanut confections, and candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale and retail dealers salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Said salted peanuts are packed in individual, small, sealed cartons which retail to the ultimate consumer at 5 cents per carton. Said salted peanuts are designated by respondents as "Strange As It Seems." Sealed within a small number of individual cartons are 5 cents, 25 cents, 50 cents, or \$1, but the ultimate purchasers cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money thus procure the same wholly by lot or chance. The individual cartons of said salted peanuts have lithographed or printed thereon the following language: "You may find 5 cents, 25 cents, 50 cents, or \$1."

PAR. 3. The wholesale dealers and jobbers to whom respondents sell the said salted peanuts resell the same to retail dealers, and said retail

dealers and the retail dealers to whom respondents sell direct expose said salted peanuts for sale and sell same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has a capacity and tendency to induce purchases thereof to purchase respondents' said products in preference to salted nuts, salted peanuts, peanut confections, or candy offered for sale and sold by their competitors.

PAR. 4. The sale of said salted peanuts to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a sum of money. The use by respondents of said method in the sale of salted peanuts, and the sale of salted peanuts by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has a tendency unduly to hinder competition or create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the salted nut and peanut confection or candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, salted peanuts, and peanut confections or candy in competition with the respondents, as above described, are unwilling to offer for sale or sell their said products so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of salted nuts, salted peanuts, and peanut confections and candy are attracted by respondents' said method and manner of packing said salted peanuts, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said salted peanuts so packed and sold by respondents in preference to salted peanuts or candy offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their competitors who do not use the same or an equivalent method; to exclude from said salted peanut and candy trade all competitors who are unwilling to and who do not use the same or an equivalent method

869

Order

because the same is unlawful; to lessen competition in said salted peanut and candy trade, and to tend to create a monopoly of said salted peanut and candy trade in respondents and in such other distributors of salted peanuts and candy as used the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said salted peanut and candy trade. The use of said method by respondents has the tendency and capacity to eliminate from said salted peanut and candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

CONCLUSION

The aforementioned method, acts and practices of respondents are all to the prejudice of the public and respondents' competitors, as hereinabove found. 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, 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 substitute answer of the respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, Tosto Foods, Inc., a corporation, its officers, and William C. Mithoefer, individually, and as an officer of Tosto Foods, Inc., and their respective representatives, agents, and employees, in connection with the offering for sale, sale and distribution of salted nuts or confections in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing salted nuts or confections so packed and assembled that sales of such salted nuts or confections 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 dealers assortments of salted nuts or confections which are used, or may be used, without

Order

26 F. T. C.

alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the salted nuts or confections contained in said assortments to the public;

3. Selling or distributing individual packages of salted nuts or confections containing coins or other United States money, which said individual packages of salted nuts or confections are packed and assembled in assortments with other individual packages of salted nuts or confections of similar size, shape, and appearance not containing coins or other United States money, for resale to the public by retail dealers.

It is further ordered, That the respondents shall, within 30 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 forth.

Syllabus

IN THE MATTER OF

CARL E. KOCH AND EUGENE F. HEFLEBOWER, TRADING AS CO-OPERATIVE BUYERS' SERVICE AND AMERICAN BEAUTY 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 2529. Complaint, Nov. 17, 1936¹—Decision, Mar. 7, 1938

Where two partners and a corporation, which they served as president and vice president, respectively, and stock of which they owned, with same principal place of business and representing a common enterprise, engaged in sale and distribution of beauty and barber shop supply products consisting of a large number of different items, such as permanent-waving machines, scissors, brushes, lotions and oils, and other related products, through catalogs, correspondence, bulletins, and monthly trade literature, and with branch offices in seven American cities—

(a) Represented business conducted by them as that of a cooperative, through selecting and using trade name "Co-Operative Buyers' Service" for business conducted by the two partners, and represented to customers and prospective customers, through long stories and articles in their said trade literature and in other ways, that business done under aforesaid trade name was that of a cooperative and that prices at which said products were offered were cost prices, and that only profit which enured to their benefit for purchase of their said products, at prices listed, was service charge paid on order;

Facts being business was not in any sense a cooperative, prices included a profit to them over and above such charge, and there was no difference in the method and manner of conduct of business done under said trade name and that done by said corporation, conducted from same office, by same personnel, and with same overhead expense, and trade literature of both listed same products at same price quotations, and orders to either were filled from same stock, in same manner, and at identical prices, excepting addition of service charge in case of so-called "cooperative";

(b) Falsely represented in their trade literature that they had branch offices in San Francisco and Paris; and

(c) Adopted and pursued plan and practice of advertising and offering for sale in their trade literature nationally known patented and trade-marked products of manufacturers who refused to sell same to them, at prices substantially below said products' prevailing market prices, and filled many orders therefor with products of inferior quality and grade to those called for;

Notwithstanding fact they did not keep in stock and were unable to purchase in natural channels of trade sufficient quantities of such nationally known products to fill, supply, and service a normal and anticipated number of orders therefor at prices advertised, and in many instances did not have any of such products in stock and were unable to obtain any substantial

¹ Amended.

quantities thereof; and with no expectation of filling all or any substantial portion of orders therefor, but with intent and effect of creating confusion and dissatisfaction in trade, to the injury of good will which had attached to products offered and sold by competitors, and to create impression and belief on part of customers that they were able to fill and service a normal number of orders therefor; and

Where such trade names as "Mar-O-Oil," "Vita Tonic," "Oil of Pine," "Oil-O-Castor," "Realistic," and "Revivatone" had long been used in connection with sale and distribution of competing products, and same had become well and favorably known and were closely associated in minds of the purchasing public with said brand names, and there was a substantial preference on part of portion of consuming public for said trade-marked, patented, and nationally known products over any other competing goods; and thereafter aforesaid partners and corporations, engaged as above set forth—

- (d) Selected and adopted such brand names for products offered by them as "Marlow," "Vita Tone," "Oil-O-Pine," "Oil of Castor," "Realistic," and "Revitasheen," in furtherance of plan and practice adopted, used and pursued, of simulating nationally known and advertised products of competitors, and of selecting and adopting brand names for their products similar in letters, sound, and appearance to those under which nationally known and advertised competing products had long been offered, as aforesaid;
- (e) Selected and used cartons, packages, bottles, designs, labels, slogans, and verbiage in connection with promotion and sale of their own products similar to and imitative of those long used in connection with manufacture, sale, and distribution of nationally known and advertised articles;
- (f) Selected and used such language as "A substitute for" and "Similar to" in loose and disconnected association with brand names under which nationally known and advertised competing goods were distributed and sold, and adopted and used such statements as "Modern science is able to reproduce any product," "The days of secret formulas are gone forever," "The products listed will give the same results as the most expensive advertised items," and many others to same effect and import;

Notwithstanding fact that products offered, listed, and advertised as aforesaid were not substitutes for the designated nationally known and advertised brands, and were not similar thereto in quality or composition and would not produce the same results;

- With effect of enabling them to pass off their own products as and for those nationally advertised, patented, and trade-marked goods sold by their competitors, and with result of confusion and deception of purchasers respecting identity of their said goods;
- (g) Falsely represented in their trade literature that said corporation was manufacturer and importer, facts being it did not manufacture or import any substantial portion of goods offered and sold;
- (h) Falsely represented that certain merchandise would be given free to purchasers who bought a certain quantity of their products, facts being total cost of both items and profit thereon were included in resale prices of articles sold at purported bargain prices;
- (i) Falsely represented that their products had regular retail prices and were customarily sold for sums greatly in excess of those charged, and that offers made of certain products were limited offers or based on purchase of limited quantities;

Complaint

- (j) Represented that products offered and sold were of exactly same nature, quality, and substance as those made, distributed, and sold by competitors under well and favorably known trade names and brands which enjoyed substantial demand among purchasers thereof, facts being they were not comparable thereto, nor of same nature, quality, and substance, but were other and different articles, inferior in grade and quality; and
- (k) With intent and effect of unfairly disparaging competitors, made many and varied unfounded or unwarranted representations and statements to effect that competitors did not deal with customers on a fair and honest basis but defrauded and cheated same and took unfair advantage of them, used "gyp" equipment and effected fake trade-ins, and were racketeers, and that businesses thereof were rackets;

With effect of deceiving, confusing, and misleading purchasers into buying products which they did not intend to buy and of unfairly diverting to them trade of competitors engaged in selling products of the same kind and nature as their own or other products designed for similar usage, and truthfully advertised, represented, and described, and with capacity and tendency so to deceive, confuse, mislead, and divert; to the substantial injury of substantial competition in commerce among and between the various States:

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

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

Mr. John Darsey, for the Commission.

Mr. Clinton O. Thompson, of Chicago, Ill., for respondents.

AMENDED COMPLAINT¹

Whereas, The Federal Trade Commission did heretofore, to wit, on the 26th day of August 1935, issue its complaint herein charging that respondents herein have been, and are, using unfair methods of competition in commerce, as "commerce" is defined in an Act of 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

Whereas, This Commission has reason to believe that respondents herein have been, and are, using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to the Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, Acting in the public interest, pursuant to the provisions of the Act of Congress aforesaid, the Federal Trade Commission charges that Carl E. Koch and Eugene F. Heflebower, trading as Co-operative Buyers' Service and American Beauty Prod-

¹ Published as finally amended to conform to proof by order of March 7, 1938.

ucts Company, a corporation, have been, and are now, using unfair methods of competition in commerce and hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Carl E. Koch and Eugene F. Heflebower, are residents of Chicago, Ill., and are partners trading under the name and style of Co-operative Buyers' Service, with the principal place of business of said partnership located in the city of Chicago in the State of Illinois. They are now, and for more than 1 year last past have been, engaged in the sale and distribution in commerce, between and among various States of the United States, of beauty shop supplies.

American Beauty Products Company is a corporation organized, chartered, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago in the State of Illinois. It is now, and for more than 1 year last past has been, engaged in the sale and distribution in commerce, between and among the various States of the United States, of beauty shop supplies.

PAR. 2. Said Carl E. Koch and Eugene F. Heflebower, as individuals and as partners, trading and doing business as Co-operative Buyers' Service and American Beauty Products Company, in the course of their said business were, at all times hereinbefore referred to, and now are, in competition with other corporations, partnerships, firms, and individuals likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. The Federal Trade Commission is advised, believes to be true, and consequently charges that the said respondents, Carl E. Koch and Eugene F. Heflebower, own and control the entire capital stock of respondent, American Beauty Products Company, or else own a majority of such stock and are in full and complete control of the business operated and conducted by said respondent, American Beauty Products Company, a corporation, and dictate and direct its business policy.

PAR. 4. In the course and conduct of their business as described in paragraph 1 hereof, said respondents in soliciting the sale of and selling their products in interstate commerce, respectively used and employed, and still do use and employ the following methods and practices, to wit:

(a) Said Carl E. Koch and Eugene F. Heflebower, trading under the name and style, "Co-operative Buyers' Service," use and employ the following methods and practices:

1. They adopted as and for a trade name and partnership name under which to carry on their said business the words "Co-operative Buyers' Service," and use such name in advertisements and advertising matter circulating through interstate commerce, which advertisements and advertising matter contain such statements and representations as:

Your International Purchasing Agent.

The prices in this Value Index are at cost. Our service charge of \$1.00 on orders over \$3.00 and 50¢ on smaller orders is our only profit. Many beauty supply jobbers make a 50% gross profit on sales. You share profits. In July and January of each year a part of our service charges are rebated to our regular clients, according to our profit participation plan. Co-operation of this sort puts money into your cash register. Co-operation makes these low prices possible. Here you buy at cost plus a small service charge.

HERE'S WHAT WE MEAN BY CO-OPERATION. The relationship between Co-operative Buyers' Service and beauty shop owners is strictly a matter of co-operation. This becomes clear to you when you give a moment's consideration to the basic difference between our practice and that of the jobber operating on the conventional basis of merchandising. The jobber must look to "price mark up" to produce his profits, while a small service charge added to any order sent to us entitles you to our service as your purchasing agent in the markets of the world. Marking up the price of each individual item we sell has no place in our merchandising plan.

When in truth and in fact, said Co-operative Buyers' Service was not and is not operated cooperatively by said Carl E. Koch and Eugene F. Heflebower; they did not and do not act as purchasing agents, and did not and do not sell their merchandise at cost plus a service charge.

2. They stated and represented in advertisements and advertising matter circulated in interstate commerce that Co-operative Buyers' Service had offices in San Francisco, Calif. and Paris, France; when in truth and in fact, said Co-operative Buyers' Service had no office or offices either in San Francisco, Calif. or in Paris, France.

3. For the purpose and with the intent and effect of creating confusion and dissatisfaction in the trade, to the end of injuring competition and the good-will of the products so advertised, and inducing the impression that they are able to fill and service a normal number of orders for such products, the respondents adopted, use, and pursue a plan of practice of advertising and offering for sale through the trade literature of the Co-Operative Buyers' Service and the American Beauty Products Company, at prices below the prevailing market prices of such products, nationally known, patented, and trade-marked products of manufacturers who refuse to sell respondents such products. The respondents do not keep in stock and are unable to purchase in the natural channels of trade sufficient quantities of such products

to fill, supply, and service a normal and anticipated number of orders for the same at the prices advertised. In many instances the respondents do not have any of such products in stock and are unable to obtain any substantial quantities thereof, and many orders for such products, when received, are filled with products of inferior quality and grade to those actually ordered; they do not expect to fill all orders received for such products, and the purpose of the adoption and execution of such plan and practice is to prejudice and injure competition, rather than the legitimate sale of such products.

4. For the purpose and with the intent and effect of passing off their products for those of competitors, the respondents adopted, use and pursue a general plan and practice of simulating nationally known and advertised products of competitors. Illustrative, but not all-inclusive; of the acts and things done in accomplishment of this plan and program are the following:

The selection and adoption of trade names for products by them offered for sale, similar in letters, sound, and appearance to those under which nationally known and advertised competing products have long been offered for sale; the selection and use of cartons, packages, bottles, designs, labels, slogans, and verbiage in connection with the promotion of sale and sale of their products, similar to those long used in connection with the manufacture, sale, and distribution of nationally known and advertised competing products; the selection and use of such language as "a substitute for" and "similar to" in loose and disconnected association with the trade names under which nationally known and advertised competing products are distributed and sold; the adoption and use of such statements as "Modern science is able to reproduce any product," "The days of secret formulas are gone forever," "The products listed will give the same results as the most expensive advertised items," and many other statements to the same effect, gist, or meaning.

The products offered for sale, listed, and advertised as aforesaid, are not substitutes for the designated nationally known and advertised brands; they are not similar to in quality and composition, and will not produce the same results as the nationally known and advertised brands for which they are offered as substitutes. The practice of simulating products of competitors, as set forth hereinabove, has a tendency and capacity to confuse, mislead, and deceive purchasers respecting the identity of said products.

(b) Said respondent, American Beauty Products Company, a corporation, employed the following practices and methods, to wit:

1. It caused advertisements of its products to be circulated in interstate commerce among customers and prospective customers, in

which advertisements and advertising matter the following statements and representations appeared:

AMERICAN BEAUTY PRODUCTS CO.
MANUFACTURER—AGENTS—IMPORTER

WHO IS AMERICAN BEAUTY PRODUCTS COMPANY? An Illinois corporation founded several years ago by Carl E. Koch and Eugene F. Heflebower * * *

The said respondent, American Beauty Products Company, a corporation, further stated and represented in its catalog as follows:

It is against the law for a dealer to break up and sell separately items of merchandise in a package that is packed as and intended to be sold as a unit package;

when, in truth and in fact, said corporation was not a manufacturer, nor an importer; it was not "founded several years ago," but was organized in 1934; and there was no law forbidding the breaking up and selling separately of units of packages.

2. Said respondent, American Beauty Products Company, a corporation, advertised for sale, sold, and distributed in interstate commerce, a product designated as "Marlow Soapless Oil Shampoo," which was a simulation of the name under which a similar product had for several years been manufactured and sold by J. W. Marrow Manufacturing Company of Chicago, Ill., to wit, "Mar-O-Oil Shampoo," and which simulation had and has a tendency and capacity to confuse, mislead, and deceive purchasers respecting the identity of said products.

PAR. 5. Carl E. Koch and Eugene F. Heflebower, as individuals and as partners, trading and doing business as Co-operative Buyers' Service and American Beauty Products Company, a corporation, for the purpose of inducing the purchase of various items of merchandise sold by them, have caused advertisements purporting to describe said merchandise to be circulated in interstate commerce to customers and prospective customers. Said advertisements contain statements and representations to the effect: (1) That upon the purchase of a certain quantity of respondents' merchandise, other merchandise would be given to the purchaser free or at a very slight cost; (2) that the merchandise sold by respondents had regular retail values and customarily sold for sums greatly in excess of the prices charged for said articles by respondents; (3) that certain articles of merchandise offered for sale and sold by the respondents are of exactly the same nature, quality and substance as other articles manufactured, distributed, and sold by established and well-known manufacturers under well and favorably known trade names and brands which enjoy a substantial demand among purchasers there-

of; and (4) that offers made in such advertisements were limited offers or offers based on a limited quantity.

In truth and in fact, the respondents do not give other merchandise free or at a slight extra cost when purchases of certain articles are made at respondents' regular resale prices. The total cost to the respondents of both items of merchandise, as well as the respondents' profit thereon, is included in the resale prices of the articles sold at the purported regular prices. Articles of merchandise sold by the respondents do not have regular values greatly in excess of the prices actually charged by the respondents and are not customarily sold by others for sums greatly in excess of the prices charged by respondents. The articles of merchandise sold by the respondents and represented to be of the same nature, quality, and substance as competitive articles manufactured and sold by well-established manufacturers under well-known trade names are not, in fact, comparable to said articles and are not of the same nature, quality, and substance, but are, in fact, other and different articles of merchandise and less valuable than the articles to which they are compared. The purported limited offers or offers based on limited quantity purchases are not limited or qualified offers but the prices quoted by said respondents in said offers are the regular and customary prices charged by them for said merchandise irrespective of limits as to quantity and time of purchase.

The respondents named herein, in the course and conduct of their business and for the purpose of inducing the purchase of their products, have adopted and followed, and now follow, a course of action designed to, and having the effect of unfairly disparaging their competitors. Respondents have represented that said competitors do not deal with their respective customers on a fair and honest basis but defraud and cheat said customers and take unfair advantages of them in business dealings. Respondents also represent that said competitors charge high and exorbitant prices for the articles of merchandise sold by them so as to result in substantially more than a legitimate profit to said competitors. Respondents also charge and represent that said competitors are racketeers and that the businesses conducted by said competitors are rackets because of high and exorbitant prices charged for merchandise and for other reasons.

In truth and in fact, said competitors are engaged in business in a legitimate way and operate on a reasonable profit. They do not charge high and exorbitant prices for the merchandise which they sell as to result in substantially more than legitimate profits to them. They are not racketeers and the businesses which they conduct are

not rackets but are, in fact, legitimate businesses operated on reasonable margins of profit.

PAR. 6. The said respondents, Carl E. Koch and Eugene F. Heflebower, as individuals, and said Koch and Heflebower, partners, trading and doing business as Co-operative Buyers' Service and American Beauty Products Company, a corporation, all have the same and identical place of business, to wit, 2568 Lincoln Avenue, Chicago, Ill.; and all of said respondents are engaged in the same business, to wit, the selling, in interstate commerce, of beauty shop supplies. Therefore, the Federal Trade Commission, on information and belief, charges that the said partnership and the said corporation are instrumentalities under which the said Carl E. Koch and Eugene F. Heflebower conduct the business hereinbefore described, and that the said Carl E. Koch and Eugene F. Heflebower are engaged in a joint enterprise, and therefore the said Carl E. Koch and Eugene F. Heflebower are joined and made parties respondent herein, both as individuals and as partners trading and doing business under the name and style of Co-operative Buyers' Service, along with respondent American Beauty Products Company, a corporation.

PAR. 7. The use by the respondents of the false and misleading advertisements, representations, and practices set out herein has had and now has a capacity and tendency to mislead and deceive the purchasing public, and to unfairly divert trade to the respondents from other corporations, firms, and individuals engaged in a like or similar business to that of the respondents, and who honestly and truthfully advertise and represent their said products. As a result thereof, substantial injury is done by respondents, both to the public and to competition in interstate commerce.

PAR. 8. The acts and things done as herein alleged by respondents are to the injury and prejudice of the public and 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 17, 1936, issued and served its amended complaint in this proceeding upon respondents, Carl E.

Koch and Eugene F. Heflebower, as individuals and as partners, trading and doing business under the name and style of Co-Operative Buyers' Service and American Beauty Products Company, 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 amended complaint, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said amended complaint were introduced by John Darsey, attorney for the Commission and in opposition to the allegations of the amended complaint by Clinton O. Thompson, attorney for the respondents, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and said testimony and other 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 amended complaint, the answer thereto, testimony and other evidence, and briefs in support of the amended complaint and in opposition thereto (respondents having not requested oral argument herein); and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents are Carl E. Koch and Eugene F. Heflebower in their individual capacities and as partners trading and doing business under the name and style of Co-Operative Buyers' Service, and the American Beauty Products Company, an Illinois corporation. The above-named individuals manage and control the business operated under the name and style of Co-Operative Buyers' Service, and are the sole parties at interest therein. They are also president and vice president respectively of the American Beauty Products Company, the respondent corporation, and own all of the stock of said corporation. The aforesaid individual respondents direct and control the sales policies and general business activities of the corporate respondent. All of the parties respondent herein have the same principal place of business located at 1157 Fullerton Avenue, Chicago, Ill. The respondents are engaged in the sale and distribution of beauty and barber shop supply products, consisting of a large number of different items such as permanent-waving machines, scissors, brushes, combs, mirrors, lotions and oils, and other related products. The method of doing business adopted and used by all of the parties respondent is that of a mail order house. The beauty and barber shop trade is circularized through the medium of catalogs,

correspondence, bulletins, and other trade literature. When orders are received in response to this advertising campaign, respondents fill such orders by shipping and transporting such merchandise through the medium of the United States mail and such other public utility transportation services as the occasion may suggest from their aforesaid principal place of business, or from one of their branch offices, to customers residing in various States of the United States other than the State within which the principal office or the branch offices filling such orders are located. The respondents have branch offices located in Atlanta, Ga.; Dallas, Tex.; Kansas City, Mo.; Minneapolis, Minn.; Newark, N. J.; Pittsburgh, Pa.; Salt Lake City, Utah. Orders of customers are usually addressed to one of the respondents at the nearest branch office. All of the parties respondent use the same branch offices and the same office force and personnel maintained therein.

PAR. 2. There are many other corporations, firms, partnerships, and individuals engaged in the sale of like and similar products, and of products used for the same and similar purposes, who seek the patronage and trade of the same customers, and who cause their respective products, when sold, to be transported from their respective places of business to purchasers thereof residing in the various other States of the United States. In the course and conduct of their said business as aforesaid, all of the parties respondent have been, and are, in competition in commerce among and between the various States of the United States with such other corporations, partnerships, firms, and individuals.

PAR. 3. In the course and conduct of their businesses as aforesaid, and for the purpose of promoting the sale of their said products, the respondents have adopted and they now pursue a plan of representing the business conducted by them to be that of a cooperative. In furtherance of such a plan, the individual respondents selected as a trade name under which to do business the name "Co-Operative Buyers' Service." All respondents have represented to customers and prospective customers through long stories and articles which they cause to be inserted in their trade literature and in other ways, that the business done under such trade name is that of a cooperative, that the prices at which the aforesaid products are offered for sale are cost prices, and that the only profit which enures to the benefit of the respondents from the purchase of their products at the prices listed is a service charge paid on such orders.

The business conducted by the individual respondents under the trade name "Co-Operative Buyers' Service" is not in any sense that of a cooperative. The prices at which products are offered

for sale and sold under said trade name to customers are not cost prices plus a service charge, but are prices which include a profit to the respondents over and above the service charge paid. There is no difference in the method and manner of the conduct of the business done by the individual respondents under the trade name "Co-Operative Buyers' Service" and that done by the respondent, American Beauty Products Company. The businesses of both are conducted from the same office, by the same personnel, and with the same overhead expense. The trade literature of both businesses conducted by respondents contains listings of the same products with the same price quotations, and an order addressed to one is filled from the same stock in the same manner that an order for the same product would be filled if addressed to the other. The products are sold at identical prices in either instance except that, if sold by the individual respondents, trading as Co-Operative Buyers' Service, the applicable service charge is added. The trade literature in which the respondents cause the aforesaid articles to be described and the aforesaid representations to be made is published by the respondents periodically, usually once a month, and is distributed by them to the trade located in the various States of the United States. The trade name "Co-Operative Buyers' Service" is false and potentially deceptive in character. The aforesaid representations and statements contained in the stories and articles published in respondents' trade literature and otherwise brought to the attention of their customers have no foundation in fact and are wholly false and untrue.

PAR. 4. In connection with the promotion of sale and sale of their products as aforesaid, the respondents cause representations and statements to appear in their trade literature to the effect that branch offices are maintained by them in the cities of San Francisco, Calif., and Paris, France. The respondents do not maintain any branch offices in the aforesaid cities, and such representations and statements are wholly false and untrue.

PAR. 5. In connection with the promotion of sale and sale of their own products, and for the purpose and with the intent and effect of creating confusion and dissatisfaction in the trade to the injury of the goodwill which has attached to products offered for sale and sold by competitors, and for the purpose of creating and inducing the impression and belief on the part of customers that they are able to fill and service a normal number of orders for such products, the respondents adopted and now use and pursue a plan and practice of advertising and offering for sale in their trade literature at prices substantially below prevailing market prices of such products, nationally known, patented, and trade-marked products of manu-

facturers who refuse to sell their products to respondents. The respondents do not keep in stock, and are unable to purchase in the natural channels of trade, sufficient quantities of such products to fill, supply, and service a normal and anticipated number of orders for the same at the prices advertised. In many instances, the respondents do not have any of such products in stock and are unable to obtain any substantial quantities thereof. Many orders for such products, when received, are filled with products of inferior quality and grade to those actually ordered. The respondents do not expect to and do not in fact fill all or any substantial portion of the orders so received with such nationally known and trade-marked products. The purpose of the adoption and execution of such a plan and practice is to prejudice and injure the reputation of competitors and the goodwill which may attach to the products sold by them, rather than the legitimate sale of such products.

PAR. 6. For the purpose and with the intent and effect of passing off their own products for those of competitors, the respondents adopted and now use and pursue a general plan and practice of simulating nationally known and advertised products of competitors. In furtherance of such a plan, the respondents have selected and adopted brand names for products by them offered for sale, similar in letters, sound, and appearance to those under which nationally known and advertised competing products have long been offered for sale, such as the brand names "Marlow," "Vita Tone," "Oil-O-Pine," "Oil of Castor," "Realistic," and "Revitasheen," which trade names are similar to and variations respectively of the brand names "Mar-O-Oil," "Vita Tonic," "Oil of Pine," "Oil-O-Castor," "Realistic," and "Revivatone." The aforesaid brand names "Mar-O-Oil," "Vita Tonic," "Oil of Pine," "Oil-O-Castor," "Realistic," and "Revivatone" have long been used in connection with the sale and distribution of competing products designed for similar usage and such products are well and favorably known by and are closely associated in the minds of the purchasing public with said brand names. There is a substantial preference on the part of a portion of the consuming public for the aforesaid trade marked, patented, and nationally known products over any other competing products. Respondents have selected and now use cartons, packages, bottles, designs, labels, slogans, and verbiage, in connection with the promotion of sale and sale of their products, similar to and imitative of those long used in connection with the manufacture, sale, and distribution of nationally known and advertised competing products. They have selected and now use such language as "A substitute for" and "similar to" in loose and disconnected association with the brand

names under which nationally known and advertised competing products are distributed and sold. They have adopted and now use such statements as "Modern science is able to reproduce any product," "The days of secret formulas are gone forever," "The products listed will give the same results as the most expensive advertised items," and many other statements to the same effect and import. The products offered for sale, listed, and advertised as aforesaid are not substitutes for the designated nationally known and advertised brands; they are not similar thereto in quality or composition, and will not produce the same results as the nationally known and advertised brands for which they are offered as substitutes. The practice of simulating products of competitors as hereinabove set forth has enabled respondents to pass off their own products as and for those nationally advertised, patented, and trade-marked articles sold by their competitors and has resulted in confusion and deception of purchasers respecting the identity of respondents' products.

PAR. 7. The respondents have caused representations and statements to appear in their said trade literature, which is distributed as aforesaid, to the effect that respondent, American Beauty Products Company, is a manufacturer and importer. The American Beauty Products Company is not a manufacturer or importer and does not manufacture or import any substantial proportion of the products offered for sale and sold by it.

PAR. 8. In connection with the promotion of sale and sale of their products as aforesaid, the respondents have caused representations and statements to appear in their trade literature to the effect that certain merchandise will be given free to purchasers who purchase a certain quantity of respondents' products; that products sold by respondents have regular retail prices and are customarily sold for sums greatly in excess of the prices charged for said products by respondents; that products offered for sale and sold by respondents are of exactly the same nature, quality, and substance as products manufactured, distributed, and sold by competitors under well and favorably known trade names and brands which enjoy a substantial demand among purchasers thereof; and that the offers made of certain products by respondents are limited offers or offers based on the purchase of limited quantities. The respondents do not give merchandise free with purchases of certain quantities of products offered for sale by them. The total cost to the respondents of both items of merchandise, as well as the respondents' profit thereon, is included in the resale prices of the articles sold at the purported bargain prices. The articles of merchandise offered for sale and sold by the respondents do not have regular values greatly in excess of the prices actually

charged by them and are not customarily sold by others for sums greatly in excess of the prices charged by respondents. The articles of merchandise represented to be of the same nature, quality, and substance as those offered for sale and sold by competitors under well known trade names are not comparable to such products and are not of the same nature, quality, and substance, but are, in fact, other and different articles of merchandise of inferior grade and quality to those with which they are compared. The purported limited offers, or offers based on limited quantity purchases, are not limited or qualified offers, but the prices quoted by the respondents in said offers are their regular and customary prices irrespective of limits as to quantity and time of purchase.

PAR. 9. In the course and conduct of their businesses and for the purpose of inducing the purchase of their products, the respondents have adopted and follow a course of action designed to and having the effect of unfairly disparaging their competitors. In pursuance of such a plan, the respondents have made many and varied representations and statements to the effect and meaning that their competitors do not deal with their customers on a fair and honest basis, but defraud and cheat their customers and take unfair advantages of their customers in business dealings; that their competitors use gyp equipment and effect fake trade-ins; that their said competitors are racketeers and that the businesses conducted by them are rackets. The aforesaid statements and representations unfairly disparage the respondents' competitors and their respective businesses and the record in this case shows an absence of any proof on the part of the respondents that the aforesaid disparaging statements and representations are truthful.

PAR. 10. The foregoing statements, representations, practices, and methods set forth in paragraphs 3 to 9 inclusive herein are false and misleading and have the capacity and tendency to deceive, confuse, and mislead and have deceived, confused, and misled purchasers into buying products which they did not intend to buy. The aforesaid acts, practices, and methods of the respondents have the capacity and tendency to divert unfairly, and they have unfairly diverted, to said respondents the trade of competitors engaged in selling, in interstate commerce, products of the same kind and nature as those of respondents, or other products designed for similar usage, all of which products are truthfully advertised, represented, and described. Substantial injury is thereby done by respondents to substantial competition in commerce among and between the various States of the United States.

Order

26 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondents, Carl E. Koch and Eugene F. Heflebower, as individuals and as partners, trading and doing business under the name and style of Co-Operative Buyers' Service and American Beauty Products Company, a corporation, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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 respondents, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, and briefs filed herein (respondents having not requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress, approved 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, Carl E. Koch and Eugene F. Heflebower, in their individual capacities and as partners doing business under the trade name "Co-Operative Buyers' Service," or any other trade name, their agents, representatives, and employees, and the American Beauty Products Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of beauty and barber shop supply products in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing, through use of the trade name "Co-Operative Buyers' Service," or of any other name of like import and meaning, or through any other means or device, or in any other manner, that the business conducted by the respondents is that of a cooperative.

2. Representing that such products are sold at cost prices or at prices substantially less than those at which products of equal grade and quality may be purchased from others or under a plan eliminating the profits and other charges of middlemen with resultant savings to the purchasers.

3. Representing that respondents maintain branches in San Francisco, Calif., and Paris, France, or in any other place in which they do not maintain such branch.

4. Representing, through listing and offering for sale well-known or trade-marked products of others who refuse to sell to respondent which they do not have on hand and are unable to purchase in the regular channels of trade, or through any other means or device, or in any manner, that respondents are able to service and fill orders for such products unless and until they have on hand, or can secure through the normal channels of trade, a sufficient quantity of such products to be able to service and fill a normal number of orders or demands for such products.

5. Substituting products of a different grade and quality for well-known or trade-marked products.

6. Using trade or brand names, or cartons, packages, bottles, designs, labels, and slogans, in connection with the sale of respondents' products, which simulate and imitate those long used in connection with the manufacture, sale, and distribution of well-known or trade-marked competing products through similarity of letters, sound, or appearance, or in any other manner, or which have the tendency and capacity to confuse and deceive the purchasing public in relation to the origin, identity, or quality of the products so designated and described.

7. Representing that the respondent corporation is the manufacturer of any of said products, or that purchasers therefrom deal direct with the manufacturer.

8. Representing that the respondent corporation is an importer, or that any substantial portion of the products offered for sale by it is of foreign origin.

9. Representing that merchandise will be given free or without additional charge to purchasers of designated quantities of respondents' products, or that offers of designated products are limited as to time or quantity, or any other respect, when such is not the fact.

10. Representing, through use of purported special sale prices which are in fact respondents' regular prices, or through any other means or device, that such products have regular retail values or prices and are customarily sold for sums in excess of the prices charged for such products by respondents.

11. Representing that such products are of exactly the same or substantially the same nature, quality, and substance as well-known or trade-marked competing products when such is not the fact.

12. Circulating, representing, or publishing, or causing to be circulated, represented, or published in the trade, any false or deceptive

Order

26 F. T. C.

or misleading statement respecting or concerning the business methods of competitors, or the character or integrity of the managements of competitors.

It is further ordered, That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF

BARNETT C. HELZBERG, TRADING AS HELZBERG'S
DIAMOND SHOP

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

Docket 3295. Complaint, Jan. 4, 1938—Decision, Mar. 8, 1938

Where an individual engaged as sole owner and general manager of retail jewelry stores in five midwestern cities; in advertising certain diamonds and diamond rings in newspapers of interstate circulation—

- (a) Represented "They are perfect according to the specifications of the United States Federal Trade Commission of Washington, D. C.," and "Certified perfect diamonds. Certified perfect diamonds are 'perfect' according to the specifications approved by the Federal Trade Commission of Washington, D. C.;" and
- (b) Furnished to purchasers of said diamonds and diamond rings certificates containing, among other things, statements and representations to same effect as those used in aforesaid advertisements in regard to said diamonds being perfect according to specifications of, or approved by, said commission;

Facts being it had neither fixed nor promulgated any standard of perfect or other diamonds, nor inspected, found or certified said or any other diamonds as perfect;

With effect of misleading and deceiving dealers and substantial portion of purchasing public into erroneous belief that said representations were true, and into purchase of said articles on account of such erroneous and mistaken beliefs thus induced, and with result that substantial trade in said commerce was unfairly diverted to him from competitors who do not misrepresent and guarantee their diamonds and diamond rings, and with capacity and tendency so to mislead, deceive, and divert to said competitors' substantial injury:

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. Joseph Cohen, of Kansas City, Kans., 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 Barnett C. Helzberg, trading under the name Helzberg's Diamond Shop, 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Barnett C. Helzberg, trading under the name Helzberg's Diamond Shop, is the sole owner and general manager of five retail jewelry stores located in Kansas City, Kans.; Kansas City, Mo.; Wichita, Kans.; Topeka, Kans., and Des Moines, Iowa. His business includes the sale and distribution of diamonds and diamond rings. His principal place of business is at 612 Minnesota Avenue, Kansas City, Kans. Respondent in the course and conduct of his business sells and distributes his diamonds and diamond rings to purchasers and members of the public and causes said wares when sold, to be transported from the State of Kansas and the other States of origin of his shipments, to purchasers thereof located at points in the various States of the United States other than the State of origin of such shipments. There is now, and has been during all the times herein mentioned, a course of trade in commerce in diamonds and diamond rings between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, respondent is now, and has been during all the times herein mentioned, engaged in substantial competition with various other individuals, firms, and corporations engaged in offering for sale and selling diamonds and diamond rings to purchasers and members of the general public 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 his business of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of certain of its said diamonds and diamond rings, respondent caused advertisements to be inserted in newspapers having an interstate circulation, containing, among other matter, the following statements and representations, and others of similar substance and import, as to the diamonds and diamond rings offered for sale and sold by him:

(a) They are perfect according to the specifications of the United States Federal Trade Commission at Washington, D. C.

(b) Certified Perfect Diamonds. Certified Perfect Diamonds are "Perfect" according to the Specifications approved by the Federal Trade Commission at Washington, D. C.

Respondent furnishes to purchasers of said diamonds and diamond rings certificates containing, among other things, statements and representations to the same effect as those used in said advertisements in regard to said diamonds being perfect according to the specifications of, or approved by, the Federal Trade Commission.

895

Complaint

The said advertisements and the certificates furnished in accordance therewith to purchasers of his diamonds and diamond rings constitute and are representations by respondent that the diamond rings sold by him, when accompanied by such certificates, are in fact perfect in accordance with a standard and specifications required by the Federal Trade Commission. The intent of respondent in so representing and certifying his said diamonds and diamond rings, and the effect thereof, is to mislead and deceive purchasers of such diamond rings into the erroneous belief that the Federal Trade Commission has in fact fixed and promulgated specifications and a required standard for perfect diamonds, and that these diamonds of respondent meet those requirements.

In truth and in fact the Federal Trade Commission has neither fixed specifications nor promulgated any standard for perfect diamonds.

Said advertisements and certificates are also intended by respondent to imply, and they do imply, that the diamonds sold with such certificates have been inspected, found, and certified by a United States Government agency, to wit, the Federal Trade Commission, to be perfect diamonds, in accord with certain specifications made by it. In truth and in fact the Federal Trade Commission has neither promulgated any such specifications, nor inspected nor found nor certified said diamonds to be perfect diamonds.

All of said advertisements, statements, representations, and implications are deceptive, misleading, and false, and tend to and do deceive and mislead purchasers into the purchase of respondent's said diamonds and diamond rings in the erroneous belief that said representations and implications are true.

PAR. 4. There are among the competitors of respondent many who do not so misrepresent their diamonds and diamond rings, and the basis of their certificates.

PAR. 5. The acts and practices of the respondent as above alleged in the course of selling and offering for sale his diamonds and diamond rings in commerce as described herein have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, trade in said commerce has been unfairly diverted to the respondent from those of his competitors referred to in paragraph 4 hereof who do not so misrepresent their certificates and diamonds and diamond rings. In consequence thereof, substantial injury has been, and is being, done to respondent's com-

petitors in commerce among and between the various States of the United States.

PAR. 6. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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, 1938, issued, and on January 8, 1938, served, its complaint in this proceeding upon respondent Barnett C. Helzberg 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 on February 10, 1938, filed an answer to said complaint, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and said answer; and the Commission having duly considered the same and being now 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. Said respondent Barnett C. Helzberg, trading under the name of Helzberg's Diamond Shop, is the sole owner and general manager of five retail jewelry stores located in Kansas City, Kans.; Kansas City, Mo.; Wichita, Kans.; Topeka, Kans.; and Des Moines, Iowa. His business includes the sale and distribution of diamonds and diamond rings. His principal place of business is at 612 Minnesota Avenue, Kansas City, Kans. In the course and conduct of his business respondent sold and distributed his diamonds and diamond rings to purchasers and members of the general public and caused said wares, when sold, to be transported from his places of business in the States of Kansas, Missouri, and Iowa to the purchasers thereof located at various points in the several States of the United States other than the States of origin of said shipments.

PAR. 2. Respondent is engaged in substantial competition with various other individuals, and with firms and corporations engaged in offering for sale and selling diamonds and diamond rings to pur-

chasers and members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course and conduct of his business, in order to induce the purchase of certain of his said diamonds and diamond rings, inserted in newspapers having an interstate circulation, advertisements containing, among other matters, the following statements and representations, and others of similar substance and import, as to the diamonds and diamond rings offered for sale and sold by him:

(a) They are perfect according to the specifications of the United States Federal Trade Commission of Washington, D. C.

(b) Certified perfect diamonds. Certified perfect diamonds are "perfect" according to the specifications approved by the Federal Trade Commission of Washington, D. C.

PAR. 4. In the course and conduct of his business of selling diamonds and diamond rings in interstate commerce, and to induce the purchase of his said diamonds and diamond rings, respondent furnished to purchasers of said diamonds and diamond rings, certificates containing, among other things, statements and representations to the same effect as those used in said advertisements in regard to said diamonds being perfect according to the specifications of, or approved by, the Federal Trade Commission.

PAR. 5. Respondent's said advertisements and the certificates furnished in accordance therewith to purchasers of his diamonds and diamond rings constitute and are representations by respondent that the diamonds and diamond rings sold by him, when accompanied by said certificates, are in fact perfect in accordance with standards and specifications required by the Federal Trade Commission. The effect of so representing and certifying his diamonds and diamond rings was to mislead and deceive purchasers of said diamonds and diamond rings into the erroneous belief that the Federal Trade Commission had in fact fixed and promulgated a required standard for perfect diamonds and that these diamonds of respondent met that requirement. The general form, arrangement, and text of said certificates implied that the diamonds sold with such certificates had been inspected, found, and certified by a United States Government agency, to wit, the Federal Trade Commission, to be perfect diamonds.

PAR. 6. All of said statements, advertisements, representations, and implications are deceptive, misleading, and false in that the Federal Trade Commission has neither fixed nor promulgated any standard of perfect or other diamonds, nor inspected, nor found, nor certified said diamonds, or any other diamonds, to be perfect.

Order

26 F. T. C.

PAR. 7. There are among the competitors of respondent many who do not misrepresent their diamonds and diamond rings and the basis of their guarantees.

PAR. 8. The acts and practices of respondent as above set out in the course of selling and offering for sale his diamonds and diamond rings in commerce, as described herein, have a capacity and tendency to, and do, mislead and deceive dealers and a substantial portion of the purchasing public into the erroneous belief that said representations are true, and into the purchase of respondent's diamonds and diamond rings on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof substantial trade in said commerce has been unfairly diverted to the respondent from those of his competitors who do not misrepresent their guarantees or their diamonds and diamond rings. In consequence thereof, substantial injury has been, and is being done to respondent's 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 respondent Barnett C. Helzberg 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 and the answer filed herein on February 10, 1938, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That respondent, Barnett C. Helzberg, trading under the name of Helzberg's Diamond Shop, or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of diamonds and diamond rings in interstate commerce or in the District of Columbia do

forthwith cease and desist in any manner directly or indirectly from representing:

1. That the diamonds and diamond rings offered for sale and sold by respondent are perfect, "according to the specifications of the United States Federal Trade Commission at Washington, D. C." or "according to the specifications approved by the Federal Trade Commission at Washington, D. C.";

2. That the Federal Trade Commission has fixed or promulgated any standard for perfect or other diamonds;

3. That the Federal Trade Commission has inspected said diamonds or that it has found and certified them to be perfect diamonds;

4. That any agency of the United States Government has fixed or promulgated any standard for perfect or other diamonds, until and unless a standard has been fixed and promulgated by such an agency;

5. That an agency of the United States Government has inspected said diamonds, or that it has found and certified them to be perfect diamonds, until and unless such an agency has inspected said diamond sand found and certified them to be perfect.

It is further ordered, That said respondent Barnett C. Helzberg shall within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
DERMOLAV LABORATORIES, INC.

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

Docket 2813. Complaint, May 21, 1936—Decision, Mar. 10, 1938

Where a corporation engaged in manufacture, sale, and distribution of hair and scalp preparations for prevention and cure of baldness and stimulation of hair growth under designation "Dermolav Liquid" and "Dermolav Compound"—

Represented in newspaper and magazine advertising, and through leaflets, booklets, and letters circulated among prospective purchasers, that its said preparations constituted effective treatments for all types and forms of baldness and new ways of removing the several causes of falling hair, scalp diseases, and baldness, through such statements as "WHY MEN GET BALD * * *". Full particulars of an amazing new discovery that enables people who have dandruff, scalp itch, falling hair, or baldness to harmlessly remove the congested thin outer layer of scalp skin and activate the dormant hair roots to grow new hair. WILL BE SENT, ABSOLUTELY FREE, to any sufferer who will write," etc., and referred to aforesaid letters in support of its claims, etc.;

Notwithstanding fact neither of said products nor any of the ingredients therein contained were beneficial, either singly or in combination, in removing causes of baldness, and were in no wise a scalp food and did not involve any new scientific methods in treatment of said ailment and other scalp conditions, would not grow hair or revive or bring to life so-called dormant hair roots, nor cure alopecia areata; and were not harmless preparations for removing congested skin from the scalp, but resulted in a rash for people who were hypersensitive to elements therein contained;

With effect of misleading and deceiving substantial part of purchasing public into false and erroneous belief that said representations and claims were true, and that said preparations would cure falling hair and prevent baldness, etc., and were harmless, new, and scientific, and with capacity and tendency so to do, and with result that public, acting in mistaken and erroneous beliefs thus induced, purchased a substantial volume of its said products, and trade was unfairly diverted to it from competitors engaged in manufacture and sale or sale and distribution of treatments intended for such various conditions, and who truthfully represented nature and curative value of their respective products;

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Reuben J. Martin and *Mr. S. Brogdyne Teu, II* for the Commission.

Mr. John A. Bolles, 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 Dermolav Laboratories, Inc. 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. Said respondent, Dermolav Laboratories, Inc., is 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 at 1700 Broadway in the city of New York, within the State of New York. Said respondent is now, and for more than 2 years last past has been, engaged in the manufacture and sale of preparations for use on the scalp, known as Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, and in the distribution thereof between and among the various States of the United States. Respondent causes said preparations, when sold by it, to be transported to the purchasers thereof located in the State of New York and in various other States of the United States. The business conducted by said respondent is a mail-order business, a large portion of its sales, to wit, 99 percent, being conducted through the mails, and the remaining portion of the sales, to wit, 1 percent, being local. There is now, and for more than 2 years last past has been, a constant current of trade and commerce by respondent in said preparations between and among the various States of the United States. In the course and conduct of its said business the said respondent is now, and for more than 2 years last past has been, in substantial competition in commerce between and among the various States of the United States with various other individuals, firms, partnerships, and corporations engaged in the manufacture and interstate sale of preparations for use on the scalp.

PAR. 2. In the regular course and conduct of its said business, as hereinbefore set out in paragraph 1, said respondent has been and now is engaged in extensive advertising through the medium of local tabloid papers such as "The Daily Mirror" and "The Daily News," and also through magazines with a national distribution such as "Physical Culture," "Picture Play," "True Story," "Radio Guide," and the Detective Story group.

In addition to the advertising which has been and now is being done by said respondent using newspapers and magazines as media, as hereinbefore set forth, said respondent has been and now is furnishing to

purchasers and to persons making inquiry as a result of the advertisements used by respondent, as hereinabove set forth, additional information other than that contained in its newspaper advertisements. This information has been and now is contained in various circulars, pamphlets, letters, and folders. All of said advertisements were and are intended by said respondent, Dermolav Laboratories, Inc., to be read by the general public and in particular by prospective purchasers of preparations for use on the scalp, and to cause and induce said prospective purchasers to buy those preparations manufactured and sold by said respondent.

PAR. 3. Said respondent, in its said advertisements of its said preparations known as Dermolav Liquid Scalp Peel and Dermolav Scalp Compound manufactured and sold by it, has made and is now making various false, deceptive and misleading statements concerning said preparations. Among the said statements which said respondent has used and is now using in its advertisements in newspapers, magazines, circulars, pamphlets, folders, and letters are statements to the effect that its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will grow hair; that the said products, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will cure alopecia areata, which is a disease causing bald spots on the head; that Dermolav Scalp Compound is a scalp food; that the Dermolav treatment is a new way of removing several causes of falling hair, and will grow new hair; that Dermolav Liquid Scalp Peel is a harmless liquid for removing congested skin from the scalp; and that the Dermolav treatment is beneficial in reviving dormant roots and restoring hair.

The above statements made, and now being made, by said respondent in its said advertisements were, and are now, false, deceptive, and misleading because in truth and in fact its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will not grow hair; its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will not cure alopecia areata, which is a disease causing bald spots on the head; Dermolav Scalp Compound is not a scalp food; the Dermolav treatment is not a new method and will not remove several causes for falling hair and baldness, and will not cause new hair to grow; Dermolav Liquid Scalp Peel is not a harmless liquid for removing congested skin from the scalp, but its use may result in serious injury; and the Dermolav treatment will not revive dormant hair roots, and will not cause a new growth of hair.

PAR. 4. Said respondent, in the regular course and conduct of its said business, has for more than 2 years last past in its advertisements contained in circulars, pamphlets, folders, and letters represented to prospective purchasers that said respondent would pay to any user of

its product the sum of \$50 for photographs showing the head before and after using respondent's Dermolav treatment, and showing new hair as a result of said treatment. Said offer has been made and is now being made by said respondent as an inducement to the purchasing public to purchase its said preparations, with the full knowledge on the part of respondent that said preparations would not grow hair, and that therefore respondent would not be required to make the payments as offered by it.

PAR. 5. The use by said respondent, Dermolav Laboratories, Inc., of the foregoing false, deceptive, and misleading representations alleged to be used by the said respondent in paragraphs 3 and 4 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that its said preparations, Dermolav Liquid Scalp Peel and Dermolav Scalp Compound, will in truth and in fact grow hair; will cure alopecia areata; that Dermolav Scalp Compound is a skin food; that the Dermolav treatment is a new way of removing several causes of falling hair and baldness, and will grow new hair; that Dermolav Liquid Scalp Peel is a harmless liquid for removing congested skin from the scalp; and that the Dermolav treatment is beneficial for dormant hair roots, and will promote the growth of new hair, and has thereby induced and does now induce the consuming public and especially prospective purchasers of preparations for use on the scalp, acting in said erroneous belief, to purchase Dermolav Liquid Scalp Peel and Dermolav Scalp Compound in preference to preparations for use on the scalp offered for sale by other manufacturers and distributors who do not falsely, deceptively, and misleadingly advertise their products. As a result of such false, deceptive, and misleading representations on the part of said respondent trade has been diverted to respondent from other manufacturers and distributors of preparations for use on the scalp, who do not falsely, deceptively, and misleadingly advertise their products, and thereby injury to its competitors has been done and is now being done by said respondent.

PAR. 6. Said false, deceptive, and misleading representations of said respondent contained in its advertising have resulted in injury to respondent's competitors, and to retail dealers and distributors 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."

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 21, 1936, issued and served its complaint in this proceeding upon respondent, Dermolav Laboratories, Inc., 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 other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, and in opposition to the allegations of the complaint by F. C. McIntyre, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Dermolav Laboratories, Inc., is a corporation, organized and doing business under the laws of the State of New York. Its principal office and place of business are at 1700 Broadway, in the city of New York, State of New York. It has been for more than 1 year last past, and now is, engaged in the manufacture, sale and distribution of products designated as Dermolav Liquid and Dermolav Compound, together known as Dermolav Method and Dermolav Scalpfood, preparations recommended, advertised and sold as treatments for the hair and scalp, for the prevention and cure of baldness, and the stimulation of the growth of hair.

PAR. 2. Respondent's products are compounded and packaged at its place of business in the city of New York, State of New York, and sold to individual purchasers and to retail dealers purchasing for resale to the consuming public. When orders are received for respondent's said products, it causes them to be shipped through the United States mail from its place of business in the city of New York, State of New York, to the purchasers thereof located at various points in

the various States of the United States other than the State of New York, and in the District of Columbia. Since the date the respondent began the manufacturing and compounding of its said products, it has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now and has been in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of preparations designed and sold as treatments for the hair and scalp, for the prevention of baldness and the stimulation of the growth of hair, in commerce among and between the several States of the United States and in the District of Columbia. Ninety-eight percent of the respondent's business is done by mail.

PAR. 4. The respondent advertises its said product in newspapers and magazines having a general circulation, as follows:

WHY MEN GET BALD

* * *

Full particulars of an amazing new discovery that enables people who have dandruff, scalp itch, falling hair or baldness, to harmlessly remove the congested thin outer layer of scalp skin and activate the dormant hair roots to grow new hair. WILL BE SENT, ABSOLUTELY FREE, to any sufferer who will write to Dermolav Lab., Desk 47, 1700 Broadway, New York, N. Y. Send no money. No obligation.

Respondent, in addition to advertising its compound in newspapers and magazines having a general circulation, has advertised and now advertises its Dermolav Liquid and Dermolav Compound by leaflets, booklets and letters circulated among prospective purchasers. The following is representative of the statements and claims made by the respondent in said advertising matter as to the value of respondent's products as a treatment for the hair and scalp for the prevention of baldness and the stimulation of the growth of hair:

And so it is with these voluntary letters of praise we receive. You may remark—"You can't grow hair on a bald part"—but, my friend, as so many of these letters of praise state—"I have grown hair where bald," how can any one deny such a possibility?

Now why not put your own mind at rest on this subject of starting a new hair growth, where bald, or where hair is thinning out, by getting the above complete treatment on the easy terms offered? You may yet live to thank the day I decided to "throw out this last life line to you."

Respondent has made numerous other statements and representations in its advertising copy and literature to the effect that its products manufactured, sold and distributed by it will cure alopecia areata, a disease causing bald spots on the head, that its product is

Findings

26 F. T. C.

a scalp food, that its method is a new way of removing the causes of falling hair, that its products will grow new hair, that they are harmless preparations for removing congested skin from the scalp, and that the products are beneficial in reviving so-called dormant hair roots and restoring hair.

By means of the foregoing statements, the respondent represents to purchasers and prospective purchasers that its products are effective treatments for all types and forms of baldness and that respondent's products are new ways of removing the several causes of falling hair, scalp diseases, and baldness.

PAR. 5. The quantitative formula of the Dermolav Liquid is as follows:

Resorcinol.....	12 oz.
Alcohol.....	8 oz.
Euresol.....	8 cc.
Water.....	100 oz.
Sodium benzoate.....	$\frac{3}{4}$ oz.

The quantitative formula of the Scalpfood is as follows:

Pilocarpine hydrochloride.....	$\frac{3}{4}$ oz.
Oxycholesterin.....	1 lb.
Crude Oil.....	1 lb. 4 oz.
Castor Oil.....	2 lbs.
Lanolin.....	5 lbs. 8 oz.
Petrolatum.....	38 lbs.
Perfume.....	Q. S.
Beeswax.....	2 lbs. 4 oz.

PAR. 6. None of the respondent's products, Dermolav Liquid and Dermolav Compound, together known as Dermolav Method and Dermolav Scalpfood, or any of the ingredients in respondent's products, as shown by formulae in paragraph 5 *supra*, either singly or in combination, are beneficial in removing the causes of baldness and are in no wise a scalp food. They do not involve or embrace any new scientific methods in the treatment of baldness and other conditions of the scalp, and they will not grow hair or revive or bring to life so-called dormant hair roots. Further, respondent's products will not cure alopecia areata and are not harmless preparations for removing the congested skin from the scalp.

Respondent's products are sold to individuals for self-medication. People who are hypersensitive to the elements in respondent's products find that the use of the products causes a rash.

The use by respondent of the representations and claims herein set out has had and now has the capacity and tendency to, and does, mislead and deceive a substantial part of the purchasing public into the

false and erroneous belief that said representations and claims are true, and that the respondent's products, Dermolav Liquid and Dermolav Scalpfood, will prevent falling hair, will cure baldness and alopecia areata, revive so-called dormant hair roots, and are harmless, new and scientific preparations.

Acting under the above mistaken and erroneous beliefs induced by the false and deceptive statements and representations made by respondent as herein set out, the public has purchased a substantial volume of respondent's products. As a result, trade in interstate commerce has been unfairly diverted to respondent from its competitors likewise engaged in the manufacture, sale, and distribution, or in the sale and distribution of treatments intended to be used and used for the treatment of the condition of falling hair and baldness, and for other afflictions of the scalp, who truthfully represent the nature and the curative value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Dermolav Laboratories, Inc., are to the prejudice and injury 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 respondent, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations 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 the respondent, Dermolav Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of preparations recommended and sold for the treatment of conditions of the scalp and now designated as Dermolav Liquid, Dermolav Compound, Dermolav Method, and Dermolav Scalpfood, or under any other

Order

26 F. T. C.

name, do forthwith cease and desist from directly or indirectly representing:

1. That respondent's said products will cure baldness;
2. That respondent's said products will stop or prevent falling hair;
3. That respondent's said products will cure alopecia areata;
4. That respondent's said products are harmless;
5. That respondent's said products will revive so-called dormant hair roots;
6. That respondent's said products constitute a new method for treating afflictions and conditions of the scalp;
7. That respondent's products are scientific.

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.

Syllabus

IN THE MATTER OF

LORD & TAYLOR, BIBERMAN BROS., INC., AND GALEY
& LORD, INC.,COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3141. Complaint, July 21, 1937¹—Decision, Mar. 11, 1938*

Where three corporations, respectively engaged as retailer of coats, dresses, robes, and other items of wearing apparel, manufacturer of dresses for sale and distribution to department and retail stores, and commission house converter and seller of fabrics to the cutting trade; in cooperatively advertising, in newspapers and leaflets, dresses made by aforesaid corporate manufacturer, of said converter's fabrics, of material other than silk, product of cocoon of the silk worm—

(a) Made use of such words as "Crepe," "Seal Crepe," "silky," and "Pure Dye," through such statements in newspaper advertising as "Soft, silky Seal Crepe, woven from Enka Yarns and printed with charming motifs * * *", and substantially similarly used said words in leaflets describing said garments, and tagged said dresses for offer and sale by said corporate retailer as "* * * made from SEAL CREPE, Fast Color, Pure Dye * * * American ENKA," and on reverse side advised reader or customer that "For best results on SEAL CREPE we recommend dry cleaning"; and

Where said corporate retailer, in newspaper advertising soliciting sale of certain pajama robes and dresses, some of which were composed wholly of other and different materials than silk, product of cocoon of the silk worm—

(b) Described same, respectively, as "Silk Robes—Rich Brocades, all silk-lined. * * * Silk Facings and Trims in All robes," and as "Satin";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said various garments were made from silk, product of the cocoon of the silk worm, and unfairly to divert trade to said corporations from their competitors engaged in sale of dresses, etc., and who accurately describe and brand their said products by terms properly descriptive of fabric content thereof, notwithstanding absence of intent to mislead and deceive in such mistaken designation of said robes and use of other terms as accurately and truthfully describing materials from which garments were made; to substantial injury of competition in commerce:

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

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

Mr. Astor Hogg and *Mr. George W. Williams* for the Commission.

Gould & Wilkie, of New York City, for Lord & Taylor.

Mr. Erwin Feldman, of New York City, for Biberman Bros., Inc.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for Galey & Lord, Inc.

¹Amended.

Complaint

26 F. T. C.

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 Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., corporations, 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lord & Taylor, 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 on Fifth Avenue at 38th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in business as a retailer of coats, dresses, robes, and other items of wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in various States of the United States and in the District of Columbia.

Respondent, Biberman Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 15th and Mt. Vernon Street in the city of Philadelphia, State of Pennsylvania, and with a sales office located in the city of New York, State of New York. It is engaged in business as a manufacturer of dresses which it sells and distributes to department stores and retail stores located in the various States of the United States.

Respondent, Galey & Lord, 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 57 Worth Street, in the city of New York in said State. It is now, and has been for several years last past, engaged in business as a commission house in converting and selling dress fabrics to the cutting trade located in various States of the United States.

Respondents now cause, and during the time herein mentioned have caused, their articles of merchandise when sold to be shipped from their respective places of business to the purchasers thereof located in the various States of the United States other than the States of origin of such shipments. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondents in their respective products between and among the various States of the United States.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of wearing apparel, dresses, robes, and dress fabrics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of business as described in paragraph 1 hereof, respondent, Lord & Taylor, purchased and now purchases certain of the dresses offered for sale and sold by it in commerce as set out in paragraph 1 hereof from the manufacturer thereof, respondent Biberman Bros., Inc. The latter concern, in turn, purchased and now purchases the fabric from which said dresses were made from respondent, Galey & Lord, Inc. To aid and facilitate the sale of said dresses, the said Lord & Taylor, with the aid, assistance, and cooperation of said Biberman Bros., Inc., and the said Galey & Lord, Inc., caused and now causes advertising matter to be inserted over the name of Lord & Taylor in newspapers having interstate circulation and in which advertising matter said dresses were represented, designated and referred to as "Soft, silky Seal Crepe, woven from Enka Yarns and printed with charming motifs * * *." The said respondents, acting in cooperation each with the other, also caused and now cause a substantial number of leaflets to be distributed to customers and prospective customers located in various States of the United States and which leaflets referred to such dresses in the following language:

Lovely colors—new, different looking prints on that
marvelously soft, silky Seal Crepe—woven from Enka Yarns

Said dresses displayed and offered for sale by the said Lord & Taylor bear tags and labels placed upon the dresses of respondents in cooperation with each other on which were printed the statement:

This Garment
is made from
SEAL CREPE
Fast Color, Pure Dye
Unweighted and
washable

Made
From

American
ENKA

Enka
Yarn

and the reverse side reads:

A L'Aiglon Frock

For best results on
SEAL CREPE we recom-
mend dry cleaning.

Complaint

26 F. T. C.

The said dresses advertised and tagged by said respondents acting cooperatively each with the other, as hereinabove set forth, were and are offered for sale and sold by the said Lord & Taylor in commerce as set forth in paragraph 1 hereof. Such statements and representations served and now serve as representations on the part of respondents that such dresses so advertised and offered for sale were silk dresses.

The representations hereinbefore set forth are and were grossly false and misleading in that said dresses so represented, designated, and referred to are not and were not composed of silk, the product of the cocoon of the silk worm, but were composed of materials other than silk.

PAR. 3. Respondent Lord & Taylor, in soliciting the sale of and selling certain pajama robes in commerce as in paragraph 1 hereof, set out, caused and now causes said pajama robes to be advertised in newspapers having interstate circulation as "Silk Robes—Rich Brocades, all silk-lined. A Variety of Handsome Patterns and a Good Color Range. Silk Facings and Trims in All Robes." Also respondent Lord & Taylor in soliciting the sale of and selling certain dresses in commerce as in paragraph 1 hereof, set out, caused and now causes, such dresses to be advertised in newspapers having interstate circulation as "Satin" dresses. In truth and in fact, the said robes and dresses so represented and designated contain no silk, the product of the cocoon of the silk worm, but are composed wholly of other and different materials.

PAR. 4. The word "Silk" for many years past has had, and still has, in the minds of the consuming public a definite and specific meaning, to-wit: the product of the cocoon of the silk worm. Silk fabrics for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics, and a variety of distinctive terms has been applied to the fabrics resulting from different types of weaving. Dress goods, pajama robes and other similar products designated, described or referred to as "Silk," "Silky," "Crepe," "Satin," "Pure Dye," and "Seal Crepe" have been for a long time, and at the present time still are, associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as silk.

PAR. 5. The use by respondents of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true and to cause them to purchase such dresses and pajama robes on account of such

erroneous beliefs engendered as above set forth. There are among the competitors of respondents as mentioned in paragraph 1 hereof corporations, individuals, partnerships, and firms engaged in the sale of dresses and pajama robes and other items of wearing apparel who do not misrepresent the kind of dresses, pajama robes, and other items of wearing apparel offered for sale. By the representations aforesaid, trade is unfairly diverted to respondents from such competitors and thereby substantial injury is being and has been done by respondents to competition in commerce as herein set out.

PAR. 6. The above alleged acts and practices of respondents are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 21, 1937, issued and subsequently served its complaint in this proceeding upon respondents Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., 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' answers thereto, W. T. Kelley, Chief Counsel for the Federal Trade Commission, and Gould & Wilkie, Davis, Polk, Wardwell, Gardiner & Reed, and Erwin Feldman, counsel for respondents, executed a stipulation as to the facts wherein it was agreed that the statement of facts therein recited might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts was subsequently approved by the Commission and 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 and said stipulation as to the facts; and

the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Lord & Taylor, 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 on Fifth Avenue at 38th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in business as a retailer of coats, dresses, robes, and other items of wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in various States of the United States and in the District of Columbia.

Respondent, Biberman Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 15th and Mt. Vernon Street in the city of Philadelphia, State of Pennsylvania, and with a sales office located in the city of New York, State of New York. It is engaged in business as a manufacturer of dresses which it sells and distributes to department stores and retail stores located in the various States of the United States.

Respondent, Galey & Lord, 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 57 Worth Street, in the city of New York in said State. It is now, and has been for several years last past, engaged in business as a commission house in converting and selling fabrics to the cutting trade located in various States of the United States.

Respondents caused said articles of merchandise when sold to be shipped from their respective places of business to the purchasers thereof located in the various States of the United States other than the State where the shipments originate. There is now, and has been for the several years last past, a constant current of trade and commerce by said respondents in their respective products between and among the various States of the United States.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of wearing apparel, dresses, robes, and dress fabrics in commerce

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

PAR. 2. In the course and conduct of business as described in paragraph 1 hereof, respondent, Lord & Taylor, purchased and now purchases certain of the dresses offered for sale and sold by it in commerce as set out in paragraph 1 hereof from the manufacturer thereof, respondent Biberman Bros., Inc. The latter concern, in turn, purchased and now purchases the fabric from which said dresses were made from respondent, Galey & Lord, Inc. To aid and facilitate the sale of said dresses, the said Lord & Taylor, with the aid, assistance, and cooperation of said Biberman Bros., Inc., and the said Galey & Lord, Inc., caused advertising matter to be inserted over the name of Lord & Taylor in newspapers having interstate circulation and in which advertising matter said dresses were represented, designated, and referred to as "Soft, silky Seal Crepe, woven from Enka Yarns and printed with charming motifs * * *." The said respondents, Lord & Taylor and Biberman Bros., Inc., acting in cooperation with each other, also caused a substantial number of leaflets to be distributed to customers and prospective customers located in various States of the United States and which leaflets referred to such dresses in the following language:

Lovely colors—new, different looking prints on that
marvelously soft, silky Seal Crepe—woven from Enka Yarns

Said dresses displayed and offered for sale by the said Lord & Taylor bore tags and labels placed upon the dresses by the respondents in cooperation with each other on which were printed the statement:

This Garment
is made from
SEAL CREPE
Fast Color, Pure Dye
Unweighted and
washable

Made
From

Enka
Yarn

American
ENKA

and the reverse side reads:

A L'Aiglon Frock
For best results on
SEAL CREPE we recom-
mend dry cleaning.

The said dresses advertised and tagged by said respondents acting cooperatively each with the other, as hereinabove set forth, were offered for sale and sold by the said Lord & Taylor in commerce as set forth in paragraph 1 hereof.

Said dresses so represented, designated and referred to were not composed of silk, the product of the cocoon of the silkworm, but were composed of materials other than silk.

PAR. 3. Respondent Lord & Taylor, in soliciting the sale of and selling certain pajama robes in commerce as in paragraph 1 hereof set out, caused said pajama robes to be advertised in newspapers having interstate circulation as "Silk Robes—Rich Brocades, all silk-lined. A Variety of Handsome Patterns and a Good Color Range. Silk Facings and Trims in All robes." Also respondent Lord & Taylor in soliciting the sale of and selling certain dresses in commerce as in paragraph 1 hereof set out, caused such dresses to be advertised in newspapers having interstate circulation as "Satin" dresses. In truth and in fact, some of said robes and dresses so represented and designated contained no silk, the product of the cocoon of the silkworm, but were composed wholly of other and different materials.

PAR. 4. Silk fabrics for many years have held, and still hold, great public esteem and confidence for their preeminent qualities; silk fiber has long been woven into a variety of fabrics, and a variety of distinctive terms has been applied to the fabrics resulting from this type of weaving; dress goods, pajamas, robes, and other similar products designated, described or referred to as "Silk," "Silky," and "Pure Dye," when used to designate and describe the material from which a garment is made, and the words "Crepe," "Satin" and "Seal Crepe," when used alone to designate and describe the material from which a garment is made, have been for a long time, and at the present time still are, associated in the public mind with the material made from the cocoon of the silkworm, commonly known and understood by the public as silk.

PAR. 5. Respondent Lord & Taylor, in designating and describing certain of its robes as "Silk Robes—Rich Brocades, all silk-lined. A Variety of Handsome Patterns and a Good Color Range. Silk Facings and Trims in All robes", as set out in paragraph 3 hereof, did so through mistake and not through any intent to mislead and deceive the purchasing public.

In all the other instances herein mentioned, wherein the other terms hereinabove set out were used by respondents, all of said respondents believed that said terms and designations accurately and truthfully described the material from which the garments were made.

PAR. 6. The use by the respondents of the representations above set forth in describing the materials from which said garments were made had the capacity and tendency to mislead and deceive a sub-

911

Order

stantial portion of the purchasing public into the erroneous belief that said garments were made from silk, the product of the cocoon of the silkworm, and to cause them to purchase such articles on account of such erroneous beliefs.

There are among the competitors of the respondents corporations, individuals, partnerships, and firms engaged in the sale of dresses, pajama robes, and other items of wearing apparel who accurately describe and brand such products by terms properly descriptive of the fabric content thereof. The representations made by respondents as aforesaid had the capacity and tendency unfairly to divert trade to respondents from their said competitors. Thereby, substantial injury is being done and has been done by the respondents to competition in commerce as herein set out.

CONCLUSION

The aforesaid acts and practices of respondents Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and a stipulation as to the facts executed by W. T. Kelley, Chief Counsel for the Federal Trade Commission, and Gould & Wilkie, Davis, Polk, Wardwell, Gardiner & Reed, and Erwin Feldman, counsel for respondents, the filing of briefs 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 respondents Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., their officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of their merchandise, dress goods, and garments in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word or words "Crepe," "Seal Crepe," or any other word or words of similar import or meaning to describe or designate

any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless there is used in immediate connection and conjunction therewith, in letters of at least equal size or conspicuousness, a word or words accurately naming or describing the fiber, material or materials from which said fabric or product is actually made; and provided, that such disclosure of the fiber or material content thereof shall be made by accurately designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent;

2. Using the word "Silky," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm, unless in the case of a fabric or product composed in part of silk and in part of rayon or of a material or materials other than silk, there is used in immediate connection and conjunction therewith, and in letters of equal size and conspicuousness, a word or words accurately describing the fiber, material, or materials from which said fabric or product was actually made; and provided, that the fiber or material content of such fabric or product be accurately disclosed by designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent;

3. Using the words "Pure Dye," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm; and

It is further ordered, That the respondent, Lord & Taylor, its officers, representatives, agents, servants, and employees, in connection with the offering for sale, sale, or distribution of its merchandise, dress goods, and garments, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "silk," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm, unless, in the case of a fabric or product composed in part of silk and in part of rayon or material or materials other than silk, there is used in immediate connection and conjunction therewith, and in letters of at least equal size and conspicuousness, a word or words accurately describing the fiber, material, or materials from which said fabric or product was actually made; and provided, that the fiber or material content of such fabric or product be accurately disclosed by designating each constituent fiber or material thereof, in

Order

the order of its predominance by weight, beginning with the largest single constituent;

2. Using the word "satin," or any other word or words of similar import or meaning, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless there is used in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, a word or words accurately naming or describing the fiber, material, or materials, from which said fabric or product is actually made; and provided that such disclosure of the fiber or material content thereof shall be made by accurately designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent.

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 this order.

IN THE MATTER OF
LONNIE E. CARTER, INDIVIDUALLY, AND TRADING AS
CARTER CANDY COMPANY

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

Docket 3300. Complaint, Jan. 15, 1938—Decision, Mar. 11, 1938

Where an individual engaged in manufacture of candies and processing of salted nuts, and in sale and distribution thereof to wholesalers, jobbers, and retailers, in competition with others similarly engaged in sale and distribution of candies, salted nuts, and peanut confections—

Sold its so-called "Early Bird Peanuts," packed in individual, small, sealed, 5-cent cartons, within small number of which, as placed in larger pasteboard containers, there were concealed, in accordance with individual cartons, and retailers, explanatory display cards, legends advising ultimate purchaser "You may find 5¢, 10¢, 25¢ or \$1," some such sum, as determined through chance selection and breaking of one of such enclosing cartons, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his said product, as displayed and sold by retail purchasers thereof in accordance with such plan or game of chance and in violation of public policy of the common law and criminal statutes and contrary to that of the United States Government;

With result that many dealers in and ultimate purchasers of such products were attracted by element of chance involved in sale thereof, and thereby induced to buy same, thus packed and sold, in preference to nuts or candy of competitors who are not willing to and do not offer and sell their products so packed, assembled, or otherwise arranged as to involve game of chance, and refrain therefrom, and with tendency and capacity thereby to divert to himself trade and custom from competitors who do not use same or equivalent method, and to exclude from said trade all aforesaid unwilling competitors and lesson competition therein, and create a monopoly of said trade in himself and in such other distributors as use same or equivalent method, and to deprive purchasing public of benefit of free competition in said trade and eliminate or exclude therefrom, as case might be, all actual or potential competitors who do not adopt and use such methods:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski 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 Lonnie E. Carter, individually, and trading as Carter Candy Company, herein-

after 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 Lonnie E. Carter is an individual doing business under the trade name of Carter Candy Company, with his principal office and place of business located at 2300 East Twenty-eighth Street, Chattanooga, Tenn. He is now, and for some time last past has been, engaged in the manufacturing of candies and processing of salted nuts, and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused his products when sold to be transported from his principal place of business in the city of Chattanooga, Tenn., to purchasers thereof in the State of Tennessee and in other States of the United States, at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candies and salted nuts between and among the various States of the United States. In the course and conduct of his business respondent is in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of candies, salted nuts, salted peanuts, and peanut confections, in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold, to wholesale and retail dealers and jobbers, salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said salted peanuts are packed in individual, small, sealed cartons for retail to the ultimate consumer at five cents per carton. A number of these small cartons of peanuts are placed in a larger pasteboard carton. Said salted peanuts are designated by respondent as "Early Bird Peanuts." Sealed within a small number of individual cartons are 5 cents, 10 cents, 25 cents, or \$1, but the ultimate purchasers cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money thus procure the same wholly by lot or chance. The individual cartons of said salted peanuts bear stickers which have lithographed or printed thereon the following language: "You may find 5¢, 10¢, 25¢." With said assortments respondent furnishes display cards for use by the

retail dealers in offering such assortments to the public, which display cards bear legends or statements containing, among other things, the following: "You may find 5¢, 10¢, 25¢ or \$1," and inform the purchasing public that such assortments are being distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the said salted peanuts resell same to retail dealers and said retail dealers, and the retail dealers to whom respondent sells direct, expose said salted peanuts for sale and sell same 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 his products in accordance with the sales plan hereinabove set forth. Said sales plan has a capacity and tendency to induce purchasers thereof to purchase respondent's said products in preference to salted nuts, salted peanuts, peanut confections, or candy offered for sale and sold by his competitors.

PAR. 4. The sale of said salted peanuts to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure a sum of money. The use by respondent of said method in the sale of salted peanuts, and the sale of salted peanuts by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the salted nut, peanut confection, or candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, salted peanuts, and peanut confections or candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell their said products 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 any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, salted nuts, salted peanuts, peanut confections, and candy are attracted by respondent's said method and manner of packing said salted peanuts and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said

salted peanuts so packed and sold by respondent in preference to salted peanuts or candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his competitors who do not use the same or an equivalent method, to exclude from said trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful, to lessen competition in said trade, to tend to create a monopoly of said trade in respondent and in such other distributors as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the respondent has the tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 6. The aforementioned method, acts and practices of respondent are all to the prejudice of the public and respondent's competitors, as hereinabove alleged. Said methods, acts, and practices 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," and are to the prejudice of the public.

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 15, 1938, issued and served its complaint in this proceeding upon the respondent, Lonnie E. Carter, individually, and trading as Carter Candy 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, respondent filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lonnie E. Carter is an individual doing business under the trade name of Carter Candy Company, with his principal office and place of business located at 2300 East 28th Street, Chattanooga, Tenn. He is now, and for some time last past has been, engaged in the manufacture of candies and processing of salted nuts, and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused his products when sold to be transported from his principal place of business in the city of Chattanooga, Tenn., to purchasers thereof in the State of Tennessee and in various States of the United States, at their respective places of business. There is now, and for more than 1 year last past has been, a course of trade and commerce by said respondent in such candies and salted nuts between and among the various States of the United States. In the course and conduct of his business respondent is in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of candies, salted nuts, salted peanuts, and peanut confections, in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold, to wholesale and retail dealers and jobbers, salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said salted peanuts are packed in individual, small, sealed cartons for retail to the ultimate consumer at 5 cents per carton. A number of these small cartons of peanuts are placed in a larger pasteboard carton. Said salted peanuts are designated by respondent as "Early Bird Peanuts." Sealed within a small number of individual cartons are 5 cents, 10 cents, 25 cents, or \$1, but the ultimate purchasers cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money thus procure the same wholly by lot or chance. The individual cartons of said salted peanuts bear stickers which have lithographed or printed thereon the following language: "You may find 5¢, 10¢, 25¢." With said assortments respondent furnishes display cards for use by the retail dealers in offering such assortments to the public, which display cards bear legends or statements containing, among other things, the following: "You may find 5¢, 10¢, 25¢ or \$1.00," and inform the purchasing public that

such assortments are being distributed in accordance with the above described sales plan.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the said salted peanuts resell same to retail dealers and said retail dealers, and the retail dealers to whom respondent sells direct, expose said salted peanuts for sale and sell same 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 his products in accordance with the sales plan hereinabove set forth. Said sales plan has a capacity and tendency to induce purchasers thereof to purchase respondent's said products in preference to salted nuts, salted peanuts, peanut confections, or candy offered for sale and sold by his competitors.

PAR. 4. The sale of said salted peanuts to the purchasing public, in the manner above found, involves a game of chance or the sale of a chance to procure a sum of money. The use by respondent of said method in the sale of salted peanuts, and the sale of salted peanuts by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a tendency unduly to hinder competition or to create a monopoly, in this, to wit: that the use thereof has the tendency and capacity to exclude from the salted nut, peanut confection, or candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same of an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell salted nuts, salted peanuts, and peanut confections or candy in competition with the respondent, as above described, are unwilling to offer for sale or sell their said products so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, salted nuts, salted peanuts, peanut confections, and candy are attracted by respondent's said method and manner of packing said salted peanuts and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said salted peanuts so packed and sold by respondent in preference to salted peanuts or candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent has the tendency and capacity, because of said game of

chance, to divert to respondent trade and custom from his competitors who do not use the same or an equivalent method, to exclude from said salted peanut and candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful, to lessen competition in said salted peanut and candy trade, to tend to create a monopoly of said salted peanut and candy trade in respondent and in such other distributors of salted peanuts and candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said salted peanut and candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said salted peanut and candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

CONCLUSION

The aforementioned method, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove found. 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, 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 answer of the respondent, Lonnie E. Carter, individually, and trading as Carter Candy Company, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening 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 ordered, That the respondent, Lonnie E. Carter, an individual trading as Carter Candy Company, or under any other trade name, his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of salted nuts or confections in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing salted nuts or confections so packed and assembled that sales of such salted nuts or confections 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 and placing in the hands of dealers assortments of salted nuts or confections which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the salted nuts or confections contained in said assortment to the public;

3. Selling or distributing individual packages of salted nuts or confections containing coins or other United States money, which said individual packages of salted nuts or confections are packed and assembled in assortments with other individual packages of salted nuts or confections of similar size, shape and appearance not containing coins or other United States money, for resale to the public by retail dealers;

4. Furnishing to dealers a display card, either with packages or assortments of salted nuts or confections, or separately, bearing a legend or legends or statements informing the purchaser that the salted nuts or confections 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 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 the order to cease and desist hereinabove set forth.

Complaint

26 F. T. C.

IN THE MATTER OF

VAN OGDEN, INC., AND FREDERICK T. GORDON

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

Docket 2851. Complaint, June 26, 1936—Decision, Mar. 18, 1938

Where a corporation, as engaged under direct management, supervision, direction, and control of an individual who was president, treasurer, and managing officer thereof, in sale and transportation of chemicals, extracts, and other food products through personal solicitation of prospective purchasers in various States by agents and other representatives—

- (a) Described two of its products, in advertising same through circulars and pamphlets distributed throughout the various States, as "Dr. Gordon's Solid Comfort Foot Soap" and "Dr. Gordon's Mustard Oil Cream," and made various other statements intended to create impression that commodities thus labeled and designated were made under direction or according to formula of registered physician, facts being such commodities were in fact named after aforesaid individual and president, etc., who was neither registered pharmacist nor physician;
- (b) Advertised certain products, including those designated as "Walnut," "Maple," and "Rootbeer," as flavoring extracts, in circulars distributed in interstate commerce, notwithstanding fact such products were not compounds wherein flavoring, secured by extraction of juices from beans, berries, nuts, or fruits, is suspended in alcohol, as trade and public had been generally led to believe and understand for many years from word "extract" as applied to product offered as flavoring ingredient, but were imitation extracts composed of synthetic chemical substitutes and not of genuine ingredients;

With tendency and capacity to confuse and deceive purchasing public in regard to true nature and quality of its product and induce purchasers to buy same on account of mistaken belief that they were made in accordance with doctor's prescription and were true extracts, and with result that trade was thereby unfairly diverted to it from competitors engaged in sale in commerce of similar products, truthfully advertised and represented by them:

Held, That such corporate and individual acts and practices were to injury and prejudice of public and competitors and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Alden S. Bradley and *Mr. Gerard A. Rault* for the Commission.

Mr. Charles J. Trainor, of Chicago, Ill., 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 Van Ogden, Inc., a corporation, and Frederick T. Gordon, an individual, hereinafter referred to as respondents, have been and are 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, Van Ogden, Inc., is a corporation, existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in such State. Frederick T. Gordon is an individual, the president and treasurer of the respondent corporation, and its managing officer, and is a resident of, and has his principal place of business in the city of Chicago, and State of Illinois. Respondent, Van Ogden, Inc., a corporation, is under the direct management, supervision, direction, and control of the respondent, Frederick T. Gordon, and is engaged in the manufacture, sale, and transportation of chemicals, extracts, and other food products. In the course and conduct of such business respondent, Van Ogden, Inc., sells, transports and causes to be transported the above named commodities into, and through the various States of the United States, other than the State of Illinois. Such sales are, and have been made to purchasers and users thereof located in various States of the United States, as aforesaid, through the medium of personal or individual solicitation of prospective users and purchasers in interviews had for that purpose by agents, salesmen, and representatives of the respondent corporation, and pursuant to orders procured thereby, shipments have been made as aforesaid. Respondent has thus maintained a constant current of trade and commerce into and through the various States of the United States in the commodities above listed.

PAR. 2. In the course and conduct of its business, the respondent, Van Ogden, Inc., under the supervision and direction of Frederick T. Gordon, as aforesaid, has been and now is, in substantial competition with other corporations, firms, persons, and copartnerships engaged in the sale and distribution of commodities of like nature, character, and design throughout the various States of the United States.

PAR. 3. Among such competitors is one styled as "Gemac Sales Corporation," a corporation existing under and by virtue of the laws of the State of Illinois and having its principal office and place of business in the city of Chicago and State of Illinois.

Complaint

26 F. T. C.

PAR. 4. Since the organization of the respondent, approximately 3 years heretofore, it has, acting by and through its president and treasurer, Frederick T. Gordon, and other agents, officers, and employees, both in their own individual capacity and official person endeavored to appropriate and has appropriated values created by said competitor, "Gemac Sales Corporation" by enticing and attempting to entice the employees of the same to violate their contractual relations with such competitor and to enter into the employ of the respondent, Van Ogden, Inc. The values of such competitor, so appropriated and attempted to be appropriated by the respondent, are—training, experience, and ability of such employees as salesmen in their particular field of competition.

PAR. 5. The enticing and the attempts to entice, as related in the paragraph last above, have been made throughout the various States of the United States by the above named respondents, and each of them, and their agents, servants, and employees.

PAR. 6. In enticing, and in attempting to entice in the manner above related, respondents, their agents, servants, and employees, have made various representations to the employees of Gemac Sales Corporation, that it, the respondent corporation, would provide an increased compensation, promotions in position, additional responsibility, and have made various and numerous statements and representations, unfairly disparaging the organization, the business policies, and the financial standing of the Gemac Sales Corporation, with the result that a large number of the most experienced and skilful employees of the Gemac Sales Corporation have been induced to quit the employ of such corporation, and enter the employ of the respondents.

In truth and in fact, the respondent did not and now does not provide increased compensation, promotions in position, additional responsibility, or other increments to employees as represented by it.

PAR. 7. In the course and conduct of the business of the respondent corporation, it has advertised in various periodicals, magazines, and newspapers having an interstate circulation, and has through the medium of circulars and pamphlets, distributed throughout the various States of the United States, represented and described one of its products under the trade name or brand of:

Dr. Gordon's Solid Comfort Foot Soap;

another as:

Dr. Gordon's Mustard Oil Cream;

another as:

Dr. Trask's New Treatment for Constipation.

and has made various other statements calculated and intended to create the impression that the commodities so labeled and designated were, and are, manufactured under the direction, or according to a formula of a registered physician.

In truth and in fact, the individual Gordon from whom the first two commodities above listed obtained their name and designation, is the respondent, Frederick T. Gordon, who is not a chemist, is not a registered pharmacist, and is not a physician.

PAR. 8. Also in the advertising matter above referred to, the respondents describe and represent certain of the products vended by the respondent corporation as "Flavoring Extracts," including such products as "Walnuto," "Mapleo," and "Root Beer."

Over a period of many years, the trade and the public generally have been led to and now do believe and consider an "extract" offered for sale as a flavoring ingredient to be a compound wherein the flavoring is secured by the extraction of juices from beans, berries, nuts, or fruits. Such juices are then suspended in alcohol, which is recognized as a most valuable and desirable vehicle that can be used for dissolving and preserving extracts of juice from beans, nuts, berries, or fruits.

In truth and in fact, the products advertised and represented by the respondent, as herein related, are not extracts within the common meaning and acceptance of the term but are imitations of the same.

PAR. 9. The acts and practices of the respondents are prejudicial and injurious to respondents' competitor, Gemac Sales Corporation, a corporation, in that such acts and practices effectually appropriate values of such competitor to the use and benefit of the respondents, enabling the respondents to maintain a large selling staff, and cause a substantial decrease in the personnel of the sales organization of said competitor, thereby causing a substantial diversion of trade from the said competitors to the respondents in interstate commerce.

PAR. 10. The acts and practices of the respondents, as aforesaid, likewise have the tendency and capacity to mislead and deceive a substantial number of the members of the purchasing public into the false beliefs that:

1. Certain commodities vended by the respondents were and are manufactured under the direction of, or according to a formula prepared by a registered physician, when in truth and in fact such commodities are not so prepared.

2. Certain products and commodities vended by the respondents variously labeled as "Flavoring Extracts," "Walnuto," "Mapleo," and "Root Beer," and others, are in fact extracts when, in truth and in fact, they are but imitations of such.

As a result of such belief, many purchasers have purchased commodities of respondent and as a result thereof there has been caused a substantial diversion of trade to respondent from competitors in interstate commerce who do not falsely represent that the commodities vended by them have been manufactured by them and who do not falsely represent commodities vended by them to be extracts when in truth and in fact they are not.

PAR. 11. There are among the competitors of the respondents, a substantial number who truthfully represent that certain commodities vended by such competitors were and are manufactured under the direction of, or according to a formula of a physician; that certain flavoring extracts represented by them to be extracts are, in truth and in fact, genuine extracts.

PAR. 12. There are likewise among the competitors of the respondents, those who do not through the use of false and misleading statements and representations concerning the organization, business policy, or financial standing of their competitors, entice and endeavor to entice, employees of such competitors with the calculated design of thereby appropriating to themselves values created by such competitors.

PAR. 13. The above acts and practices done, and caused to be done by the respondents, are and were, each and all, to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 26th day of June 1936, issued, and on the 29th day of June 1936, served its complaint in this proceeding upon respondents, Van Ogden, Inc., and Frederick T. Gordon, 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 other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Charles J. Trainor, attorney for

the respondent, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (respondent not having requested oral argument), and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Van Ogden, Inc., is a corporation existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in such State. Frederick T. Gordon is an individual, the president and treasurer of the respondent corporation and its managing officer. He is a resident of and has his principal place of business in the city of Chicago, State of Illinois. Respondent, Van Ogden, Inc., is a corporation under the direct management, supervision, direction, and control of the respondent, Frederick T. Gordon, and is engaged in the sale and transportation of chemicals, extracts, and other food products. In the course and conduct of its said business, Van Ogden, Inc., sells, transports, and causes to be transported the above named commodities from the State of Illinois into the various States of the United States other than the State of Illinois, and in the District of Columbia. Such sales are, and have been, made to purchasers thereof located in the various States of the United States as aforesaid, through the medium of personal solicitation of prospective purchasers by agents, salesmen, and other representatives of the respondent corporation. Pursuant to orders procured thereby, shipments have been made, and are made, as aforesaid. Respondent has thus maintained a course of trade and commerce among and between the various States of the United States, and the District of Columbia.

PAR. 2. In the course and conduct of its business, the respondent, Van Ogden, Inc., under the supervision of Frederick T. Gordon, has been and is now in substantial competition with other corporations, firms, and copartnerships engaged in the sale and distribution of commodities of like nature, character, and design in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is charged in paragraphs 3, 4, 5, and 6 of the complaint with enticing away employees of a competitor corporation. However, this charge is not substantiated by a preponderance of the evidence and appears to be a private controversy, lacking in public interest.

PAR. 4. In the course and conduct of its business, respondent corporation has advertised through the medium of circulars and pamphlets distributed throughout the various States of the United States, describing two of its products under the trade names or brands of:

Dr. Gordon's Solid Comfort Foot Soap, and
Dr. Gordon's Mustard Oil Cream,

and has made various other statements intended to create the impression that the commodities so labeled and designed were, and are, manufactured under the direction or according to the formula of a registered physician. The two commodities above listed are in fact named after respondent, Frederick T. Gordon, who is not a registered pharmacist, nor a physician.

Respondent has also distributed circulars in interstate commerce advertising certain of its products as flavor extracts. Included under this head are such products as "Walnuto," "Mapleo," and "Rootbeer". Over a period of many years, the trade and the public generally have been led to and do now believe and consider an "extract" offered for sale as a flavoring ingredient to be a compound wherein a flavoring is secured by the extraction of juices from beans, berries, nuts, or fruit. Such juices are then suspended in alcohol which is recognized as the most desirable vehicle that can be used for dissolving and preserving extracts of juices from beans, nuts, berries, or fruits. The evidence shows that the product advertised and represented as extracts by respondent are not extracts within the common meaning and acceptance of the term, but are imitation extracts composed not of genuine ingredients, but of synthetic chemical substitutes.

PAR. 5. The acts and practices of respondents as herein described have had, and have, the tendency and capacity to confuse and deceive the purchasing public in regard to the true nature and quality of its products and to induce purchasers to buy such products on account of the mistaken belief that these products are made in accordance with a doctor's prescription, and are true extracts. Trade is thereby unfairly diverted to respondent from competitors engaged in the sale in commerce as herein defined of products similar to those sold and distributed by said respondent, which competitors truthfully advertise and represent their products.

CONCLUSION

The aforesaid acts and practices of the respondents, Van Ogden, Inc., and Frederick T. Gordon, are to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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 other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto; briefs having been filed by Alden S. Bradley, counsel for the Commission, and by Charles J. Trainor, counsel for respondent (counsel for respondent not having requested oral argument) 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, Van Ogden, Inc., its officers, representatives, agents, and employees, and respondent, Frederick T. Gordon, in connection with the offering for sale, sale, and distribution of their soaps, toilet articles, and food flavors in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. 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 in any way as a trade name, brand, or designation for their products, or in any way which may have the capacity and tendency to confuse and mislead or deceive purchasers into the belief that said products are made in accordance with the prescription of a doctor, or under the supervision of a doctor, when such is not a fact.

2. Designating any food flavors as extracts unless and until the product is composed of genuine ingredients as distinguished from synthetic chemical substitutes and such ingredients are suspended in ethyl alcohol.

Order

26 F. T. C.

It is further ordered, That that part of the complaint dealing with the enticement of competitors' employees be dismissed for lack of public interest.

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

Syllabus

IN THE MATTER OF

MIDWEST PUBLISHING COMPANY, AND WALTER H. GORHAM, INDIVIDUALLY, AND AS PRESIDENT OF MIDWEST PUBLISHING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2893. Complaint, Aug. 10, 1936—Decision, Mar. 18, 1938

Where a corporation and an individual, substantially sole owner thereof and responsible for its policies and activities, engaged in sale of its so-called "Modern American Encyclopedia," together with extension service therefor, through agents and representatives supplied with advertising folders, prospectuses, sample volumes, order blanks or contracts, sales talks, and other literature and paraphernalia for exhibition, distribution, and use in connection with sale or solicitation thereof; pursuant to a scheme to foist upon purchasing public at a profit said old and obsolete set of reference books, of little or no value as such, and consisting of reprints, poorly made on inferior paper from plates cast in 1891, and ownership of which plates changed hands from time to time, and then currently issued and sold under aforesaid deceptive and misleading title—

- (a) Represented verbally through said authorized agents, etc., and through advertisements, letters, etc., to prospective and actual purchasing public throughout United States, that their said "Modern American Encyclopedia" was in fact a new, modern, and up-to-date encyclopedia and reference work, and had been kept perpetually up-to-date and up to the minute, facts being, printed as aforesaid, with only few page or minor revisions between 1912 and 1922, and none in following decade, and only minor ones between 1932 and 1934, and none of substance since, it had not been for many years, and was not then, a modern or up-to-date reference work which in any reasonable degree met needs and requirements of purchasing and using public for reliable work of reference;
- (b) Set forth in broadside, issued as part of their advertising and in which was included expression "keep abreast of the times," list of 33 persons prominent in particular fields of learning or industry, and represented that each had contributed substantially to said alleged new and modern work, facts being none had made any contribution thereto or done anything in connection therewith to make it new and modern so as to enable purchaser to keep abreast of the times, and only contribution was a very slight one on the part of a few to the original work in 1891 and earlier revisions thereof, and some of persons so listed had been dead for a number of years;
- (c) Represented that in order to keep said "Modern American Encyclopedia" from becoming obsolete and getting out of date, they would furnish a 10-year, quarterly, loose-leaf, extension service to purchasers which made and kept information in set current, facts being that they discontinued such loose-leaf service within first 2 years of said 10-year period and issued and used in lieu thereof so-called Year Book, for which they usually demanded and received \$1 a year, and which they offered to purchasers, after expiration of said period, for \$7.50 a year, but which was of little or no authorita-

Complaint

26 F. T. C.

tive value as reference work, and did not make and keep information in set current, etc., and \$7.50 price of which was not regular or intended retail price, but fictitious, and used and offered solely to induce purchasers to believe that book was of a much greater value than \$1, or regular price at which offered;

- (d) Represented in many instances to prospective purchasers that set's regular price, at which offered, ranging from \$15.75 to \$19.80, was a special and reduced one and much less than its usual price, represented as several times the true one, and variously stated former as being from \$59 to \$80, with extra charge for 10-year, quarterly, loose-leaf, extension service, ranging from \$1 to \$7.50 a year, facts being no sets were ever sold for more than offered price and higher figures were either for original issue when new or for sets in special deluxe bindings;
- (e) Represented that certain other books, value of which was stated as being equal to or in excess of total purchase price of set, would be delivered to prospective purchasers free and as a gratuity and as a result of purchase of encyclopedia, facts being so-called "free" books were not thus given, but price thereof, including profit to themselves, was included in and made part of purchase price of set, and value of said pretended, free books was not equal to or in excess of purchase price of set;
- (f) Falsely represented that price quoted at any time for said offer was "just what" purchaser is "to pay" for everything, facts being extra annual, or total, price was later demanded for 10-year service of current replacement pages or Year Book;
- (g) Represented that other purchasers or persons had recommended prospect for special list of those to receive set at alleged pretended special price, or to receive complimentary set free in return for card to be filed, facts being no such recommendation had been made and no free sets were given out, but cards obtained were used by them in procuring entree to other prospects, and books promised free were not sent;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of said books in and on account of said erroneous and mistaken beliefs induced by said acts and practices, and with result that trade was diverted unfairly to them from their competitors who do not resort to false and deceptive practices in sale of their respective reference books, and with tendency and capacity so to mislead and deceive:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. Wm. T. Chantland 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 Walter H. Gorham and Midwest Publishing Company, hereinafter re-

ferred to as respondents, have been and are now using unfair methods of competition in commerce, as defined by 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, Midwest Publishing Company, is a corporation duly organized and existing under the laws of the State of Illinois. Respondent, Walter H. Gorham, is the sole owner of respondent, Midwest Publishing Company (except qualifying shares in the name of the secretary), and fixes its policies and directs its activities. Respondents' plant, office, and principal place of business is located at 540 North Michigan Avenue, Chicago, Ill. Respondents are now and for some time have been engaged in the business of selling books, chief among which is a set of reference books now called "Modern American Encyclopedia," together with extension service therefor.

PAR. 2. Said respondents being engaged in business as aforesaid, cause said books, when sold, to be transported from respondents' place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondents now maintain a constant current of trade in commerce in said books, distributed and sold by them, between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling reference books, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their said business in selling and seeking to sell said encyclopedia, and the extension services, respondents employ various agents, solicitors, salesmen, and representatives, who are authorized and directed to solicit orders for, and to sell said commodities to prospective purchasers in the several States, said salesmen and representatives ordinarily traveling from place to place and canvassing prospective purchasers at such places. Respondents furnish such salesmen and representatives with advertising folders, prospectuses, sample volumes, order blanks or contracts, sales talks, and other literature and paraphernalia, which are exhibited, distributed, and used in connection with the sale or solicitations for the sale of said books, and extension services. Upon a sale being made by such salesmen or representatives, the purchaser is asked to sign a printed order or contract which is then transmitted

to the respondent. Respondent thereupon causes a shipment of said books and extension services to be made to such purchaser from Chicago, Ill. At the time the order is signed the salesman or representative usually collects a down payment from the purchaser, and the order or contract so signed ordinarily requires additional payments in installments until the total purchase price is paid in full.

PAR. 5. During the time above mentioned, in the course and conduct of their said business, respondents, through verbal statements made by their agents, salesmen, representatives, and employees, and by means of their advertisements, letters, order blanks, sales talks, and other literature used and distributed and exhibited to prospective purchasers and to purchasers, have represented and now represent to the prospective and actual purchasing public throughout the United States the matters and things hereinafter set forth:

1. That said so-called "Modern American Encyclopedia" is a new, modern, and up-to-date encyclopedia and reference work.

The truth and facts are that Walter H. Gorham, and two associates organized an Illinois corporation known as "Modern American Company," and also organized respondent corporation, Midwest Publishing Company. Acting through the former, respondent and said two associates purchased a set of old plates made in 1891 from which, at various times from 1891 to 1933, four prior owners had printed and sold five separate issues or editions of reference books, under four different titles, to-wit: the original issue or edition was called "New Practical Reference Library"; the second and third issues or editions were called "New Students' Reference Works"; the fourth issue or edition was called "Students' Reference Works"; and the fifth issue or edition was called "Students' Encyclopedia." From these old plates, very slightly revised, Modern American Company has been and now is printing, as called for by respondent Gorham and his associates above named, a sixth issue or edition under the name "Modern American Encyclopedia," "1934 Edition," and "1935 Edition." Respondents, having bought said sets, sell and distribute same in commerce as above described.

Respondents also failed and neglected in any proper way to disclose to or inform its prospective purchasers of the fact that its said so-called Modern American Encyclopedia is an old work, as above described, and is substantially the same as prior sets of reference works put out at various times from 1891 to 1933 under the various other names and titles above stated.

The chief value of any reference book or set is that it is in fact "Modern" and contains the latest facts and data available on each subject treated. The purchasing public generally buys such reference

Complaint

books or sets or encyclopedias chiefly for the purpose of procuring such up-to-date facts, data and information, and generally rely implicitly upon them as furnishing exactly that, up to the date of actual issue. Reference books which purport to be, but are not of that character, are not only in themselves misleading, deceptive, and of little or no value for the purposes for which purchased, but are in fact injurious to the purchasing public who consult and read them, by reason of the misguided reliance placed on the antiquated data, erroneous facts, and superseded theories and processes therein set forth or treated. The many and rapid scientific, historical, and other changes and discoveries that have occurred since 1891, the date of the plates from which respondents' issues of the so-called "Modern American Encyclopedia" are printed, render it practically valueless as a reference work.

For these reasons, all claims, representations, and implications, as above described, made by respondents, have been and are false, fraudulent, misleading, deceptive, and injurious to the purchasing public in that they tend to and do confuse and mislead the public into the belief that they are buying and obtaining for use a new and useful up-to-date reference work.

2. As a part of their advertising of said work and to induce its purchase, respondents issued a broadside containing the expression "Keep abreast of the times." This broadside contains a list of 33 persons, each prominent in some particular field of learning or industry, and respondents represented that each of these had contributed substantially to such alleged new and modern encyclopedia.

In truth and in fact, not one of the persons named in said lists has made any contribution to the "Modern American Encyclopedia" or done anything in connection therewith to make it a new and modern encyclopedia so as to enable a purchaser to "keep abreast of the times," save that some few of the persons named did contribute very slightly to the said original work in 1891, and the earlier revisions thereof. Some of the persons listed have been dead for a number of years.

The use and circulation of said broadside and list is false, deceptive, and misleading, and tends to and does further the deception of the members of the purchasing public into the belief that they are receiving a work which is new and "modern," and is being kept "abreast of the times," by substantial contributions from the several persons on said list.

3. Part of the sales talk which sales people of respondents were and are instructed to make, is as follows:

Mrs. Miller, one valid complaint against encyclopedias is that they get out of date very quickly. At the rate the world moves today it is not too much to say that an encyclopedia depreciates in value at least ten per cent a year. That

rate of depreciation means that in ten years an encyclopedia is obsolete and of no value like an old city directory. But the publishers of this encyclopedia do not permit it to get out of date.

The purpose and effect of such sales talk was and is to further impress upon prospective purchasers the quick obsolescence of such reference work, the modern and up-to-date character of respondents' said encyclopedias, by thus coupling with a correct statement as to the rapid obsolescence of all authoritative reference works, the direct assertion that the encyclopedias which respondents are selling are not permitted to get out of date.

The truth and fact is that such assertion is grossly false, contrary to the facts as above set forth.

4. Respondents represented that, in order to keep the "Modern American Encyclopedia" from becoming obsolete and from getting "out of date," they would furnish a 10-year quarterly loose-leaf service to purchasers which makes and keeps the information in the set current. When less than 2 years of the 10-year period had expired, as to the first of such loose-leaf services promised, the quarterly loose-leaf service was discontinued and in lieu thereof the respondents issued and now use a so-called year book, for which they usually demand and receive a price of \$1 per year and which they offer to furnish to purchasers after the expiration of the 10-year period for the sum of \$7.50 per year.

In truth and in fact, said year book is of little or no authoritative value as a reference work and does not make and keep the information in the set current and thereby prevent it from becoming obsolete and from getting "out of date." The price of \$7.50 at which the year book is offered after the expiration of the 10-year period, is a fictitious price and not the regular or intended retail price at which said year book is to be sold, and is used and offered solely to induce purchasers to believe that the year book is of a much greater value than the price at which it is now offered, \$1 per year. In truth and in fact, the price of \$1 per year for said year book is the regular price for it, and such price will yield respondent a profit on any reasonable volume of sales.

5. Respondents offer the "Modern American Encyclopedia" at prices ranging from \$15.75 to \$19.80 a set and, in many instances, represent to prospective purchasers that this is a special and reduced price, much less than the usual or regular price at which the set is sold. In such instances, the representation is made that the usual or regular price at which the set is sold is several times that at which it is being offered, and the usual or regular price is variously stated to be from \$59 to \$80 per set, with an extra charge for the 10-year quarterly loose-leaf service, variously quoted to be from \$1 to \$4 per year.

The truth and fact is that no sets of respondents' encyclopedia were ever sold for more than the offered price, the higher prices named were either for the original issue when it was new, or for sets in special De Luxe bindings, and the usual or regular price for the set was from \$15.75 to \$19.80.

6. To induce prospective purchasers to purchase said encyclopedia the respondents, in many instances, represent that certain other books, the value of which is represented as being equal to or in excess of the total purchase price of the set, will be delivered to said prospective purchaser free and as a gratuity, if the encyclopedia is purchased.

In truth and in fact, said "free" books are not given as a gratuity but the price therefor, including a profit to the respondents, is included in and made a part of the purchase price of the set, and the value of said "free" books is not equal to or in excess of the purchase price for the set.

7. Respondents represented that the price quoted at any time for the set offered is "just what" the purchaser is "to pay" * * * "for everything."

This representation was false and deceptive in that an extra annual or total price was later demanded for the 10-year service of current replacement pages or Year Book.

8. Respondents represented that other purchasers or persons had recommended the prospect for a special list to receive the set at the alleged special price aforementioned or to receive a complimentary set free in return for a card to be filed.

The truth is that no one had so recommended any prospect, and that no free sets were given out, but when cards were obtained they were used by respondents in procuring entree to other prospects, and the books promised to be sent free were not sent.

9. Respondents at all times have recklessly hired applicants for sales positions indiscriminately and with no effort to learn of their character and capacity, and have permitted and acquiesced in the representations made by such sales people touching said set which were made to the prospective purchasers among other ways in form and substance in all the manners hereinbefore described.

The whole plan and methods employed by respondents constitute merely a scheme to foist upon the purchasing public, at a profit, an old and obsolete set of reference books of little or no value as reference books, by reprints poorly made on inferior quality of paper, from plates cast in 1891, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 6. The aforesaid acts and practices of the respondents have the tendency and capacity to and do mislead and deceive a sub-

stantial portion of the purchasing public and cause it erroneously to believe that said representations are true, and, because of such erroneous belief, to purchase these reference books of the respondents, with the result that trade in said commerce is unfairly diverted to the respondents from said competitors who do not misrepresent their reference books, to the substantial injury of said competitors and to the injury of the public.

PAR. 7. 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 August 10, 1936 issued and on August 12, 1936 duly served its complaint in this proceeding upon respondents, Midwest Publishing Company, a corporation, and Walter H. Gorham, individually and as president of Midwest Publishing Company, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. No answer was filed by either respondent but after the issuance of the complaint, testimony and other evidence in support of the allegations of said complaint were introduced by Wm. T. Chantland and Henry Junge, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by respondent Walter H. Gorham appearing in his own behalf and on behalf of respondent Midwest Publishing Company, a corporation, before John W. Norwood, an examiner of the Commission, theretofore duly designated by it, and said testimony and other 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 other evidence and brief in support of the complaint, no brief having been filed by respondent (no oral argument having been requested), and the Commission having duly considered the same and being now fully advised in the premises, finds 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, Midwest Publishing Company, is a corporation duly organized and existing under the laws of the State of Illinois. Respondent, Walter H. Gorham, is the sole owner of respondent, Midwest Publishing Company (except qualifying shares in the name of the secretary), and fixes its policies and directs its activities. Respondents' plant, office, and principal place of business is located at 540 North Michigan Avenue, Chicago, Ill. Respondents are now and for some years have been engaged in the business of selling books, chief among which is a set of reference books now called "Modern American Encyclopedia," together with extension service therefor.

PAR. 2. Respondents, being engaged in business as aforesaid, cause said books, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State from which said shipments are made, and respondents have maintained a course of trade in commerce in said books and extension services sold and distributed by them, between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling reference books and services in connection therewith, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their said business in selling and seeking to sell said encyclopedia, and the extension services, respondents employ various agents, solicitors, salesmen, and representatives, who are authorized and directed to solicit orders for, and to sell said reference books and the extension services in connection therewith to prospective purchasers in the several States, and said salesmen and representatives travel from place to place and canvass prospective purchasers. Respondents furnish such salesmen and representatives with advertising folders, prospectuses, sample volumes, order blanks or contracts, sales talks, and other literature and paraphernalia, which are exhibited, distributed and used in connection with the sale or solicitations for the sale of said books, and extension services. When a sale is made by any such salesman or representative, the purchaser is asked to sign and does sign a printed order or contract which is then transmitted to the respondents. Respondents thereupon cause a shipment of said books and extension services to be made to such purchaser from Chicago, Ill.

At the time the order is signed the salesman or representative usually collects a down payment from the purchaser, and the order or contract so signed ordinarily requires additional payments in installments until the total purchase price is paid in full.

PAR. 5. During the time above mentioned, in the course and conduct of their said business, and as inducement to the purchase of said books and services, respondents, through verbal statements made by their agents, salesmen, representatives, and employees, and by means of their advertisements, letters, order blanks, sales talks, and other literature used and distributed and exhibited to prospective purchasers and to purchasers, have represented to the prospective and actual purchasing public throughout the United States, that respondents' so-called "Modern American Encyclopedia" has been and is in fact a new, modern, up-to-date encyclopedia and reference work, and that it has been kept perpetually up-to-date and up to the minute.

Reference books are valuable only in proportion to their accuracy and up-to-dateness. Failing in either, they are to that extent in and of themselves misleading and deceptive to those who buy and use them in reliance upon their up-to-date accuracy. Obsolescence of such works approximates 10 percent per annum, so that if unrevised such a work in 10 years becomes practically valueless for its intended purposes.

Respondents' said so-called "Modern Encyclopedia" is printed from plates originally made long prior to 1912 when they changed hands. The plates had been reset in 1908, after which and until 1922 there had been made only some few page revisions, or revisions of less amount. In about 1922 the plates again twice changed hands, the latter vendee at that time holding and owning them without revision until about 1932 when they were purchased by the Modern American Corporation, a holding company, in part owned by respondent Gorham. Since 1932 only minor revision work has been done on said plates and none of substance since 1934, so that respondents' said "Modern American Encyclopedia" has not been for many years and is not now a modern or up-to-date reference work which in any reasonable degree meets the needs and requirements of the purchasing and using public for a reliable reference work.

PAR. 6. As a part of the plan or scheme to sell and distribute said "Modern American Encyclopedia" and the extension service in connection therewith in interstate commerce, and as inducements to procuring purchasers therefor—

(a) Respondents, as a part of their advertising of said work and to induce its purchase, issued a broadside containing the expression "Keep abreast of the times." This broadside contains a list of 33

persons, each prominent in some particular field of learning or industry, and respondents represented that each of these had contributed substantially to such alleged new and modern encyclopedia. In truth and in fact, not one of the persons named in said lists has made any contribution to the "Modern American Encyclopedia" or done anything in connection therewith to make it a new and modern encyclopedia so as to enable a purchaser to "keep abreast of the times," save that some few of the persons named did contribute very slightly to the said original work in 1891, and the earlier revisions thereof. Some of the persons listed have been dead for a number of years.

(b) Respondents represented that, in order to keep the "Modern American Encyclopedia" from becoming obsolete and from getting "out of date," they would furnish a 10-year quarterly loose-leaf service to purchasers which makes and keeps the information in the set current. When less than 2 years of the 10-year period had expired, as to the first of such loose-leaf services promised, the quarterly loose-leaf service was discontinued and in lieu thereof the respondents issued and now use a so-called year book, for which they usually demand and receive a price of \$1 per year and which they offer to furnish to purchasers after the expiration of the 10-year period for the sum of \$7.50 per year. In truth and in fact, said year book is of little or no authoritative value as a reference work and does not make and keep the information in the set current and thereby prevent it from becoming obsolete and from getting "out of date." The price of \$7.50 at which the year book is offered after the expiration of the 10-year period, is a fictitious price and not the regular or intended retail price at which said year book is to be sold, and is used and offered solely to induce purchasers to believe that the year book is of a much greater value than the price at which it is now offered, \$1 per year. In truth and in fact, the price of \$1 per year for said year book is the regular price for it, and such price will yield respondent a profit on any reasonable volume of sales.

(c) Respondents offer the "Modern American Encyclopedia" at prices ranging from \$15.75 a set to \$19.80 a set and, in many instances, represent to prospective purchasers that this is a special and reduced price, much less than the usual or regular price at which the set is sold. In such instances, the representation is made that the usual or regular price at which the set is sold is several times that at which it is being offered, and the usual or regular price is variously stated to be from \$59 to \$80 per set, with an extra charge for the 10-year quarterly loose-leaf service, variously quoted to be from \$1 to \$7.50 per year. The truth and fact is that no sets of respondents' encyclopedia were ever sold for more than the offered price, the higher

prices named were either for the original issue when it was new, or for sets in special De Luxe bindings, and the usual or regular price for the set was from \$15.75 to \$19.80.

(d) Respondents, to induce prospective purchasers to purchase said encyclopedia, in many instances, represent that certain other books, the value of which is represented as being equal to or in excess of the total purchase price of the set, will be delivered to said prospective purchaser free and as a gratuity, if the encyclopedia is purchased. In truth and in fact, said "free" books are not given as a gratuity but the price therefor, including a profit to the respondents, is included in and made a part of the purchase price of the set, and the value of said "free" books is not equal to or in excess of the purchase price for the set.

(e) Respondents represented that the price quoted at any time for the set offered is "just what" the purchaser is "to pay" * * * "for everything." This representation was false and deceptive in that an extra annual or total price was later demanded for the 10-year service of current replacement pages or Year Book.

(f) Respondents represented that other purchasers or persons had recommended the prospect for a special list to receive the set at the alleged special price aforementioned or to receive a complimentary set free in return for a card to be filed. The truth is that no one had so recommended any prospect, and that no free sets were given out, but when cards were obtained they were used by respondents in procuring entree to other prospects, and the books promised to be sent free were not sent.

(g) Respondents have permitted, authorized, and benefited from, the representations made to prospective purchasers by their agents concerning said set, which representations were made as hereinbefore set out, and in various other forms.

PAR. 7. The whole plan and methods employed by respondents constitute merely a scheme to foist upon the purchasing public, at a profit, an old and obsolete set of reference books of little or no value as reference books, by reprints poorly made on inferior quality of paper, from plates cast in 1891, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 8. There are among the competitors of respondents engaged in the sale of books of reference, as mentioned in paragraph 3 hereof, corporations, firms, partnerships, and individuals, who do not in connection with such sale, resort to the false and deceptive practices hereinabove set forth.

PAR. 9. The aforesaid acts and practices of the respondents have the tendency and capacity to, and do, mislead and deceive a substantial

Order

portion of the purchasing public into the mistaken and erroneous belief that said representations are true and into the purchase of respondents' reference books in and on account of the aforesaid erroneous and mistaken beliefs so induced by the acts and practices of the respondents. As a result trade has been diverted unfairly to the respondents from their aforesaid competitors who do not resort to false, misleading, and deceptive acts and practices in the sale of their respective competitive reference books.

CONCLUSION

The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice and injury of the public and of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer having been filed by respondent), testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief by 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, Midwest Publishing Company, a corporation, and its officers, and Walter H. Gorham, individually, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of encyclopedia now entitled "Modern American Encyclopedia" and extension services in connection therewith and of other books, in interstate commerce or in the District of Columbia, do cease and desist from, directly or indirectly, or through any corporate or other device, advertising or in any other manner representing:

1. That respondents' so-called "Modern American Encyclopedia" is a new, modern, up-to-date encyclopedia or reference work, or that it has been kept up-to-date.

Order

26 F. T. C.

2. That any person or persons, especially those prominent in particular fields of learning, have contributed substantially or at all to any revision of said so-called "Modern American Encyclopedia," when such is not the fact.

3. That respondents furnish any extension service of a kind or character that will keep said "Modern American Encyclopedia" up-to-date, unless and until they furnish such service.

4. That the regular price for which respondents will furnish to the purchaser of said "Modern American Encyclopedia" an annual extension service is greater than the price at which said extension service is actually and usually sold.

5. That respondents furnish any specified character of extension service for any specified term of years, when such is not the fact.

6. That the regular prices at which the sets of encyclopedias and services are habitually and generally offered are special prices or reduced prices offered only to a selected list of persons, for special reasons.

7. That other allegedly valuable books offered in connection with said "Modern American Encyclopedia" are given free or as a gratuity when in fact the price named includes payment at a profit for all of the books so offered and delivered.

8. That any price that a purchaser will be required to pay for the books and services offered and sold, is different from the total price which respondents actually collect or attempt to collect.

9. That any prospect has been recommended to receive a set of said reference or other books and services in connection therewith at a special price, or as a free gift, or in return for a testimonial letter, when any of said representations are untrue.

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

Complaint

IN THE MATTER OF

ALBERT L. HILKEMEYER AND LEONARD HILKEMEYER,
INDIVIDUALLY, AND TRADING AS DIXIE HATCH-
ERIES, AND AS JEFFERSON FARMS

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

Docket 3285. Complaint, Dec. 21, 1937—Decision, Mar. 19, 1938

Where two individuals, engaged as part owners and under profit-sharing arrange-
ments in business of hatching, selling, and distributing poultry and baby
chicks under name "Dixie Hatcheries"—

Advertised, over such name, their said business in various issues of poultry
journals and papers of interstate circulation, in which issues, in substan-
tially identical advertisements, they offered, at a much lower scale of prices,
same grade and type of baby chicks over trade name of Jefferson Farms, then
inoperative hatchery of one of said individuals, and turned over for filling
to former hatcheries and filled at same prices, with one exception, orders
coming to latter, in competition with those who do not falsely advertise or
otherwise represent that affiliated or branch businesses are separate and dis-
tinct competing businesses;

With effect of misleading and deceiving substantial portion of purchasing public
into erroneous belief that such representations were true and that said Dixie
Hatcheries and Jefferson Farms were separate and distinct competing busi-
ness, and into purchase of said chicks because of erroneous and mistaken
beliefs thus induced, and with result that trade was unfairly diverted to
them from competitors who do not misrepresent their business connection or
status, and with tendency and capacity so to mislead and deceive; to the
injury of such competitors:

Held, That such acts and practices were all to the prejudice of public and com-
petitors and constituted unfair methods of competition.

Mr. Wm. T. Chantland for the Commission.

Stokes & Stokes and *Mr. John W. Hilldrop* 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 Albert L. Hilke-
meyer and Leonard Hilkemeyer, individually, and trading as Dixie
Hatcheries and as Jefferson Farms, hereinafter referred to as respon-
dents, have been and now 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 and states its charges
in that respect as follows:

Complaint

26 F. T. C.

PARAGRAPH 1. Respondent Albert L. Hilkemeyer is an individual residing at Westphalia, Missouri, and for some time last past he has been, and is now, doing business as the owner-lessor of a number of baby chick hatcheries located in States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, including one located at 2401 Second Avenue, North Birmingham, Ala., which is known as the Dixie Hatcheries. Respondent Leonard Hilkemeyer is a part owner of the chick hatchery business operated in Birmingham under the name Dixie Hatcheries, and said respondent, for some time last past has operated, and now operates, said Dixie Hatcheries under an agreement by which each of said respondents share in the profits from said business. Respondent Leonard Hilkemeyer maintains his residence at 2401 Second Avenue, North Birmingham, and at Jefferson Farms, Highway 31, twelve miles north of Birmingham, Ala.

Respondents are now, and have been for some time past, engaged in the business of hatching, selling, and distributing poultry, more particularly young chickens which are commonly known and referred to as "baby chicks." The business in which the respondents are engaged is commonly known as and is hereinafter referred to as the chick-hatchery business. Respondents in the course and conduct of their business under the name Dixie Hatcheries sell and distribute said baby chicks to members of the public and cause said chicks, when sold, to be transported from the State of Alabama, the State of origin of the shipment, to purchasers thereof located at points in the various States of the United States other than the State of Alabama. There is now, and has been during all the times herein mentioned, a course of trade in commerce in said baby chicks sold by respondents between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, respondents are now, and have been during all the times herein mentioned, engaged in substantial competition with various other individuals, firms, and corporations engaged in hatching, offering for sale, and selling baby chicks to members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. As part of their said business operations, said respondents have, for some time last past and since June 1, 1936, caused to be inserted in various issues of poultry journals and papers having an interstate circulation certain advertisements over the trade name of Dixie Hatcheries and other advertisements substantially identical except with a much lower scale of prices for the same grade and types of baby chicks over the trade name of Jefferson Farms.

The use of the different trade names Jefferson Farms and Dixie Hatcheries in connection with advertising the same grades and types

of baby chicks at different prices serves as a representation to prospective purchasers that the businesses conducted under the names Dixie Hatcheries and Jefferson Farms were, and are, separate and distinct competing chick-hatchery businesses. Through use of such advertisements and representations, and through the quoting of cheaper prices for the same grades and types of baby chicks by the Jefferson Farms, the respondents induce inquiries and orders by members of the purchasing public. Such inquiries and orders are answered under the trade name Dixie Hatcheries with quotations of prices higher than those originally quoted in the advertisements over the name Jefferson Farms, and sales are made under the name Dixie Hatcheries with baby chicks hatched by said Dixie Hatcheries.

PAR. 4. At one time, respondent Leonard Hilkemeyer conducted a baby chick hatchery at Jefferson Farms near Birmingham, Ala. In the conduct of such business, respondent did business under the name Jefferson Farms, but he ceased all operations of such business about June 1, 1936. Since that time, all the operations and business relating to baby chicks theretofore conducted at Jefferson Farms by respondent Leonard Hilkemeyer under the trade name Jefferson Farms, included those resulting from the aforementioned advertising printed under the trade name Jefferson Farms have been carried on by respondents as part of the business operations conducted under the trade name Dixie Hatcheries.

PAR. 5. In truth and in fact the baby chick-hatchery business formerly conducted under the name Jefferson Farms has not been in operation since June 1, 1936 and respondents have actually operated only one business at or near Birmingham, Ala., since that date, although they have continued to represent and hold themselves out as the operators of two separate and distinct competing businesses for the purpose and with the effect of attracting additional inquiries, contacts and purchasers from members of the public. Respondents do not conduct any chick hatchery operation at the Jefferson Farms and this name is used by them in their aforesaid advertisements solely for the purpose of inducing inquiries on account of the advertised lower prices. The advertisements appearing over the name Jefferson Farms are merely a subterfuge for the business conducted under the name Dixie Hatcheries. The Dixie Hatcheries replies to all correspondence and inquiries addressed to Jefferson Farms and it makes all sales secured pursuant thereto at higher prices than originally quoted in the advertisements under the name Jefferson Farms.

PAR. 6. There are among the competitors of respondents many who do not advertise or otherwise represent that affiliated or branch businesses are separate and distinct competing businesses, when such is

not the fact, and who do not otherwise misrepresent the character and status of their respective businesses by operating the same plant under two or more different names, or selling the same quality or grade of chicks at the same or different prices using separate sets of literature, or in any other manner.

PAR. 7. The acts and practices of the respondents as above alleged in the course of selling and offering for sale their baby chicks in commerce as described herein have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true and that Dixie Hatcheries and Jefferson Farms are separate and distinct competing businesses, and into the purchase of respondents' baby chicks on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, trade has been unfairly diverted to the respondents from those of their competitors rereferred to in paragraph 6 hereof who do not misrepresent their business connection or status. In consequence thereof, injury has been, and is being, done to respondents' competitors in commerce among and between the various States of the United States.

PAR. 8. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 December 21, 1937 issued, and on December 23, 1937 served, its complaint in this proceeding upon respondents, Albert L. Hilkemeyer and Leonard Hilkemeyer, individually, and trading as Dixie Hatcheries and as Jefferson Farms, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for leave to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of evidence and all other intervening procedure, which substituted answer was duly filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Albert L. Hilkemeyer is an individual residing at Westphalia, Mo., and for some time last past he has been, and is now, doing business as the owner-lessor of a number of baby chick hatcheries located in States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, including one located at 2401 Second Avenue, North Birmingham, Ala., which is known as the Dixie Hatcheries. Respondent Leonard Hilkemeyer is a part owner of the chick-hatchery business operated in Birmingham under the name Dixie Hatcheries, and said respondent, for some time last past, has operated, and now operates, said Dixie Hatcheries under an agreement by which each of said respondents share in the profits from said business. Respondent Leonard Hilkemeyer maintains his residence at 2401 Second Avenue, North Birmingham, and at Jefferson Farms, Highway 31, 12 miles north of Birmingham, Ala.

PAR. 2. Respondents are now, and have been for some time past, engaged in the business of hatching, selling, and distributing poultry, more particularly young chickens which are commonly known and referred to as "baby chicks." The business in which the respondents are engaged is commonly known as, and is hereinafter referred to as the chick hatchery business. Respondents in the course and conduct of their business under the name Dixie Hatcheries sell and distribute said baby chicks to members of the public and cause said chicks, when sold, to be transported from the State of Alabama, the State of origin of the shipment, to purchasers thereof located at points in the various States of the United States other than the State of Alabama. There is now, and has been during all the times herein mentioned, a course of trade in commerce in said baby chicks sold by respondents between and among the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents are now, and have been during all the times herein mentioned, engaged in substantial competition with various other individuals, firms, and corporations engaged in hatching, offering for sale, and selling baby chicks to members of the general public in commerce

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

PAR. 4. As part of their said business operations, said respondents have, for some time last past and particularly from June 1, 1936 to February 1937, caused to be inserted in various issues of poultry journals and papers having an interstate circulation certain advertisements over the trade name of Dixie Hatcheries and other advertisements substantially identical except with a much lower scale of prices for the same grade and types of baby chicks over the trade name of Jefferson Farms.

PAR. 5. For some time during 1936 and 1937, and particularly from June 1, 1936 to February 1937, the Jefferson Farms Hatchery was closed down and all orders coming to it were turned over to Dixie Hatcheries to be filled. With one exception, the prices at which these orders were filled by the Dixie Hatcheries were not higher than those quoted in the current Jefferson Farms' advertisements.

PAR. 6. Jefferson Farms has now been leased and its control and operation passed to the lessee.

PAR. 7. Among competitors of respondents are many who do not advertise or otherwise represent that affiliated or branch businesses are separate and distinct competing businesses when such is not the fact.

PAR. 8. The advertising of respondents as above described has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and that Dixie Hatcheries and Jefferson Farms were separate and distinct competing businesses, and so into the purchase of respondents' baby chicks because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade was unfairly diverted to respondents from those of their competitors who did not thus misrepresent their business connection or status to the injury of such competitors in commerce among and between the various States of the United States.

CONCLUSION

The above and foregoing acts and practices have been and are all to the prejudice of the public and of the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on 16th day of March A. D. 1938, whereby respondents admit all the material allegations of the complaint to be true, and waive the taking of further evidence and all other intervening procedure, 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, Albert L. Hilkemeyer and Leonard Hilkemeyer, individually, and trading as Dixie Hatcheries, and as Jefferson Farms, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of baby chicks in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or indirectly, or by implication, in their advertising or in any other manner, representing:

That any baby chick hatchery or business owned, operated, or controlled by them or either of them is otherwise owned, operated, or controlled; or that one of two or more such hatcheries or businesses owned, operated, or controlled by either or both of them is competitive with the others similarly owned.

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

IN THE MATTER OF
SELECTED KENTUCKY DISTILLERS, INC.

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

Docket 3047. Complaint, Feb. 3, 1937—Decision, Mar. 26, 1938

Where a corporation engaged as wholesaler only of whiskies, wines, liquors, gins, and champagnes purchased from distillers and rectifiers, and doing no distilling, rectifying, or bottling, and neither owning, operating nor controlling any place or places where alcoholic beverages are made by process of distillation from mash, wort, or wash, and in competition, as thus engaged, with individuals and concerns who manufacture and distill, from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names on labels of bottles in which they sell and ship their said whiskies, etc., and with those engaged as purchasers, rectifiers, blenders, bottlers, and sellers of whiskies, etc., or as wholesalers thereof, who do not use said words as aforesaid—

Falsely represented, through use of term "Distillers" in its corporate name, printed on its stationery and invoices and on labels attached to bottles in which it sold and shipped its products, and in various other ways, to customers, whom it thereby furnished with means of similarly representing to their retailer-vendees and to ultimate consuming public, that it was a distiller of whiskies, wines, gins, and champagnes, i. e., as long understood by trade and ultimate purchasing public, engaged in manufacture of alcoholic beverages by process of original and continuous distillation from raw materials such as grain, mash, or wort;

With capacity and tendency to lead retail liquor dealers to purchase its said products under false impression that it was a distiller and owned and operated a distillery, and to induce purchasers and prospective purchasers unfairly to buy its said liquors in preference to those of competing wholesalers who do not thus falsely designate themselves, and with effect of misleading and deceiving dealers and purchasing public into aforesaid belief, and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, etc., labeled and sold by it, and of thereby unfairly diverting trade to it from competitors who do not, through their corporate or trade names or in any other manner, misrepresent that they are distillers of whiskies, gins, and other spirituous beverages, and with capacity and tendency so to do:

Held, That such acts and practices were to the prejudice and injury 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.

Mr. R. L. Durning, of Louisville, Ky., 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 Selected Kentucky Distillers, 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 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 Kentucky, with its office and principal place of business at 305 West Broadway, in the city of Louisville, Ky. It is now and for more than 1 year last past has been engaged as a wholesaler of spirituous 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 other 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 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, 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 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, 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, and for more than 1 year last past has been, in sub-

stantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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 with 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 the process of distillation from mash, wort, or wash, 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 "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 consuming public, that the said whiskies, gins, and other spirituous beverages therein contained were by it manufactured through 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, 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 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 "distilling," "distillery," "distilleries," or "distillers" as a part of their corporate or trade names, or on their stationery, or 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 purchasing, bottling, and selling at wholesale, whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, or 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 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, 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 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 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 February 3, 1937, issued, and on February 5, 1937, served its complaint in this proceeding upon the respondent, Selected Kentucky Distillers, 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 other evidence in support of the allegations of the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it. No testimony or other evidence was introduced by the respondent in opposition to the allegations of the complaint. The said testimony and other evidence in support of the allegations of the 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, other evidence, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested); and the Commis-

sion having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its finding 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 Kentucky, with its principal office and place of business at 653 South Third Street in the city of Louisville in said State. It was incorporated in May 1934, and has been continuously engaged since that time as a wholesaler only of whiskies, wines, liquors, gins, and champagnes, which it purchases from distillers and rectifiers. Respondent does no distilling, rectifying, or bottling.

Respondent's said products are distributed through other wholesalers, retail stores, taverns, and bars. When orders are received for respondent's said products, it causes them to be shipped from its place of business in Louisville, Ky., and from the points where the concerns from which it purchases said products are located, to the purchasers thereof located at various points outside the State of Kentucky. During 1935 and the first half of 1936, the respondent had wholesale permits to sell its merchandise in Missouri and Kentucky. Its total volume of business for 1935 was \$480,000 and for the first half of 1936, it was \$200,000.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the manufacture, sale, and distribution, or in the sale and distribution, of whiskies, wines, liquors, gins, champagnes, and other spirituous beverages in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The corporate name, Selected Kentucky Distillers, Inc., appears on the letterheads, envelopes, and invoices used by respondent. The labels attached to its labeled products read "Bottled for Selected Kentucky Distillers," "Distilled and Bottled for Selected Kentucky Distillers," and "Bottled at the Distillery for Selected Kentucky Distillers." 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 distillers, rectifiers, and wholesalers in such industry, and to the ultimate purchasing public; to wit, persons engaged in the manufacture of alcoholic beverages by the process of original and continuous distillation from raw materials such as grain, mash, or wort.

At a hearing in Louisville, Ky., 6 persons engaged in various aspects of the liquor industry and 13 members of the lay public testified as to the meaning of the trade name "Selected Kentucky Distillers" and the meaning and effect of the term "distillers" when used by a concern engaged in the distilled-spirits industry. From the testimony of the trade witnesses, the Commission finds that the term "distillers," when used on the labels or in other advertising matter by a concern engaged in the liquor industry, indicates that that concern is a distiller of alcoholic spirits; that use of the term has a commercial value; that wholesalers, retailers, and the purchasing public are influenced by use of the term and they prefer to buy from a concern that distills and bottles its own products. The Commission also finds from the testimony of the lay public witnesses that a substantial portion of the purchasing public prefers to buy alcoholic spirits from retailers who purchase their alcoholic beverages direct from the manufacturers thereof, as against the products of a wholesaler or rectifier; that that preference is based upon a belief that a better quality and more uniform product can thus be obtained; that ultimate purchasers are influenced in making purchases of alcoholic beverages by the labels borne thereby; that if such labels contain the word "distillers," it implies that the contents so labeled have been manufactured by the concern whose name appears thereon.

The Commission further finds that the inclusion of respondent's present corporate name upon the labels of the bottles in which it sells and ships its aforesaid liquors therefore has a tendency unfairly to induce purchasers and prospective purchasers to buy respondent's said liquors in preference to liquors sold by competing wholesalers who do not falsely designate themselves as distillers or distilling companies, and to induce retailers to purchase respondent's whiskies, wines, liquors, gins, and champagnes in preference to like products sold by wholesalers who do not use trade or corporate names having a capacity and tendency to confuse the purchasing public as to their status in the trade.

PAR. 3. In the course and conduct of its business as aforesaid, by use of the term "distillers" in its corporate name, printed on its stationery and invoices, and on the labels attached to the bottles in which it sells and ships its 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 of whiskies, wines, gins, and champagnes, when, as a matter of fact, respondent is not a distiller, and does not own, operate, or control any place or places where any alcoholic beverages are manufactured by the process of

distillation from mash, wort, or wash. The Commission finds that such advertising and labeling has been and is misleading and deceptive in fact and has had and now has the capacity and tendency to lead retail liquor dealers to purchase respondent's products under the false impression that respondent is a distiller and owns and operates a distillery.

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 on the labels of the bottles in which they sell and ship such products as whiskies, wines, liquors, gins, champagnes, and other alcoholic beverages. There are also among such competitors corporations, firms, partnerships, and individuals engaged in business as purchasers, rectifiers, blenders, bottlers, and sellers of whiskies, gins, and other spirituous beverages, or as wholesalers thereof, who do not use the words "distillery," "distilleries," "distilling," or "distillers," as a part of their corporate or trade names on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent as set forth herein 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 has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, wines, gins, champagnes, and other spirituous beverages labeled and sold by the respondent, thereby unfairly diverting trade to respondent from those of its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers of whiskies, gins, and other spirituous beverages.

CONCLUSION

The aforesaid acts and practices of respondent, Selected Kentucky Distillers, Inc., are to the prejudice and injury 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 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

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 other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and briefs filed herein in support of the complaint and in opposition thereto (no oral argument having been requested), 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, Selected Kentucky Distillers, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale or sale and distribution by it in interstate commerce or in the District of Columbia, of whiskies, gins, or other spirituous beverages, do cease and desist from:

Representing, through the use of the word "Distillers" 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 way by a word, or words of like import (a) that respondent is a distiller of the said whiskies, wines, liquors, gins, champagnes, or other spirituous beverages; or, (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through a process of distillation; or (c) that respondent owns, operates, or controls a place or places where 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 60 days from and after the date of 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
CALIFORNIA RICE INDUSTRY, 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 3090, Complaint, Mar. 26, 1937—Decision, Mar. 26, 1938

- Where an unincorporated trade association, which included individuals and concerns and corporate cooperative organization of some 300 rice growers of northern California, engaged in said State in purchasing, processing, milling, and selling and distributing, in aforesaid and other States and as below set forth, the "California-Japan type," produced, substantially, only in said State and shipped, largely, to Hawaii and Puerto Rico; association officers, including individual who, as chairman of its marketing board and member of its crop board, was dominant factor in its organization and directing executive of its practices and those of (1) its said marketing board, membership of which, excepting said chairman (neither miller nor grower), constituted all the rice millers in said State, and of (2) its said crop board, which had come to be dominated, likewise, by millers, rather than, in accordance with original plan and fact, the independent growers; and association members; acting under and in pursuance of the "Intrastate Marketing Agreement" to which they became signatories shortly preceding termination by Secretary of Agriculture of the theretofore effective "Interstate Marketing Agreement," and under which intrastate agreement said association, and its said marketing and crop boards, were set up—
- (a) Fixed prices, terms of sales, quantity discounts, and brokerage fees for sale of processed rice in interstate commerce through actions of its marketing board from time to time in (1) fixing at weekly meetings, with concurrence of crop board, industry price for extra-fancy clean rice, through which, by formula adopted by former, base price, producer's price and trade prices for all grades of processed rice were computed, and in (2) fixing, through former alone, prices for screenings and brewers;
 - (b) Listed, published, and distributed, through said association and marketing board members, said prices, and uniformly observed and maintained same, both in purchase of paddy from growers, and on all sales of processed rice, whether sold in aforesaid State or sold and shipped to customers in Hawaii or other points, and charged trade, with rare exception, prices which, for given time and grade, were uniform;
 - (c) Acting in agreement with Hawaiian Rice Importers Association, organized by aforesaid interstate agreement's marketing board, and composed of islands' largest rice importers, to monopolize rice markets thereof for benefit of its own miller members, and membership of which importers' association board determined and classified, fixed discount to purchasers on so large a minimum, that no single buyer was able to take advantage thereof, made available to and enjoyed by said importers' association through pooling member requirements and placing pooled orders with miller members, and submitted to audit, in behalf of said importers' association, to guarantee such discounts, and deducted from sales to importer members, as dues to and for benefit of said importers' association, charge

Complaint

of cent a bag; with result that said importer members, as sole recipients through such membership, obtained monopoly, practically, of rice industry in said islands, and nonmembers were unable to purchase said preferred "California-Japan type" rice from said miller members at competitive price, and only negligible sales were made to them;

- (d) Fixed percentages, under aforesaid Intrastate Marketing Agreement, of total annual rice crop which each miller member of marketing board might process, and determined, through said board, monthly processing quota for each miller, and required payments of miller members on each 100-pound bag processed, with additional 10 cents for each bag processed in excess of allotted quota for preceding month, for said board's expenditures and for distribution thereafter among the membership, and provided for imposition of a penalty against any miller member for violating board's provisions; and
- (e) Employed, through said board, certified public accountants to check records and invoices of members, and to ascertain compliance with board's prices, terms of sale, quantity discounts, and brokerage rates, and made monthly reports of said accountants, following audits, and test checks of all records of invoices of members, irrespective of where rice was shipped, subject of discussion at board's meetings, and thus checked observance of said prices, etc., and payments of discounts on sales to Hawaii, and calculation of aforesaid dues payable to said Importers' Association in behalf of its members, and proper remission thereof;

With result that competition in sale of rice and rice products was restricted and suppressed, and said association and members, etc., acquired a monopoly in sale of said "California-Japan type" rice, as above set forth:

Held, That such purposes, practices and policies constituted an unlawful agreement to fix and maintain prices of rice and rice products in commerce, and constituted unfair methods of competition.

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

Mr. Daniel J. Murphy for the Commission.

Mr. Harry M. Creech, of San Francisco, Calif., 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 the association, the individuals, and the corporations hereinafter described and named as respondents have been and are now 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. California Rice Industry hereinafter referred to as the association, is a voluntary unincorporated trade association, with its offices in the Balfour Building in the city of San Francisco, State

of California, and is composed of the firms hereinafter named and described and its acts, practices and policies are controlled and directed by the individuals hereinafter named, and the acts, practices, and methods hereinafter alleged to have been used by the respondents herein were initiated through and made effective by the association.

PAR. 2. Respondent Harry M. Creech is an individual and is the chairman of the marketing board and a member of the crop board of the respondent association, and is the executive controlling, directing, and dominating the association and its members in planning and carrying on the practices and methods as hereinafter alleged.

Respondents George W. Brewer, William Crawford, Florence M. Douglas, Charles S. Morse, J. S. Ritterband, W. T. Welisch, I. Yamakawa, O. F. Zebal, are members of the marketing board of the respondent association; respondent R. A. Renaud is chairman, and respondents Hugh Baber, Leon Brink, N. F. Dougherty, Ernest Grell, Lewis Manor, and A. E. Scarlett are members of the crop board of the respondent association. Said respondents and their predecessors and successors in office through said marketing and crop boards formulate, dominate, control, and direct the policies and practices of the respondent association and its members, and did so during all of the times hereinafter mentioned and in doing the acts and things hereinafter alleged to have been done and performed and in planning and carrying out the practices and methods hereinafter described. The individuals named in this paragraph are hereinafter referred to as the individual respondents.

PAR. 3. Respondents Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse, and Gertrude Morse are individuals trading as the Capital Rice Mills and own and operate a rice mill in the city of West Sacramento in the State of California and have their principal offices and place of business at 310 California Street in the city of San Francisco, State of California.

Respondents Ellen S. Grosjean and Eileen Callaghan are individuals trading as C. E. Grosjean Rice Milling Company and own and operate a rice mill, and have their offices and principal place of business, at 3230 20th Street in the city of San Francisco, State of California.

Respondent William Crawford is an individual trading as Woodland Rice Milling Company and owns and operates a rice mill, and has his office and principal place of business, in the city of Woodland in the State of California.

Respondent Growers Rice Milling Company is a corporation organized and existing under the laws of the State of California and owns and operates a rice mill in the city of South San Francisco,

State of California and has its office and principal place of business at 503 Market Street in the city of San Francisco, Calif.

Respondent Pacific Trading Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California and owns and operates a rice mill in the city of Sacramento, State of California, and has its office and principal place of business at 460 Battery Street in the city of San Francisco, State of California.

Respondent Phillips Milling Company is a corporation organized and existing under and by virtue of the laws of the State of California and owns and formerly operated a rice mill in the city of Sacramento, State of California and has its office and principal place of business at 38 Drumm Street, in the city of San Francisco, State of California.

Respondent Rice Growers Association of California is a corporation organized and existing under and by virtue of the laws of the State of California and owns and operates a rice mill, and has its office and principal place of business, in the city of West Sacramento, State of California.

Respondent Rosenberg Brothers and Company is a corporation organized and existing under and by virtue of the laws of the State of California and owns and operates rice mills in the cities of Biggs, San Francisco, and South San Francisco in the State of California, and has its office and principal place of business at 334 California Street, San Francisco, State of California. The respondents named in this paragraph are hereinafter referred to as the member respondents.

PAR. 4. All of the said member respondents are, and, at all times mentioned herein, were, engaged in the milling or processing of rice and rice products as more fully hereinafter described, and in the sale and distribution of said products to customers located in the several States other than the State of California and in the respective Territories of the United States and in the District of Columbia, and in foreign nations, and cause said products when milled, processed, and sold to be transported from the place of milling, or processing, to the purchasers thereof located as aforesaid, and there now is, and has been at all times herein mentioned, a constant and recurring current of trade and commerce in said products beginning at the places of milling, or processing, in the State of California and flowing through and into the several States and Territories of the United States and the District of Columbia, and foreign nations.

Prior to the adoption and use of the acts, practices, and methods hereinafter alleged, these member respondents were in active and sub-

stantial competition with each other in making and seeking to make sales of their said products in said commerce, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time and said member respondents would now be in active and substantial competition with each other.

The member respondents constitute all of the rice millers located in the State of California, and mill, sell, and distribute substantially all of the rice produced in that State. The rice produced in the State of California is of the short plump grain variety, commonly known as the Japan type or, on occasions, as the California-Japan type, and is often referred to as the round grain rice as distinguished from the long or medium grain rice produced in other sections of the United States. Substantially all of the round grain or Japan type rice produced in the United States is produced in the State of California and is milled, sold, and distributed by the member respondents. Consumers of rice located in the Territory of Hawaii, Puerto Rico, Japan, and in other territories, insular possessions and foreign nations, and in various parts of the United States prefer round grain or Japan type rice of the type produced in California and sold and distributed by the member respondents to the long grain rice produced in other parts of the United States. Because of this preference for round grain or Japan type rice there is practically no competition as to price between sellers of the two types of rice in those sections where said preference exists. The member respondents occupy such a position in the milling, selling, and distributing of the round grain or Japan type rice produced in the United States that they control, direct, and dominate the industry in the United States and control, direct, and dominate purchasers of such rice for resale throughout the world.

PAR. 5. Prior to August 28, 1935, the member respondents and the individual respondents caused the organization of the association respondent for the promotion and protection of the interests of the said member respondents. On or about August 28, 1935, said member respondents entered into and thereafter carried out an understanding, agreement, combination, and conspiracy, hereafter, at times, referred to as an undertaking, for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating competition in, the sale of milled rice, of both the round and long grain type, and in the sale of milled rice products in trade and commerce between, among, in and with the several States of the United States, the District of Columbia, foreign nations, and Territories of the United States.

PAR. 6. Pursuant to said understanding, agreement, combination, and conspiracy, and in the furtherance thereof said respondents have

done and performed, and still do and perform, the following acts and things:

1. Said member respondents agreed to fix and have fixed and maintained uniform prices in the sale of all grades of rice milled, sold, and distributed by them.

2. Said member respondents agreed to fix and have fixed and maintained uniform terms and conditions, including, but without limitation, discounts, brokerage fees, freight, and other allowances, which were to apply and have applied to all grades of rice.

3. Said member respondents agreed to allocate and have allocated among the member respondents the percentage of the total annual rice crop which each of said members could process or mill and have processed or milled monthly annually.

4. Said member respondents agreed to curtail and have curtailed the production of processed or milled rice and rice products.

5. Said member respondents agreed to refuse and have refused to make sales of rice and rice products to others than the parties to said undertaking except at prices substantially in excess of those which they agreed would apply and which have applied to sales between the parties to said undertaking.

6. Said member respondents agreed that the respondent association could and it does assess and collect penalties from said member respondents for violating the terms and conditions of agreements made in furtherance of said undertaking.

7. Said member respondents agreed that respondent association could and it did through agencies therein set up, select, appoint, and employ accountants to check, and they have checked, the books and records of the member respondents to determine whether the member respondents were complying with the terms and conditions of agreements made in furtherance of said undertakings and with rules and regulations adopted and announced by the said marketing and crop boards.

8. Said member respondents agreed to pay and have paid a sum certain in money for each bag of rice processed by them into a fund deposited with the respondent association, and agreed that penalties assessed against members for violations of the terms and conditions of the agreements made in furtherance of said undertaking could be deducted from the respective sums so deposited by said members and distributed among the other members, and penalties have been so deducted and distributed.

9. Said respondents, through said respondent association, entered into and carried out an agreement with the Hawaiian Rice Importers Association, an association of rice importers in the Territory of

Hawaii, whereby they agreed that they would not and they did not sell to importers located in Hawaii who were not members of said association.

10. Said respondents organized within the respondent association the marketing board and the crop board mentioned in paragraph 2 hereof, for the administration of the affairs of the member respondents in carrying out said undertaking. Among others said boards have done and performed and still do and perform the following acts and things:

(a) The marketing board and the crop board meet from time to time and jointly fix the prices to be observed and maintained, and which are observed and maintained by the member respondents in the sale of rice and rice products, as aforesaid.

(b) Said marketing board meets from time to time to determine, and has determined, the business policies, terms of sale, brokerage fees, discounts and freight and other allowances to be observed and maintained by said member respondents in the sale of rice and rice products, as aforesaid.

(c) Said marketing board, acting by and through its said chairman, individual respondent Harry M. Creech, promulgates the said marketing board's rules and regulations concerning the policies and terms of sale mentioned in sub-paragraph "b" of this paragraph, among the member respondents through and by the circulation of its so-called "Policy Memoranda," and through and by this means regulates the business and sales policies of the said respondent members in the sale of rice and rice products, as aforesaid.

(d) Said marketing board, through its said chairman, said individual respondent Creech, regularly and periodically collects from and disseminates among said member respondents information regarding the acts, practices and policies of said member respondents in carrying out said undertaking, to determine whether or not said member respondents have violated or are violating the terms and conditions of agreements made in furtherance of said undertaking; and from time to time fixes and collects penalties, as more particularly described in paragraph 6 herein, from said member respondents for violating the terms and conditions of the agreements made in the furtherance of said undertaking.

11. Said respondents have used and are now using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of rice and rice products in said commerce.

PAR. 7. Each of the said respondents acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understanding, agreement, combination and conspiracy.

PAR. 8. Said understanding, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said rice and rice products in trade and commerce between, among, in and with the several States of the United States, the District of Columbia, foreign nations, and Territories of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said rice and rice products in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of eliminating competition, with tendency and capacity of creating a monopoly, in the sale of said rice and rice products in said commerce. Said understanding, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, 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," and are to the prejudice of the public.

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 March 26, 1937, issued and served its complaint in this proceeding upon the respondents California Rice Industry, et al., 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 other evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Harry M. Creech, attorney for the respondents; and said testimony and other evidence were 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, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the

same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent California Rice Industry is a voluntary unincorporated trade association with its offices in the Balfour Building in the city of San Francisco, State of California. The said association does not have officers or directors, neither does it have articles of organization, constitution, or by-laws, except the Intrastate Marketing Agreement which created it.

PAR. 2. Organized within the association and controlling and administering its policies and activities are the marketing board and the crop board. Respondent Harry M. Creech, the chairman of the marketing board and a member of the crop board, was the dominant factor in the organization of the association and is the directing executive of the practices of said association and its marketing and crop boards.

PAR. 3. The respondent members of the marketing board, with the exception of its chairman who is neither a rice grower nor a miller, constituting all the rice millers located in the State of California, are as follows :

Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse, and Gertrude Morse are individuals trading as the Capital Rice Mills and own and operate a rice mill in the city of West Sacramento in the State of California, and have their principal offices and place of business in the city of San Francisco, State of California.

Ellen S. Grosjean and Eileen Callaghan are individuals trading as C. E. Grosjean Rice Milling Company and own and operate a rice mill, and have their offices and principal place of business in the city of San Francisco, State of California.

William Crawford is an individual trading as Woodland Rice Milling Company and owns and operates a rice mill, and has his office and principal place of business in the city of Woodland, State of California.

The Growers Rice Milling Company is a corporation organized under the laws of the State of California and owns a rice mill in the city of South San Francisco, State of California. Said corporation has not processed any rice since 1933 and its mill is leased to respondent Rosenberg Brothers & Company, which now operates the said mill.

Pacific Trading Company, Inc., is a corporation organized under the laws of the State of California and owns and operates a rice mill in the city of Sacramento, State of California, and has its office and princi-

pal place of business in the city of San Francisco in the said State of California.

Phillips Milling Company is a corporation organized under the laws of the State of California and owns a rice mill in the city of Sacramento, State of California. The said corporation since 1933 has not milled or processed any rice except rice flour. Said corporation has no vote in the meetings of the marketing board because on October 1, 1935, it leased its mill to the marketing board. The marketing board has never operated said mill.

Rice Growers Association of California is a corporation organized under the laws of the State of California and owns and operates a rice mill, with its principal place of business at West Sacramento in the State of California. It is a cooperative organization comprised of approximately 300 rice growers of northern California, and the said corporation mills and processes the rice of its members. The said Association also buys paddy rice from nonmembers thereof and mills and sells said rice at a profit.

Rosenberg Brothers & Company is a corporation organized under the laws of the State of California and owns and operates rice mills in Biggs and San Francisco in the State of California, and also operates a rice mill in the city of South San Francisco, State of California, which is leased from the respondent Growers Rice Milling Company.

PAR. 4. Respondents George W. Brewer, William Crawford, Florence M. Douglas, Charles S. Morse, J. S. Ritterband, and O. F. Zebal are representatives on the marketing board of the several miller respondents.

Respondent I. Yamakawa formerly was the representative of the respondent Pacific Trading Company, but has not represented said company on said marketing board since October 6, 1936. Since December 8, 1936, said company has been represented on said marketing board by J. S. Ritterband.

Respondent W. T. Welisch up to about July 1, 1936, was a representative of the respondent Phillips Milling Company on said marketing board but since that date has not been identified or affiliated with the respondent California Rice Industry or its marketing board.

PAR. 5. The respondent members of the crop board are N. F. Dougherty, its secretary; R. A. Renaud, Hugh Baber, Ernest Grell, A. E. Scarlett, Leon Brink, and Louis Manor.

PAR. 6. The original intention was that the representatives of the independent rice growers should constitute the membership of the crop board and dominate its affairs in order to safeguard and pro-

tect the interests of the growers. This plan was carried out until about a year and a half ago; since then four of the eight members of the crop board became and are now identified with the respondent Rice Growers Association of California, which is a miller organization and a member of the marketing board. The miller respondents, therefore, dominate the activities of both the marketing and the crop boards.

PAR. 7. Substantially all of the rice produced in the State of California is a short, plump grained variety, commonly known as the "Japan type" or as the "California-Japan type," and is often referred to as the "round grain rice" as distinguished from the long or medium grain rice produced in other sections of the United States. Substantially all of the round grain or the "Japan type" rice produced in the United States is produced in California, and is milled, sold, and distributed in interstate commerce by the miller respondents, members of the Marketing Board of the California Rice Industry.

PAR. 8. The average annual crop of Japan type rice grown in California is about 3 million 100-pound bags of paddy rice, which is equivalent to a million and one-half bags of clean rice. Of this latter, approximately 50 percent is shipped to Hawaii, where there is a preference for the Japan type rice; approximately 25 percent of the remainder is shipped to Puerto Rico, and the balance is sold in California and in various other States of the United States.

PAR. 9. On September 28, 1933, all the respondents entered into what has been termed an "Interstate Marketing Agreement." This agreement or program was in force until terminated by the Secretary of Agriculture on September 14, 1935.

PAR. 10. On August 28, 1935, all the respondents became signatories to what is termed an "Intrastate Marketing Agreement," which agreement became effective on said date; the marketing board, however, did not begin to function till October 1, 1935, the beginning of the crop year; said agreement has been since continually administered.

PAR. 11. Since October 1, 1935, the respondents, under the Intrastate Marketing Agreement, fixed prices, terms of sales, quantity discounts, and brokerage fees in the sales of processed rice in interstate commerce. At meetings held on Tuesday of each week the marketing board from time to time, and with the concurrence of the crop board, fixes an industry price for extra-fancy clean rice, and from this price, by use of a formula adopted by said marketing board, the base price, producer's price, and trade prices for all grades of processed rice are computed. The marketing board alone fixes the prices for screenings and brewers. Lists of said prices, from

time to time, were published and distributed by the California Rice Industry and the members of the marketing board. The miller respondents, members of the marketing board, uniformly observe and maintain the prices so fixed by the marketing board, not only for the purchases of paddy from the growers but also on all sales of processed rice, whether the rice is sold in the State of California or sold and shipped to customers in Hawaii or various other points. With rare exceptions, the trade prices charged by the miller respondents are uniform at any given time for the same grade of rice.

PAR. 12. Prior to 1933 the respondents were engaged in open competition in the purchase of paddy and in the sale of processed rice; since September 1933 there has been practically no competition, as the prices paid for paddy to the growers and the prices charged by the millers for processed rice have been uniform and fixed by agreement.

PAR. 13. The marketing board of the Interstate Marketing Agreement organized the Hawaiian Rice Importers Association in the Territory of Hawaii, which association is composed of the largest importers of rice in the Hawaiian Islands. The marketing board determined the membership and classified the members of said association as island importers. The purpose of the organization of said association was to monopolize the rice markets in the Hawaiian Islands for the benefit of the respondent millers.

PAR. 14. The marketing board under the Intrastate Marketing Agreement, and in agreement with the Hawaiian Rice Importers Association, fixed a discount of 22 cents a bag to purchasers of a minimum of forty thousand 100-pound bags of rice a month. This was later changed to 25 cents a bag on a minimum of 50,000 bags per month. No single purchaser is able to take shipments sufficiently large to entitle him to this discount. The members of the Hawaiian Rice Importers Association pool their requirements and the said association places the pooled orders with the respondent millers and the rice is shipped and billed to the association, which thus becomes the sole recipient of the above described discount for the benefit of its members. Because of this advantage, nonmembers of the Hawaiian Rice Importers Association are unable to purchase rice from the respondent millers at a competitive price, and only negligible sales are made to them. The members of the said association have thus obtained practically a monopoly of the rice industry in the Hawaiian Islands.

PAR. 15. The marketing board fixes the price of rice for Hawaii at 15 cents per 100-pound bag over the domestic price, and this 15 cents per 100-pound bag became a deferred discount which was deducted from the price of rice sold to the Hawaiian Rice Importers Associa-

tion and deposited by the miller vendor respondents in the Wells-Fargo Bank and Union Trust Company in San Francisco, Calif., as a credit to the said association. This 15 cents thus deducted accounted for part of the 22 cents discount referred to above as allowed to the Hawaiian Rice Importers Association. The remainder of 7 cents was quantity discount which in some cases was deducted from the face of the invoice when presented for payment, and in other cases was deposited to the credit of the Hawaiian Rice Importers Association.

PAR. 16. The Hawaiian Rice Importers Association employed a firm of auditors, to wit, Logan & Logan of San Francisco, Calif., to examine the invoices of the miller members of the marketing board and to check the deposits at the banks in order to determine that the above described discounts were properly given and deposited in the banks to the credit of the said association.

PAR. 17. The respondent miller members of the marketing board made an additional charge of 1 cent per bag on all sales intended for the members of the Hawaiian Rice Importers Association. This 1 cent per bag, so deducted, was remitted by the miller respondents to the Hawaiian Rice Importers Association as the membership dues of its members.

PAR. 18. The Intrastate Marketing Agreement fixes the percentages of the total annual rice crop which each miller member of the marketing board may process, and the marketing board determines monthly the processing quota for each miller. The miller members are required to pay into the "Millers' Trust Fund" 10 cents for each 100-pound bag of rice processed during the preceding month, and an additional 10 cents for each bag of rice processed by them in excess of their quota for the preceding month. After the expenditures of the marketing board are paid from the said Millers' Trust Fund, the remainder of the said fund is distributed among the miller members. The intrastate agreement further provides that a penalty shall be imposed upon a miller member for any violation of its provisions, and the amount of the penalty to be deducted from his share of the trust fund.

PAR. 19. The marketing board employs a firm of certified public accountants, to wit, Hood & Strong of San Francisco, to check each month the records and invoices of the miller members in order to ascertain the compliance of said millers with the prices, terms of sale, quantity discounts, and brokerage rates as fixed by said marketing board. The accountants in their audits make test checks of all records and invoices of the miller members of the marketing board, regardless of whether the said records or said invoices refer to rice

shipped to Hawaii, Puerto Rico or any other destination. Monthly reports are submitted by the accountants to the marketing board, and said reports are discussed at its meetings. The monthly reports from November 1, 1935, to April 1, 1937, show, except for a very few instances which were later corrected, that the miller members maintained the said prices, terms of sale, discounts, and brokerage rates, as fixed by the marketing board, in the sale of processed rice in interstate commerce. The accountants check the sales invoices of the miller members not only to determine that the discounts on sales to Hawaii were properly maintained, but also to calculate the dues payable to the Hawaiian Rice Importers Association, in behalf of its members, and to verify the remission of same.

CONCLUSION

1. The purposes, practices, and policies of the respondents as set forth in the aforesaid findings of facts constitute an unlawful agreement to fix and maintain prices of rice and rice products in commerce as defined in Section 4 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."
2. As a result of the respondents entering into and making effective the agreement as above described, competition in the sale of rice and rice products in commerce as hereinabove referred to has been restricted and suppressed.
3. As a further result, respondents thereby have acquired a monopoly in the sale of California-Japan type rice in commerce as hereinabove referred to.
4. The acts and practices of the respondents, as set forth in the foregoing findings as to the facts, and the circumstances therein set forth, constitute a combination and conspiracy to engage in and to further unfair methods of competition in commerce as hereinabove referred to 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 respondents, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Daniel J.

Murphy, counsel for the Commission, and by Harry M. Creech, 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 ordered, That the respondents, California Rice Industry; Harry M. Creech, George W. Brewer, Florence M. Douglas, J. S. Ritterband, W. T. Welisch, I. Yamakawa, O. F. Zebal, R. A. Renaud, Hugh Baber, Leon Brink, N. F. Dougherty, Ernest Grell, Lewis Manor, and A. E. Scarlett; Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse, and Gertrude Morse, trading as Capital Rice Mills; Ellen S. Grosjean and Eileen Callaghan, trading as C. E. Grosjean Rice Milling Company; William Crawford, trading as Woodland Rice Milling Company; Growers Rice Milling Company, Pacific Trading Company, Inc., Phillips Milling Company, Rice Growers Association of California, and Rosenberg Brothers & Company; their successors, officers, agents, and employees, do forthwith cease and desist, in connection with offering for sale, sale, and distribution of rice and rice products in commerce as defined in Section 4 of the Federal Trade Commission Act, from doing and performing by agreement, combination, or conspiracy between or among any two or more of said respondents, or with others, the following acts and things:

1. Fixing and maintaining uniform prices.
2. Compiling, publishing, and distributing any joint or uniform list or compilation of prices.
3. Adopting any joint or uniform price list or other device which fixes prices.
4. Discussing through the medium of meetings of the California Rice Industry or its marketing and crop boards, or in any similar manner, uniform prices, terms, discounts, agreements upon prices, by resolution or otherwise, or employing any similar device which fixes or tends to fix prices, or which is designed to equalize or make uniform the selling prices, terms, discounts, or policies of respondent millers.
5. Fixing or determining the quotas or percentages of the rice crop that the miller respondents may mill or process which, thereby, unlawfully restricts or hinders the sale of rice or rice products in interstate commerce.

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 this order.

Syllabus

IN THE MATTER OF
 ROCKY MOUNTAIN LABORATORIES, INC., AND JAMES
 W. FITCHES

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

Docket 2953. Complaint, Oct. 20, 1936—Decision, Mar. 29, 1938

Where a corporation and an individual, its president and general manager, engaged in manufacture, distribution and sale in commerce of a pharmaceutical preparation called "Biotone"; in advertising same in newspapers and periodicals of general circulation throughout the United States, and through advertising folders and literature printed and circulated through the various States to customers and prospective customers, and by radio broadcasts—

- (a) Represented that said preparation was natural solution for all health problems and that average individual was not getting the elements from his food supply to maintain normal chemical balance in the body, and that such elements were supplied by said "Biotone";
- (b) Represented that most common ailments have their origin in the digestive system and that "Biotone" had healing qualities that corrected serious disorders, and aided nature in its natural cleansing, building, and normalizing process of the body and helped to neutralize acids therein and combat and eliminate toxins, build sound healthy tissues, and promote vigorous normal body functions; and
- (c) Represented that said "Biotone" was a helpful remedy for malnutrition, loss of appetite, lack of energy, stomach ulcers, and various other ailments and conditions;

Facts being normal average American food supply furnishes enough chemical substances to keep body normal without supplementing diet by medicine, said preparation was not a helpful remedy in cases of malnutrition, high blood pressure, etc., generally caused by or directly associated with serious systemic or metabolic disorders, most common ailments do not have their origin in digestive system nor are great majority of common ailments of humanity traceable to unbalanced body chemistry resulting in acidity, toxemia, or mineral deficiency, natural cleansing, etc., processes of the body do not need aid of any medicine or chemical to take place and function properly, ingredients in said preparation were present in such small quantities as to be totally ineffective, and aforesaid representations as to functioning and values of said preparation in aiding nature, etc., and with respect to its curative and remedial qualities were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a large portion of purchasing public into erroneous belief that all said representations were true and that preparation possessed substantial therapeutic value, and with result that a number of said public, as direct consequence of such erroneous beliefs, bought substantial volume of said product and trade was unfairly diverted to them from individuals and concerns likewise engaged in sale of other preparations designed and intended for similar usage, and

Complaint

26 F. T. C.

who truthfully advertise efficacy of their products; to the substantial injury of competition in commerce:

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

Before *Mr. Charles P. Vicini* and *Mr. Robert S. Hall*, trial examiners.

Mr. George Foulkes for the Commission.

Mr. James W. Fitches, of Salt Lake City, Utah, for respondents.

COMPLAINT¹

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 James W. Fitches, an individual, and Rocky Mountain Laboratories, Inc., a corporation, hereinafter referred to as respondents, have been and are 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, Rocky Mountain Laboratories, Inc. is a corporation existing and doing business under the laws of the State of Utah, with its principal office and place of business located at 18 West Second South Street, Salt Lake City, Utah.

Respondent, James W. Fitches, also of Salt Lake City, Utah, was president and manager of respondent, Rocky Mountain Laboratories, Inc., during the time of its corporate existence, and controlled, managed, and directed the business activities, sales policies, and transactions of said corporate respondent, Rocky Mountain Laboratories, Inc., and used said corporation as an instrumentality and agency to accomplish such things as he proposed and planned.

Respondent, Rocky Mountain Laboratories, Inc., and respondent, James W. Fitches, are now, and have been for some time engaged in the business of manufacturing, distributing, and selling in commerce, as herein set out, a medicinal preparation designated as "Biotone."

PAR. 2. Said respondents, being engaged in business as aforesaid, caused said medicinal preparation when sold, to be transported from their respective offices and places of business in the State of Utah to purchasers thereof, located at various points in States of the United States other than the State from which said shipments were

¹ Published as amended to conform to proof by order dated March 18, 1938.

Complaint

made. Both respondents have maintained, and now maintain, a constant current of trade in commerce in said medicinal preparation, manufactured, distributed, and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their respective businesses, both said respondents are now and have been in substantial competition with other corporations, and with individuals and firms likewise engaged in the business of manufacturing, distributing, and selling medicinal preparations and kindred remedies for the same ailments for which said respondents represent "Biotone" to be a remedy, in commerce among and between the various States of the United States and in the District of Columbia.

In the course of operation of their respective businesses and for the purpose of inducing individuals to purchase "Biotone" both respondents have caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and have printed and circulated throughout the various States to customers and prospective customers advertising folders and literature. Both respondents have caused statements and representations concerning the curative and remedial quality of "Biotone" to be made over radio broadcasts. Certain advertising matter used by said respondents in making said representations, and certain statements made or caused to be made by said respondents over radio stations are set out herein, as illustrative of said representations, but are not all-inclusive. Such advertisements and statements are as follows:

BIOTONE—THE NATURAL SOLUTION FOR YOUR HEALTH PROBLEM.

The average family is not getting the elements from its food supply necessary to maintain normal chemical balance.

Most common ailments have their origin in the digestive system.

Because of the natural healing qualities of BIOTONE and its normalizing and alkalizing effects, it has proven a most remarkable corrective for many of the more serious stomach and intestinal disorders.

It helps to neutralize acids, combat and eliminate toxins, the building of sound, healthy tissues, and the promotion of vigorous, normal body functions.

Especially helpful in malnutrition, loss of appetite, lack of energy, languidness and depleted vitality.

BIOTONE gets results even when all other methods have failed.

The basic causes of most ailments are Acidity, Toxemia, and lack of the essential elements which the body must have. BIOTONE corrects all those foundations of illness, by neutralizing acids and toxins and supplying the body with these vital elements.

If your bloodstream and the vital fluids of the body are normally alkaline you cannot keep from enjoying health and vitality. But the big trouble is, that our modern methods of eating devitalized, demineralized and refined foods deprives us of the essential elements to maintain a normal chemical balance.

Complaint

26 F. T. C.

The lack of even one or two of these important substances may result in serious physical and mental disturbances. The absence of several of them may bring about a complication of said symptoms.

Sour stomach, gastritis, internal ulcers, high blood pressure, rheumatism, arthritis, eczema and many others are the result of chemical deficiencies. An acid condition proves the lack of sodium, magnesium and chlorine. A toxic condition proves the lack of sufficient sulphur, potassium, iodine, iron, manganese, phosphorus and similar elements. We urge the use of BIOTONE as the real and quick solution to these deficiency disorders.

By the use of advertisements in newspapers, pamphlets, testimonials, and over the radio, both respondents represent that:

1. Biotone is the natural solution for all health problems.
2. The average individual is not getting the elements from his food supply to maintain a normal chemical balance in the body, and that Biotone supplies these elements.
3. The most common ailments have their origin in the digestive system, and that Biotone has healing qualities that correct serious stomach and intestinal disorders.
4. Biotone aids nature in its natural cleansing, building and normalizing processes of the body and helps to neutralize acids in the body, and combat and eliminate toxins, and aids in building healthy tissues and the promotion of vigorous healthy body functions.
5. Biotone is a helpful remedy for malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis and rheumatism.

PAR. 4. Representations made by said respondents with respect to the curative and remedial qualities of Biotone when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact Biotone is not a natural solution for all health problems, and it is not true that the average individual is not getting the elements from his food supply necessary to maintain normal chemical balance in the body. In truth and in fact the most common ailments do not have their origin in the digestive system, and Biotone does not have healing qualities of such a character as to correct serious stomach and intestinal disorders. Biotone does not aid nature in its natural cleansing, building and normalizing processes of the body, and it does not help to neutralize acids in the body, or to combat and eliminate toxins. Biotone does not aid in the building of healthy tissues or in the promotion of vigorous healthy body functions. Biotone is not a helpful remedy for malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis, and rheumatism.

PAR. 5. Each and all of the false and misleading statements and representations, made by both respondents, as hereinabove set forth, in their advertising in newspapers, magazines, pamphlets, and other

advertising literature, in offering for sale and selling Biotone, had and now has the tendency and capacity to mislead and deceive a large portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the stated misleading, mistaken, and erroneous beliefs, induced by advertisements and statements of both respondents, as hereinabove enumerated, a number of the purchasing public purchased a substantial volume of respondents' product with a result that trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations, who truthfully advertise their products. As a result thereof, substantial injury has been done and is being done by both respondents 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 respondents have been, and are, all to the prejudice of the public and respondents' competitors, as aforesaid, and are unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 26, 1936, issued and served its complaint in this proceeding upon Biotone Laboratories, Inc., a corporation, and Rocky Mountain Laboratories, 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 the complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by James W. Fitches, who appeared on behalf of both respondents, before Charles P. Vicini and Robert S. Hall, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed in the office of the Commission. The chief counsel filed a motion to amend the complaint to conform to the proof contained in the record by deleting from the complaint Biotone Laboratories, Inc., as respondent, and inserting in lieu thereof James W. Fitches, an individual, as respondent, and

it appearing that the respondents had due notice of the pendency of said motion, the motion of the chief counsel was granted. Thereafter the proceeding came on for final hearing before the Commission on said complaint and answer thereto, testimony and other evidence and brief in support of the amended complaint, respondents not having filed briefs, and having not requested oral arguments herein; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Rocky Mountain Laboratories, Inc., is a corporation existing and doing business under the laws of the State of Utah with its office located at 18 West Second South Street, Salt Lake City, Utah.

In the year 1936 respondent Rocky Mountain Laboratories, Inc., became inactive, and respondent James W. Fitches became trustee of the corporate property.

Respondent James W. Fitches, also of Salt Lake City, Utah, was president and general manager of respondent Rocky Mountain Laboratories, Inc., during the time of its corporate activity, and controlled, managed, and directed the business activities, sales policies, and transactions of the respondent Rocky Mountain Laboratories, Inc., and used said corporation as an instrumentality and agency to accomplish such things as he proposed and planned.

There is a possibility that respondent James W. Fitches may again organize respondent Rocky Mountain Laboratories, Inc., for the purpose of resuming sales of its principal commodity, "Biotone." Respondent James W. Fitches now holds title to the said product "Biotone" as trustee of respondent Rocky Mountain Laboratories, Inc.

Respondent Rocky Mountain Laboratories, Inc., and respondent James W. Fitches have for some time last past been engaged in the business of manufacturing, distributing, and selling in commerce a pharmaceutical preparation designated as "Biotone."

PAR. 2. The respondents caused the medicine designated "Biotone," when sold, to be transported from their principal office and place of business in the State of Utah to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made.

Respondents have maintained a course of trade in commerce in said preparation, manufactured, distributed, and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the operation of their business, respondents have been in substantial competition with other corporations and with individuals and firms likewise engaged in the business of manufacturing, distributing, and selling other preparations and treatments for the same ailments for which the respondents represent "Biotone" to be a remedy, in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Rocky Mountain Laboratories, Inc., and respondent James W. Fitches caused advertisements descriptive of said preparation to be inserted in newspapers and magazines of general circulation throughout the United States, and have printed and circulated throughout the various States, to customers and prospective customers, similar advertising folders and literature.

The respondents have also caused statements and representations concerning the curative and remedial quality of "Biotone" to be made over radio broadcasts.

Certain advertising matter used by the respondents in making the aforementioned representations, and certain statements made or caused to be made by respondents over radio broadcasts are as follows:

BIOTONE—THE NATURAL SOLUTION FOR YOUR HEALTH PROBLEM

The average family is not getting the elements from its food supply necessary to maintain normal chemical balance.

Most common ailments have their origin in the digestive system.

Because of the natural healing qualities of BIOTONE and its normalizing and alkalizing effects, it has proven a most remarkable corrective for many of the more serious stomach and intestinal disorders.

It helps to neutralize acids, combat and eliminate toxins, the building of sound healthy tissues, and the promotion of vigorous, normal body functions.

Especially helpful in malnutrition, loss of appetite, lack of energy, languidness and depleted vitality.

BIOTONE gets results even when all other methods have failed.

The basic causes of most ailments are Acidity, Toxemia, and lack of the essential elements which the body must have. BIOTONE corrects all those foundations of illness, by neutralizing acids and toxins and supplying the body with these vital elements.

If your bloodstream and the vital fluids of the body are normally alkaline you cannot keep from enjoying health and vitality. But the big trouble is, that our modern methods of eating devitalized, demineralized and refined foods deprives us of the essential elements to maintain a normal chemical balance. The lack of even one or two of these important substances may result in serious physical and mental disturbances. The absence of several of them may bring about a complication of said symptoms.

Sour stomach, gastritis, internal ulcers, high blood pressure, rheumatism, arthritis, eczema, and many others are the result of chemical deficiencies. An acid condition proves the lack of sodium, magnesium and chlorine. A toxic condition proves the lack of sufficient sulphur, potassium, iodine, iron, manganese, phosphorus and similar elements. We urge the use of BIOTONE as the real and quick solution to these deficiency disorders.

By use of advertisements in newspapers, pamphlets, testimonials, and over the radio, both respondents represent that:

1. Biotone is the natural solution for all health problems.
2. The average individual is not getting the elements from his food supply to maintain a chemical balance in the body, and that Biotone supplies these elements.
3. The most common ailments have their origin in the digestive system, and that Biotone has healing qualities that correct serious stomach and intestinal disorders.
4. Biotone aids nature in its natural cleansing, building and normalizing processes of the body and helps to neutralize acids in the body, and combat and eliminate toxins, and aids in building healthy tissues and the promotion of vigorous healthy body functions.
5. Biotone is a helpful remedy for malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis, and rheumatism.

An analysis of the commodity "Biotone" shows that it is made up as follows:

Silica (SiO ₂)	317.0	parts	per	million
Calcium (Ca)	125.0	"	"	"
Magnesium (Mg)	155.0	"	"	"
Sodium (Na)	34.0	"	"	"
Potassium (K)	55.0	"	"	"
Phosphorus (P ₂ O ₅)	5.0	"	"	"
Chlorides (Cl)	122.0	"	"	"
Sulphur (S)	3739.0	"	"	"
Iron (Fe)	5153.0	"	"	"
Alumina (Al)	228.0	"	"	"
Manganese (Mn)	5.0	"	"	"
Notrogen (N)	64.0	"	"	"
Carbon (C)	974.0	"	"	"
Iodine (I)	Trace	"	"	"

PAR. 4. The foregoing representations made by respondents with respect to the curative and remedial quality of "Biotone" when used are grossly exaggerated, false, misleading, and untrue.

In truth and in fact the normal average American food supply furnishes enough chemical substances to keep the body normal, and it is not necessary to supplement the diet by taking internally any medicine. "Biotone" is not a helpful remedy in cases of malnutrition, high blood pressure, ulcers of the stomach, prostatitis, rheumatism, gastritis, and eczema. The aforesaid conditions and ailments are generally caused by or directly associated with serious systemic or metabolic disorders and do not respond to treatments containing ingredients similar in their properties to those contained in respondents' preparation. Said preparation is not a helpful

remedy in cases of loss of appetite, or in cases of lack of energy. Said preparation is not of any value in cases of liver trouble, acidity, sour stomach, and toxemia. In the treatment of such cases a diagnosis is necessary and no medicine such as respondents' compound could be applied in all cases.

The most common ailments do not have their origin in the digestive system, and respondents' preparation does not have healing quality of such a character as to correct serious stomach and intestinal disorders.

Respondents' preparation does not aid nature in its natural cleansing, building, and normalizing processes of the body, and it does not help to neutralize acids in the body or to combat and eliminate toxins.

"Natural cleansing, building, and normalizing processes of the body" mean the normal processes of eating, digesting, assimilating, and eliminating food material maintaining it by normal adequate intake of food, and the average individual does not need the aid of any medicine, chemical, or chemical compound for the cleansing, building up, or for the so-called normalizing processes to take place.

The great majority of the common ailments of humanity are not traceable to unbalanced body chemistry, resulting in acidity, toxemia, or mineral deficiency.

From the expert testimony adduced at the hearings, it is found that the ingredients of respondents' preparation are present in such small quantities as to be considered totally ineffective. Many of the ingredients present in the preparation are in no higher concentration than may be found in ordinary drinking water. Even if the system is deficient in some element or necessary ingredients, the amount of said element or ingredient in respondents' preparation is so minute as to render it ineffectual in supplying the deficiency. The only significant ingredients in respondents' preparation are iron and aluminum. The physiological effects of such quantities of aluminum as are contained in the preparation are negligible. The amount of iron that is contained in three teaspoonsful of the preparation, which is the prescribed dose per day, is equivalent to about one grain of iron per day. In certain deficiency diseases, varying dosages of iron may be prescribed.

PAR. 5. The above false and misleading statements and representations, made by respondents, as above set forth, in their advertising in newspapers, magazines, pamphlets, and other advertising literature, in offering for sale and selling "Biotone," had and now have the tendency and capacity to mislead and deceive a large portion of the purchasing public into the erroneous beliefs that all the said

representations are true and that said preparation possesses substantial therapeutic value.

As a direct consequence of the stated mistaken and erroneous beliefs as hereinbefore enumerated, a number of the purchasing public purchased a substantial volume of respondents' product, with the result that trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling other preparations designed and intended for similar usage, who truthfully advertise the efficacy of their products. As a result thereof, substantial injury has been done, and is being done, by respondents to 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 respondents Rocky Mountain Laboratories, Inc., a corporation, and James W. Fitches, an individual, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 respondents, testimony and other evidence taken before Charles P. Vicini and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and brief in support of the complaint, respondents having filed no brief and having not requested oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved 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 Rocky Mountain Laboratories, Inc., a corporation, and James W. Fitches, an individual, their officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a pharmaceutical product now known as "Biotone" or any product containing the same or substantially the same ingredients, and possessing similar properties, sold under that name or any name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said preparation is the natural solution for all health problems.

2. That the average individual is not getting the elements from his food supply necessary to maintain a normal chemical balance of the body, and that "Biotone" supplies these elements.

3. That the most common ailments have their origin in the digestive system, and that said preparation has any healing qualities that correct stomach and intestinal disorders.

4. That said preparation aids nature in its natural cleansing, building, and normalizing processes of the body, helps to neutralize acids in the body, combats and eliminates toxins from the body, or aids in building healthy tissues and the promotion of vigorous, healthy body functions.

5. That said preparation has any beneficial value whatsoever for the treatment of malnutrition, loss of appetite, lack of energy, languidness, depleted vitality, ulcers of the stomach, liver trouble, prostatitis, eczema, high blood pressure, acidity, toxemia, sour stomach, gastritis, and rheumatism, or similar diseases, ailments or conditions.

It is further ordered, That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
 IRA W. MINTER AND CLAYTON A. MINTER, INDIVIDUALLY,
 AND TRADING AS MINTER BROTHERS AND
 DOUGLASS CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
 OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3138. Complaint, May 23, 1937—Decision, Mar. 30, 1938

Where a firm engaged in manufacture and sale of candy, including so-called "break and take," "draw," or "deal" merchandise, composed, among others, of (a) assortments of marbles, candy bars, fudge squares and 216-hole punchboards, concealed within various holes of which boards said marbles, in accordance with color thereof as disclosed by chance punches at a penny each, and with advisory legend on said boards displayed, entitled purchaser to marble without charge, to marble only, to marble and bar of candy, or to marble and fudge square, and (b) assortments of 200 penny pieces of chocolate-covered candy of uniform size and shape, enclosed, concealed brown or chocolate centers of some of which, as distinguished from white centers of majority, entitled chance purchaser, without further charge, to one of cream bars therewith, while chance purchaser of one of still smaller numbers of pink squares was similarly entitled to one of candy bars included, with purchaser of last piece similarly entitled, without further charge, to assortment's small package of candy—

Sold said assortments to dealers knowingly so assembled and packed that they could be displayed and used by retailers for distribution to purchasing public by lot or chance without alteration or rearrangement, in competition with many manufacturers who do not make and sell such "break and take," "draw," or "deal" assortments, but only "straight" merchandise, sales of which have materially decreased whenever and wherever said other goods have appeared in their markets, due to latter's gambling or lottery feature, and in competition with many who regard sale and distribution of such lottery candy as morally bad and as teaching and encouraging gambling among children, substantial purchasers and consumers of such candy, and as injurious to the candy industry, and therefore refuse to sell candy so packed that it can be resold to public by lot or chance;

With result of placing in hands of retail merchants who purchase, from them and from others employing same methods, such "break and take," "draw," or "deal" goods as more salable in view of consumer preference therefor because of gambling feature connected with sales thereof, means of violating the laws of the several States in sale of such candy by lot or chance and operation thereby of a lottery, gambling device, or gift enterprise, and of putting to a competitive disadvantage aforesaid competitors, and with effect of diverting thereby unfairly trade from said competitors to themselves and others using similar methods:

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

Before *Mr. Miles J. Furnas* and *Mr. John L. Hornor*, trial examiners.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. David H. Kinley, of Philadelphia, Pa., 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 Ira W. Minter and Clayton A. Minter, individually and as copartners doing business under the firm names and styles of Minter Brothers and Douglass Candy Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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. The respondents, Ira W. Minter and Clayton A. Minter, are individuals and are doing business as copartners under the firm names and styles of Minton Brothers and Douglass Candy Company, and have their principal office and place of business located at 3917 Lancaster Avenue, in the city of Philadelphia, State of Pennsylvania. Respondents are now, and for several years last past have been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. Respondents cause and have caused their said candy when sold to be transported from their principal place of business in Philadelphia, Pa., to purchasers thereof in the State of Pennsylvania and in other States of the United States at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and with corporations 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. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale and retail dealers assortments of candy so packed and assembled

as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

(a) One of said assortments is composed of a number of candy balls, a number of marbles, a number of candy bars, and four packages of candy. The said candy balls and marbles are concealed in a device commonly known as a "punchboard." The punchboard has a number of holes containing marbles and candy balls. The holes are clearly indicated, but the contents thereof are effectively concealed by a piece of paper which is pasted over the said board. The area on the board occupied by the said holes is divided into four sections. The marbles and candy balls are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular marble or candy ball separated from the board. The board has legends stating that sales are 1 cent each, and that the purchaser obtaining a marble receives only that particular marble for his money; that a purchaser obtaining a white candy ball receives another punch or selection free; that a purchaser obtaining a black candy ball receives, without additional charge, one of the candy bars contained in said assortment; and that the purchaser of the last punch in each section receives one of the packages of candy contained in said assortment. The fact as to whether a purchaser receives one of the marbles, one of the candy balls free with the privilege of making another selection, one of the candy balls and a bar of candy, or a package of candy, for the price of 1 cent, is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondents is composed of a number of pieces of chocolate covered candy of uniform size and shape, together with a number of larger pieces of candy and a package of candy, which larger pieces of candy and package of candy are to be given as prizes to purchasers of said chocolate covered candies of uniform size and shape in the following manner: The majority of the said chocolate covered candies contained in said assortment have centers of the same color, but a small number of said chocolate covered candies have centers of a different color. Said pieces of candy of uniform size and shape retail at the price of 1 cent each, but the purchasers who procure one of the said pieces of candy 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 of candy heretofore referred to. The purchaser of the last piece of chocolate covered candy of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the package of

candy heretofore referred to. The color of the center of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers of said candies who procure a piece of candy having a center colored differently from the majority, and the purchaser of the last piece of candy in said assortment, thus procure the larger pieces of candy and the package of candy wholly by lot or chance.

Respondents manufacture, sell, and distribute numerous assortments involving the features of the above described sales plans, but varying in detail.

PAR. 3. The wholesale dealers to whom respondents sell their assortments resell and have resold said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondents sell and have sold direct expose said assortments for sale and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plans hereinabove set forth; and said sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to candy offered for sale and sold by their competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) candy balls, marbles, candy bars, or a package of candy, and (b) larger pieces of candy, or a package of candy. The use by respondents of said methods in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said methods has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery schemes. Many persons, firms, and corporations who make and sell candy in competition with respondents, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' said methods 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondents 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 methods by respondents has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. The aforementioned methods, acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, as hereinabove alleged. Said methods, acts and practices 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 May 28, 1937, issued and served its complaint upon the respondents, Ira W. Minter and Clayton A. Minter, individually, and doing business under the firm names and styles of Minter Brothers and Douglass Candy 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition thereto by David H. Kinley, attorney for the respondents, before Miles J. Furnas and John L. Hornor, examiners of

the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents are individuals doing business under the firm names and styles of Minter Brothers and Douglass Candy Company, with their principal offices and place of business located in the city of Philadelphia, State of Pennsylvania. Respondents are now, and for several years last past have been, engaged in the manufacture of candies and in the sale and distribution thereof to dealers located in States in the eastern part of the United States, including, among others, the New England States, States bordering on the State of Pennsylvania, and States as far south as North Carolina. Respondents cause, and have caused, their products when so sold to be transported from their principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in the State of Pennsylvania, and in other States of the United States as above mentioned, at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States. In so carrying on said business, respondents are, and have been, engaged in active competition with other partnerships and other individuals and with corporations 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. The approximate annual volume of sales of the respondents to wholesale dealers and jobbers is \$1,300,000, and the approximate total annual volume of sales to retail dealers is \$600,000.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 above, the respondents have sold in commerce between and among the States of the United States various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. The said assortments were described by one of the respondents called as

Findings

26 F. T. C.

a witness at the instance of the Commission, and certain of said assortments are hereinafter described for the purpose of showing the methods used by the respondents, but these descriptions do not include all of the assortments or the details of the several sales plans which the respondents have been or are using in the distribution of candy by lot or chance.

(a) One of said assortments is composed of a number of marbles, a number of candy bars and a number of fudge squares. The said marbles are concealed in a device commonly known as a punchboard. The punchboard has 216 holes in which the said marbles are concealed. The locations of the holes are clearly indicated, but the color of the marbles is effectively concealed by a piece of paper which is pasted over said board. Sales are 1 cent each and a purchaser punches one of the holes so as to separate the marble from the board. The board has legends advising purchasers and prospective purchasers that the purchaser obtaining a marble of a particular color receives the same free of charge, that a purchaser obtaining a marble of a different but specified color receives only the marble for the price of 1 cent, that the purchaser obtaining a marble of a different but specified color receives the marble and a bar of candy for the price of 1 cent, that the purchaser obtaining a marble of a different but specified color obtains the marble and a fudge square for the price of 1 cent. The fact as to whether a purchaser receives one of the marbles free or pays 1 cent therefor, or receives a marble and a candy bar or a marble and a fudge square for the price of 1 cent is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondents is composed of 200 pieces of chocolate-covered candy of uniform size and shape, together with 48 larger pieces of candy known as cream squares and 16 larger pieces of candy known as candy bars and a small package of candy, which larger pieces of candy and small package of candy are distributed as prizes to purchasers of said candy in the following manner: 130 of the said chocolate-covered candies contained in said assortment have white centers, 48 of the said chocolate-covered candies have brown or chocolate centers and 16 of the said chocolate-covered candies have pink centers. Said pieces of candy of uniform size and shape retail at the price of 1 cent each, but the purchasers who procure one of the said pieces of candy having a brown or chocolate center are entitled to receive, and are to be given free of charge, one of the said cream squares, and the purchasers who procure one of the said pieces of candy having a pink center are entitled to receive, and are to be given free of charge, one of the said candy bars. The purchaser of the last piece of choc-

olate-covered candy of uniform size and shape is entitled to receive, and is to be given free of charge, the small package of candy heretofore referred to. The color of the center of said pieces of candy of uniform size and shape is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers of said candy who procure a piece of candy having a center colored differently from the majority pieces of candy thus procure the larger pieces or bars of candy wholly by lot or chance.

PAR. 3. Candy assortments involving the lottery or chance features, as described in paragraph 2 above, are generally referred to in the candy trade or industry as "break and take," "draw," or "deal" assortments. Assortments of candy without any lottery or chance feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" merchandise. These terms will be used hereafter in these findings to distinguish the various types of assortments.

PAR. 4. The dealers to whom respondents sell their assortments resell the same to the public or to other dealers and said assortments are displayed for sale to the public as packed by the respondents and sold to the public in accordance with the above described sales plans.

PAR. 5. All sales made by respondents to dealers are absolute sales and respondents retain no control over said assortments after they are delivered to their customers. The assortments are assembled and packed in such manner that they are and have been used and may be used by retail dealers for distribution to the purchasing public by lot or chance without alteration or rearrangement.

In the sale and distribution of the assortments of candy hereinbefore described, respondents have knowledge that the said assortments are to be resold to the purchasing public by retail dealers by lot or chance, and respondents pack such candy in the way and manner described so that without alteration, addition thereto, or rearrangement thereof it will be and may be resold to the public by lot or chance by said retail dealers. Such packing and distribution are contrary to public policy.

PAR. 6. There are in the United States many manufacturers of candy who do not manufacture and sell "break and take," "draw," or "deal" assortments of candy and who sell their "straight" merchandise in interstate commerce in competition with the "break and take," "draw," or "deal" assortment candy, and manufacturers of straight merchandise have noted a marked decrease in the sales of their products whenever or wherever the "break and take," "draw," or

Order

26 F. T. C.

"deal" assortments have appeared in their markets. This decrease in the sale of "straight" merchandise is due to the gambling or lottery feature connected with the "break and take," "draw," or "deal" candy.

Consumers prefer to purchase the "break and take," "draw," or "deal" candy because of the gambling feature connected with its sales. The sale and distribution of "break and take," "draw," or "deal" 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. The sale and distribution of candy by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery, gambling device, or gift enterprise. Many competitors regard such sale and distribution as morally bad and as encouraging gambling, especially among children, and injurious to the candy industry. The sale and distribution by respondent of such assortments of candy supplies to and places in the hands of retail merchants a means of violating the laws of the several States. Because of these reasons some competitors of respondents refuse to sell candy so packed that it can be resold to the public by lot or chance. These competitors are thereby put to a competitive disadvantage. The retailers, finding that they can dispose of more candy by the "break and take," "draw," or "deal" method, buy from respondents and others employing the same methods of sale and thereby trade is unfairly diverted from said competitors to respondents and others using similar methods.

CONCLUSION

The aforesaid acts and practices of the respondents, Ira W. Minter and Clayton A. Minter, individually and doing business under the firm names and styles of Minter Brothers and Douglass Candy Company, are to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, 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 other evidence taken before Miles J. Furnas

and John L. Hornor, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by Henry C. Lank, counsel for the Commission, and by David H. Kinley, counsel for the respondents (oral argument not having been requested), 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, Ira W. Minter and Clayton A. Minter individually, and doing business under the firm names and styles of Minter Brothers and Douglass Candy Company, or under any other firm names and styles, their agents, representatives, and employees, in connection with the offering for sale, sale and distribution in interstate commerce, and in the District of Columbia, of candy, do forthwith cease and desist from:

1. Selling and distributing 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, gambling device, or gift enterprise.

2. Supplying to or placing in the hands of dealers packages or assortments of candy which are used or may be used, without the alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gambling device or gift enterprise in the sale or distribution of the candy contained in the said assortments to the public.

3. Supplying to or placing in the hands of dealers assortments of candy, together with a punchboard or other lottery device, for use or which may be used in distributing or selling such candy to the public at retail.

(4) Supplying to or placing in the hands of dealers a punchboard, or other lottery device, either with assortments of candy or separately, which punchboard or other lottery device is to be used or may be used in distributing or selling such candy to the public, or which punchboard or other lottery device bears legends or statements informing the purchasing public that the candy contained in said assortments is being sold to the public by lot or chance in accordance with a sales plan which constitutes a lottery device or gift enterprise.

5. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape, having centers of a different color, together with larger pieces of candy or small boxes of candy, which said larger pieces of candy or small boxes of candy are to be given as prizes to pur-

Order

26 F. T. C.

chasers procuring a piece of candy having a center of a particular color.

It is further ordered, That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

WILLIAM W. CUMMINGS, ARTHUR W. LAWTON, AND
EVERETT BUCK, INDIVIDUALLY, AND TRADING AS
UNITED STATES CARMEL COMPANY

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

Docket 3336. Complaint, Feb. 14, 1938—Decision, Mar. 30, 1938

Where a firm engaged in manufacture and sale of candy assortment, among others, consisting of a number of individually wrapped penny pieces of uniform size and shape, the enclosed, concealed differing color of a minority of which pieces entitled chance purchaser, without additional charge, to one of licorice pops included with assortment—

Sold said assortments for display by retail dealer vendees and sale to purchasing public in accordance with aforesaid plan and thereby supplied to and placed in hands of others means of conducting lotteries in sale of its products, in accordance with such plan, and in violation of long-standing public policy of the common law and criminal statutes, and that of United State Government;

With tendency and capacity to induce purchasers to buy said candy in preference to that offered and sold by competitors and unduly to hinder competition or create monopoly in excluding from candy trade competitors, including those who do not or are unwilling to offer or sell their products so packed and assembled or otherwise arranged and packed for sale to purchasing public as to involve a game of chance or other method of sale contrary to public policy, and refrain therefrom, and to divert trade unfairly to themselves, and with result that many dealers in and ultimate consumers of candy, by reason of such method and manner of packing aforesaid candy and element of chance involved in sale thereof, were induced to purchase same, thus packed, etc., in preference to that offered and sold by said competitors, who do not use same or equivalent methods, and with tendency and capacity to divert unfairly to themselves trade and custom from such competitors, exclude from candy trade all such competitors and lessen competition therein, tend to create a monopoly thereof in themselves and in such other distributors as use same or equivalent methods, and deprive purchasing public of benefit of free competition, and with capacity and tendency to eliminate from said trade all actual competitors and exclude therefrom all potential competitors, who do not use same or equivalent methods:

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

Mr. Henry C. Lank and Mr. D. C. Daniel for the Commission.
Perry, Saunders & Cheney, of Boston, Mass., for respondents.

Complaint

26 F. T. C.

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 William W. Cummings, Arthur W. Lawton, and Everett Buck, individually, and trading as United States Caramel 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. The respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, are copartners trading as United States Caramel Company, with their principal office and place of business located at 150 Orleans Street, East Boston, Mass. Respondents are now, and for some time last past have been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of East Boston, Mass., to purchasers thereof in the State of Massachusetts and in other States of the United States and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in competition with other firms, individuals, and corporations engaged in the sale and distribution of candy and similar products, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof. One of said assortments is sold and distributed to the consuming public in the following manner:

This assortment consists of a number of individually wrapped pieces of candy of uniform size and shape, together with a number of licorice pops, which licorice pops are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of said pieces of candy of uniform size and shape are of a certain color, but the minority of said pieces

1005

Complaint

of candy are of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1 cent each, but the purchaser who procures one of the said minority pieces of candy is entitled to receive, without additional charge, and is given, one of the licorice pops heretofore referred to. The color of the said pieces of candy of uniform size and shape is effectively concealed from the purchaser or prospective purchaser until a selection has been made and the wrapper removed therefrom. The aforesaid purchasers who procure one of the said minority pieces of candy of uniform size and shape in said assortment thus procure one of said licorice pops wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers thereof to purchase respondents' candy in preference to candy and similar products offered for sale and sold by their competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional piece of candy. The use by respondents of said method in the sale of candy and the sale of candy by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has a tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the candy-trade competitors who do not adopt and use the same method or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery. Many persons, firms, and corporations who make and sell candy or similar products in competition with the respondents, as above alleged, are unwilling to offer for sale or to sell their products 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 any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers of, candy are attracted by respondents' 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has a tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their competitors who do not use the same or equivalent methods, to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful, to lessen competition in the candy trade, to tend to create a monopoly of said candy trade in respondents and in such other distributors of said candy as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondents has a capacity and tendency to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same method or equivalent methods.

PAR. 6. The aforementioned method, acts, and practices of respondents are all to the injury and prejudice of the public and of respondents' 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, 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 14, 1938, issued, and thereafter served, its complaint in this proceeding upon the respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel 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 respondents' answer, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor a substitute answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office

1005

Findings

of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, are individuals trading as United States Caramel Company, with their principal office and place of business located at 150 Orleans Street, East Boston, Mass. Respondents are now, and for some time last past have been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of East Boston, Mass., to purchasers thereof in the State of Massachusetts and in various States of the United States and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in competition with other firms, individuals, and corporations engaged in the sale and distribution of candy, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to dealers, in interstate commerce, certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof. One of said assortments is sold and distributed to the consuming public in the following manner:

This assortment consists of a number of individually wrapped pieces of candy of uniform size and shape, together with a number of licorice pops, which licorice pops are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of said pieces of candy of uniform size and shape are of a certain color, but the minority of said pieces of candy are of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of one cent each, but the purchaser who procures one of the said minority pieces of candy is entitled to receive, without additional charge, and is given, one of the licorice pops heretofore referred to. The color

of the said pieces of candy of uniform size and shape is effectively concealed from the purchaser or prospective purchaser until a selection has been made and the wrapper removed therefrom. The aforesaid purchasers who procure one of the said minority pieces of candy of uniform size and shape in said assortment thus procure one of said licorice pops wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers thereof to purchase respondents' candy in preference to candy and similar products offered for sale and sold by their competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an additional piece of candy. The use by respondents of said method in the sale of candy and the sale of candy by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has a tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with the respondents, as above described, are unwilling to offer for sale or to sell their products so packed and assembled, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers of, candy are attracted by respondents' 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 respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has a tendency and capacity, because of said game

1005

Order

of chance, to unfairly divert to respondents trade and custom from their competitors who do not use the same or equivalent methods, to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful, to lessen competition in the candy trade, to tend to create a monopoly of said candy trade in respondents and in such other distributors of said candy as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondents has a capacity and tendency to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same method or equivalent methods.

CONCLUSION

The aforementioned method, acts and practices of respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel Company, are all to the injury and prejudice of the public and of respondents' competitors, as hereinabove found, 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 substitute answer of respondents, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel Company, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, William W. Cummings, Arthur W. Lawton, and Everett Buck, individually and trading as United States Caramel Company, or under any other trade name, and their respective agents, representatives, or employees, in the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of candy, do cease and desist from:

Order

26 F. T. C.

1. Selling and distributing to 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 dealers assortments of candy which are used or which 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 and distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail wrapped pieces of candy of uniform size and shape of different colors, together with licorice pops, or any other articles of merchandise, which said licorice pops or other articles of merchandise are to be given as prizes to the purchasers procuring pieces of candy of a particular color.

It is further ordered, That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

KORJENA MEDICINE COMPANY AND JEROME GLADKE,
DOING BUSINESS AS KORJENA MEDICINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2685. Complaint, Jan. 14, 1936—Decision, Apr. 6, 1938*

Where a proprietorship and individual engaged in offer, sale, and distribution of so-called "Korjena," preparation for reducing and obesity; in selling same through mails and other carriers in channels of interstate commerce, and by means of newspaper advertising, circulars, labels, container box displays, and written and oral statements by said individual and his agents and employees, and by other forms of advertising and sales promotion circulated and distributed to customers and prospective customers and members of the purchasing public in the various States and in the District of Columbia—

- (a) Represented, on letterheads, invoices, containers, and circulars, as case might be, that said individual was president and general manager of said company, and that same was a corporation, facts being that he was neither, and said company was not a corporation, but a proprietorship owned and operated by him under aforesaid name as trade name;
- (b) Represented that said company was manufacturer of "Korjena" and owned and operated apparatus and machinery for that purpose, and laboratories, through such statements as "Manufacturers" and "Laboratories and General Offices," etc., facts being it neither owned nor operated any manufacturing apparatus or machinery or laboratories, either at given address or elsewhere; and
- (c) Represented that said product was drugless and safe and harmless for consumption and constituted a safe and sure way for reducing and a new and scientific treatment for such purpose, and that it cut down moisture immediately, rendered fat liquid, had approval of medical profession, and contained two important ingredients which banished weight-inducing poisons and worked against fatty foods and caused fat to melt away from 7 to 10 pounds in 2 weeks, and that weight disappeared and physical loveliness returned;

Facts being there are no such "weight-inducing poisons" known to medical science, nor is there any scientific treatment or remedy applicable to all cases or causes of obesity, tablets in question are not a scientific treatment or remedy for any case or cause thereof, nor a sure way of bringing about permanent reduction in weight, and product, as compounded, is primarily a laxative or purgative, and has effect of such a product, and, as presently compounded, three doses constitute limit with which same can be taken without expectancy of injurious effects to some individuals;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of drugs and other prepared products used or useful in treatment of obesity or reduction of weight into false and erroneous belief that said representations were true and into purchase of said product in reliance thereon, and thereby unfairly to divert substantial trade in such commerce

Complaint

26 F. T. C.

to said proprietorship and individual, from competitors who do not engage in making false and misleading representations to induce sale and distribution of their products, and to the benefit and profit of the former :

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Jay L. Jackson for the Commission.

Mr. Walter L. Post, 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 Korjena Medicine Company and Jerome Gladke, an individual, and doing business as Korjena Medicine 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 to the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAP^H 1. Respondents, Korjena Medicine Company and Jerome Gladke, an individual, are trading as Korjena Medicine Company, with their office and principal place of business in the city of Elmira in the State of New York. Respondents are now and for a considerable period of time immediately heretofore have been engaged in selling, offering for sale, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, a prepared product called "Korjena," described as a tablet and represented as a fat-reducing agent and a remedy for obesity and overweight. Said respondents have caused and now cause said product, 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 and to the District of Columbia, in the course and conduct of which respondents have been and are now in competition with corporations, partnerships, and with other firms and individuals engaged in like commerce.

PAR. 2. In the course and conduct of the business, as aforesaid, respondents have sold and now sell the said product "Korjena" by use of the mails, by use of interstate carriers, and other channels of interstate commerce, by means of radio broadcasts, newspapers, pamphlets, periodicals, labels, and other forms of literature and advertising which have had or have a circulation in and through the various

1013

Complaint

States of the United States and in the District of Columbia, and also in circulars, carbon box displays, labels, pamphlets, printed matter, and other forms of advertising and promotion, including radio broadcasts and statements by respondents and by agents, employees, and representatives of respondents, which have been and are circulated and distributed to customers and prospective customers in and through the various States of the United States and in the District of Columbia, in the course and conduct of which said respondents have made and now make false and misleading statements and representations all to the injury of the public and to the injury of competitors of said respondents.

PAR. 3. In the course and conduct of the business, advertising, promotion, sale, and offering for sale of the said "Korjena" product, as aforesaid, said respondents have authorized, published and made, and now authorize, publish, and make, the following statements and representations, among others, to wit:

[NOTE.—The quoted matter which follows at length in the complaint at this point and is reproduced verbatim in the findings *infra* at p. 1021, as respects parts thereof, numbered (1) to (5) inclusive, is, as to such parts, omitted here in the interest of brevity, balance thereof being as below set forth.]

(6) Newspaper ads by respondents, independently and jointly with other advertisers:

FAT DANGEROUS

Get Rid Of It Quick

(Picture omitted.)

No need for undue alarm, but it should be pointed out that fat interferes with the blood circulation, strangles heart action, shortens life. Fat folks tire easy, get winded quick, live in sluggish discomfort. Get rid of fat—harmlessly, easily, pleasantly—by using the means employed by nature to build fat as the means of getting rid of it. **REVERSE THE ENTIRE FAT-MAKING PROCESS.** That's the secret of Korjena, and Korjena alone does it. It calls a halt on fat formation. Then it harmlessly, decently, quietly, tears down accumulated fat. The system doesn't know what's happening. Start with Korjena today. Laugh with joy as you see pounds disappear, often 7-10 in a single treatment, while living in comfort, eating as you please. Very first box of Korjena must satisfy or money refunded. \$1 package, now-----69¢.

NOW LOSE FAT

7-10 lbs. in 2 weeks

No Starving—Do This and Inches of Fat Melt Away

If you want to lose fat—**inches off waists, busts, hips or arms**, here's the way doctors say is **SAFE**, sure and easy. **EAT ALL YOU WANT**, just cut down on sweets and do this: After each meal take a Korjena Tablet with

Complaint

26 F. T. C.

water. This cuts down moisture weight instantly. Fat disappears and physical loveliness returns. Korjena—harmless—drugless—contains two important ingredients. One banishes weight-inducing poisons. The other works against fatty food. Fat melts away—7-10 pounds in 2 weeks. Try this way. Take Korjena.

MARSHALL'S

NOW LOSE FAT

7-10 lbs. in 2 weeks

No Starving—Do This and Inches of Fat Melt Away

If you want to lose fat—**inches off waists, busts, hips, or arms**, here's the way doctors say is **SAFE**, sure and easy. **EAT ALL YOU WANT**, just cut down on sweets and do this: After each meal take a Korjena Tablet with water. This cuts down moisture weight instantly. Fat disappears and physical loveliness returns. Korjena—harmless—drugless—contains two important ingredients. One banishes weight-inducing poisons. The other works against fatty food. Fat melts away—7-10 pounds in 2 weeks. Try this way. Take Korjena.

(Sold on money-back guarantee)

At All

WALGREEN STORES

DOCTOR LOSES FAT

39 lbs. Tells How

(Picture omitted.)

Doctor who developed a remarkably, quick and easy way to take fat off himself, now gives his prescription to the world. It is called Korjena. A new and different way to lose weight **WHILE YOU EAT ALL YOU WANT**. It's so easy, you simply take one tiny tablet after meals. Swiftly Korjena banishes that bloated distressed feeling, then works on fatty tissue and dissolves it away. You actually lose from 3 to 7 pounds first two weeks.

Medical science has proved that Korjena is **SAFE**. Does not affect the heart, the glands, or stomach. Korjena does just one thing exceedingly well—it takes pounds and inches off chin, neck, arms, waist, hips and gives you that complete slenderness which makes women attractive. Korjena costs only few cents a day. Try this marvelous prescription. In two weeks you will be delighted with the results or your money refunded.

On Sale At

**DEAN'S CUT RATE
DRUG STORE**

84 Main St.

1013

Complaint

(7) Radio broadcasts, among others, by respondents independently or jointly with other advertisers, over station KFVB, Hollywood, California (Continuity):

KFVB

TUESDAY, July 3, 1934

12:45 P. M.

OPENING ANNOUNCEMENT:

CHIMES

ANNOUNCER:

The modern woman demands youth and beauty—but she can't look youthful, she can't be beautiful, if she's too FAT. Let Miss Mary Blake of the KORJENA LABORATORIES tell you how modern men and women are losing weight quickly and safely. Miss Mary Blake.

BLAKE:

When you looked in your mirror this morning, what did you see? A woman trim, neat of face and figure, a picture which pleased you; or a woman a little old looking, a little tired looking, a little puffy as to face and figure—in other words FAT. Isn't it a crime what too many pounds can do to any woman's looks? And that isn't the worst of it—who can feel alert, bright, and happy with pounds and pounds of superfluous fat making themselves felt—and seen? Well then, why not do something about it? I know. Most methods of weight reduction have been unsatisfactory. Dieting weakens resistance and ruins dispositions. Exercise is wearying if enough is taken to have any effect on overweight, and what with this and that to be done, you can't afford to start the tired out. But have you heard of the new scientific method of weight reduction by which many are losing as much as seven to ten pounds in two weeks *without* dieting, without exercising? A method which is safe—harmless—yet without drugs? Such is the KORJENA METHOD of weight control. All you have to take is one tiny easy-to-take KORJENA tablet before each meal, and allow it to work with nature in dissolving fatty tissues, and ridding the system of toxins and weight-inducing poisons. Sounds almost too good to be true doesn't it? But that's the story of KORJENA, which is recommended by modern doctors everywhere. If you're burdened down with too many pounds—if you've just sort of let yourself go thinking "what's the use, I'm just too fat and what's to be done about it?"—what a thrill is in store for you when you see those pounds melt away, and inches disappear from places where inches had no right to be! KORJENA—K-O-R-J-E-N-A—costs so little—just one dollar for a two weeks supply, and it's sold with a money-back guarantee. Get it at any Owl, Thrifty, Sontag, Smile Store, and other leading drug stores.

RECORD-----

CLOSING ANNOUNCEMENT:

BLAKE:

Any doctor will tell you that too much fat is not only ugly it is often actually dangerous to health. In addition, no woman can afford to lose her charm. The modern woman demands youth and beauty, and she knows she can't be attractive if she's too fat. So she doesn't starve herself, and weaken her resistance and ruin her disposition; she doesn't exercise violently and develop hard muscles; she simply takes one tiny KORJENA tablet before each meal, and watches the fat disappear and the inches vanish from the places where they were not meant

to be. Think of that—many women are losing from seven to ten pounds in two weeks SAFELY, SCIENTIFICALLY, without dieting, without exercising. The only thing you must do is to cut down on sweets—and of course be faithful in taking one KORJENA TABLET before each meal. Otherwise eat what you please. Three big meals a day if you like. Why not weigh yourself today, start taking one KORJENA tablet before each meal, and weigh yourself again in two weeks—then see if you don't agree that the KORJENA way is the ideal method of getting rid of excess, unattractive fat. KORJENA, spelled KORJENA—costs but one dollar for a two weeks supply, is sold on a money-back guarantee, and will be found at all Owl, Thrifty, Sontag, Smile Stores and all leading drug stores.

PAR. 4. In the course and conduct of the business aforesaid, and in the advertising, promotion, selling, and offering for sale of respondents' Korjena product, as aforesaid, respondents and their agents, employees, and representatives have falsely and misleadingly stated, represented and implied and now falsely and misleadingly state, represent, and imply that Jerome Gladke is the president and general manager of the Korjena Medicine Company, manufacturers of "Korjena," with laboratories and general offices at 103-7 West Church Street, Elmira, N. Y.; that said Korjena Medicine Company is a corporation, owns and operates apparatus and machinery, manufactures the said Korjena product, and owns and operates laboratories; whereas, in truth and in fact, the said Korjena Medicine Company is merely an assumed trade name and is not incorporated; Jerome Gladke is not the president and general manager of said Company or of said Company as a corporation; respondents do not manufacture the said Korjena product, do not own or operate any apparatus or machinery, and do not own and operate laboratories, either at 103-7 West Church Street, Elmira, N. Y., or elsewhere.

In the course and conduct of the business aforesaid, and in the advertising, promotion, selling, and offering for sale of respondents' Korjena product, as aforesaid, respondents and their agents, employees, and representatives have further falsely and misleadingly stated, represented, and implied and now falsely and misleadingly state, represent, and imply that the said "Korjena" is drugless; that it is safe for human consumption and harmless; that it is a reducing agent for body fat and overweight; that it is a remedy for excessive body weight; that it is a new and scientific treatment for reducing body fat and body weight; that it was discovered by a doctor and is prescribed by doctors; that it has the approval of the medical profession in general; that it is a safe and sure way for reducing body fat and body weight; that it cuts down moisture weight instantly; that weight disappears and physical loveliness returns; that it contains two important ingredients, which banish weight inducing poisons and work against fatty foods; that fat melts away from

1013

Findings

seven to ten pounds in two weeks; that fat is dangerous; and that "Korjena" is a cure for body fat and excess body weight; whereas, in truth and in fact, the said product is not drugless; is not safe for human consumption and harmless and cannot be taken with impunity by all who may use the same; is not a body fat or overweight reducing agent; is not a remedy for excessive body weight; is neither new nor a scientific treatment for reducing body fat and body weight; was not discovered by a doctor; is not prescribed by doctors; does not have the approval of the medical profession in general, substantially, or at all; is not a safe and sure way of reducing body fat and body weight; does not cut down body moisture instantly; does not cause physical loveliness to return; does not and cannot banish weight inducing poisons or work against fatty foods; does not melt fat away from 7 to 10 pounds in 2 weeks or at all; fat is not dangerous, and "Korjena" is not a cure for body fat or excessive body weight.

PAR. 5. That the aforesaid false and misleading statements made by respondents in the sale of the said "Korjena" product have had and have the tendency and capacity to mislead and deceive and do mislead and deceive the purchasing public into the erroneous belief that said statements and representations are true; that respondents' so-called "Korjena" tablets are a cure, remedy and preventative for fatness, obesity and body fat and excessive body weight. Said statements and representations have tended to induce and have induced the purchase of respondents' product in reliance on such erroneous beliefs, in consequence of which trade has been and is diverted to respondents from their competitors who do not misrepresent their products, all thereby substantially injuring competition and competitors of respondents in interstate commerce.

PAR. 6. The above acts and practices of respondents are to the injury and prejudice of the public and to competitors of respondents 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 an Act of 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 14, 1936, issued, and on January 17, 1936, served, its complaint in this proceeding upon respondents, Korjena Medicine Company and Jerome Gladke, an individual, doing business as Korjena Medicine Company, charging

Findings

26 F. T. C.

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, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Jay L. Jackson, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Walter L. Post, Attorney for the respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Therefore, this proceeding regularly came on for final hearing before the Commission on the said complaint, and the answer thereto, testimony and evidence, brief in support of the complaint, and respondents not having filed any brief or requested oral argument in opposition to said complaint; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Korjena Medicine Company, is a proprietorship controlled, owned, and operated by respondent, Jerome Gladke. Respondent Jerome Gladke is an individual doing business and trading under the name and style of Korjena Medicine Company. The office and principal place of business of said respondents is located at 103-7 West Church Street, in the city of Elmira, in the State of New York. On the 14th day of January 1936, and for a considerable period of time immediately and continuously theretofore, respondents were, and since that date have been, engaged in the business of offering for sale, selling, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, a prepared product called "Korjena," described as a fat-reducing agent and a remedy for obesity and overweight. Said respondents have caused, and cause, said product, when sold or ordered, to be shipped and transported from the State of New York to wholesale and retail purchasers and sellers thereof located in various States of the United States other than the State of New York, and in the District of Columbia.

In the course and conduct of the business aforesaid, respondents have been, and are, in competition with corporations, partnerships, and with other firms and individuals engaged in the business of offering for sale, selling and distributing, in commerce among and between the various States of the United States, and in the District

1013

Findings

of Columbia, preparations and products described and used as a treatment for obesity and overweight and products which are similar in nature and use to the products of respondents.

PAR. 2. Respondents have sold and sell the aforesaid "Korjena" product by means of the United States mails and other carriers in the channels of interstate commerce and by means of newspaper advertising, circulars, labels, container box displays, and written and oral statements by respondents and agents and employees of respondents, and by other forms of advertising and sales promotion, which have been, and are, circulated and distributed to customers and prospective customers and to members of the purchasing public in general located in the various States of the United States, and in the District of Columbia, in the course of which it has been, and is, the practice of respondents to authorize, publish and make, and to cause to be distributed, by the mediums hereinafter, indicated the following statements and representations, among others, to wit:

(1) Letterheads:

Korjena Medicine Company
Manufacturers of
KORJENA
Sold Exclusively at the Leading Store
in Principal Cities
Jerome J. Gladke
President & Gen'l. Manager
Laboratories
and General Offices
103-7 W. Church St.
Elmira, N. Y.
"For Excessive Fat Specify **KORJENA**"

(2) Invoices:

Jerome J. Gladke President & Gen'l Manager	Korjena Medicine Co. Manufacturers of KORJENA A Scientific Treatment for the Reduction of Excessive Fat	Laboratories and General Offices 103-7 W. Church St. Elmira, N. Y.
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(3) Pasteboard container:

KORJENA
A Scientific Treatment
for the Reduction of
Excessive Fat
Price \$1.00
Korjena Medicine Co.

Genuine
Elmira, N. Y., U. S. A.

Laboratories

Findings

28 F. T. C.

This treatment is Guaranteed

HARMLESS

Reg. U. S. Pat. Off. © 1931 K. M. Co.

DIRECTIONS

Take 1 tablet after each meal with enough water to swallow easily. These tablets should be faithfully taken regularly as directed. Two or three packages are usually required for the best result.

IMPORTANT Watch Your Weight

Weigh yourself before starting this treatment. Weigh yourself again in Two Weeks. These tablets are guaranteed **HARMLESS**.

This package contains
42 Korjena Tablets
Two Weeks Treatment

(4) Small boxes in which Korjena is packed for shipment:
Korjena Medicine Co.—Laboratories—

Elmira, N. Y., U. S. A.

(5) Circular:

IMPORTANT

Mr. Foreman:

In setting please follow style indicated closely, especially as to bold face Gothic headlines. Same size, **FAT** always in caps. This is **NECESSARY** to make copy effective and justify further advertising.

KORJENA MEDICINE CO.

Copyright, 1935
Korjena Medicine Co.

RENDER FAT
To Lose Pounds
Ugly Pounds Pour Off When
Fat is Made Liquid

(Picture omitted)

You can't open your body and take out surplus fat, then how can you lose weight unless you render the fat, as you do when cooking fat or suet? New-Improved Korjena Tablets "renders fat"—makes the fatty tissue become liquid—then it naturally passes out of your body through elimination—fat melts away 7-10 pounds first two weeks.

1013

Findings

Quickly ugly fat disappears from bust, neck, arms, legs, waist, hips. Your new slenderness is appealing and once again you enjoy wearing the smart dresses and pretty things that make you attractive.

We recommend the New-Improved Korjena Tablets. They are absolutely harmless—Guaranteed SAFE—learn how easy and quick it is to lose fat with Korjena. Very first box must satisfy or money back. Korjena \$1, our special price 89¢.

MR. DRUGGIST:

Please include the above instructions to Foreman, when sending Ad to newspaper. This is IMPORTANT.

PAR. 3. As more fully appears from the foregoing, in the course of offering for sale, selling, and distributing the said Korjena, the respondents state and represent that Jerome Gladke is the president and general manager of the Korjena Medicine Company; that the said company is a corporation; that the said company is a manufacturer of Korjena and owns and operates apparatus and machinery for that purpose, and owns and operates laboratories; whereas, the said statements and representations are wholly false and untrue in that Jerome Gladke is not the president and general manager of said company or of said company as a corporation; that said company is not a corporation but is a proprietorship owned and operated by the said respondent Jerome Gladke under the name thereof as a trade name; that said respondents do not manufacture the said Korjena product, do not own or operate any manufacturing apparatus or machinery, and do not own or operate laboratories either at 103-7 West Church Street, Elmira, N. Y., or elsewhere.

In the course and conduct of the business of offering for sale, selling, and distributing the aforesaid Korjena product, as more fully appears above, respondents further state and represent to customers and to the buying public at large that the said Korjena product is drugless, safe for human consumption and harmless, a remedy and cure for body fat and excessive body weight, and a safe and sure way for reducing body fat and body weight; that it is a new and a scientific treatment for reducing body fat and body weight; that it cuts down moisture immediately; that it renders fat liquid; that weight disappears and physical loveliness returns; that it has the approval of the medical profession in general, and that it contains two important ingredients which banish weight-inducing poisons and work against fatty foods, and causes fat to melt away from 7 to 10 pounds in 2 weeks.

PAR. 4. The foregoing statements are, and each of them is, false and misleading.

Each tablet of the said Korjena product is a compound of the following drugs and ingredients: Phenolphthalein, leptandrin,

phytolacca, iodine, resins, calcium as calcium carbonate, and mineral oil. The aforesaid product as compounded is primarily a laxative or purgative being composed of the laxative drugs, phenolphthalein, leptandrin, and phytolacca. These drugs are known as gastro-intestinal irritants because of their effects upon the gastro-intestinal tract and each of them has dangerous properties for harm and injury to human beings when taken internally, the period required for producing such effects depending upon the idiosyncracies of each individual. As presently compounded or constituted, three doses of the said tablets is the limit within which the same can be taken without the expectancy of injurious effects to some individuals. The product cannot, therefore, be represented as drugless, safe, or harmless.

The said Korjena tablets would not be useful in the treatment of obesity resulting from hypothyroid conditions and cannot be expected to have any therapeutic effect on obesity due to pituitary or other glandular disorders. It would not directly affect the metabolism of the body and would not be used in any case of obesity except possibly in the case of superalimentation, and then only in limited doses. There is no scientific treatment or remedy applicable to all cases or causes of obesity, and the said Korjena tablets are not a scientific treatment or remedy for any case or cause of obesity and not a sure way of bringing about permanent reduction in weight.

The quantity of food absorption in the human system is directly related to the quantity of food intake and to the period in which digested food remains in the intestines. Fat is primarily formed from sugars, and sugar not oxidized is converted into fat. Where the causes for obesity are internal, there is delayed metabolism in such a way as to induce the formation of excess adipose tissue, otherwise known as fat. Fat is reduced or used by inducing oxidation, but it is not rendered liquid in this process. Oxidation, the burning process by which fat is destroyed, is induced by way of exercise or increased activity in all the body functions.

Respondents' Korjena tablets do not work against fatty tissue, render fat liquid, reverse the entire fat-making process and by such method effect a reduction in fat or weight, or work against fatty foods. There is no such thing in medical science as "weight-inducing poisons" which are, or can be, banished by the taking of respondents' product. Respondents' product is wholly laxative or purgative in effect, but purgation alone has no effect upon obesity itself, except as it causes starvation and thus a loss of weight due to a lack of food. When the purgation process ceases and the person eats again, the loss of weight is regained. The taking of respondents'

1013

Order

tablets as prescribed over a period of two weeks would be expected to effect a loss of weight due to dehydration, but this loss is quickly replaced following the intake of water. The loss of body moisture is not instantaneous, but is accomplished only after the product has had its laxative or purgative effects. Thus, any loss of weight induced by the taking of respondents' product is not evidence of a correction or cure of the causes and cannot be maintained or made permanent except through continuation of purgation or by continued reduction in food intake and control of diet once weight is lost as a result of the purgation process.

PAR. 5. The statements and representations made by respondents, as set forth in paragraph 3 above, have, and each of them has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers of drugs and other prepared products used or useful in the treatment of obesity or reduction of weight into the false and erroneous belief that the said representations are true and into the purchase of respondents' product in reliance thereon, and thus unfairly to divert substantial trade in said commerce to respondents, all to the benefit and profit of respondents, from competitors of respondents, who do not engage in making false and misleading representations to induce the sale and distribution of their products.

CONCLUSION

The aforesaid acts and practices of respondents, Korjena Medicine Company and Jerome Gladke, trading as Korjena Medicine Company, 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, by Jay L. Jackson, counsel for the Commission, and by Walter L. Post, counsel for respondents, and upon brief filed herein by counsel for the Commission, respondents having filed no brief and having requested no oral argument, and the Commission having made its findings as to the facts and its conclusion that the said

Order

26 F. T. C.

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 respondents, Korjena Medicine Company and Jerome Gladke, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce and in the District of Columbia of the products now designated as "Korjena," or "Korjena Tablets," or of any product or products of substantially the same or similar ingredients, or possessing the same or similar properties, under the same or any other name or names, do forthwith cease and desist, directly or indirectly, from representing:

1. That Jerome Gladke is the President of Korjena Medicine Company, or that Korjena Medicine Company, as now constituted and doing business, is a corporation.

2. That Korjena Medicine Company, or any selling company operated by Jerome Gladke, is a manufacturer of its products, or owns or operates laboratories, when such is not the fact.

3. That said products are drugless, or safe for human consumption and harmless, or a remedy or a cure for body fat and excess body weight, or a safe and sure way of reducing body fat and body weight, or a scientific treatment for reducing body fat and body weight, or cut down body moisture immediately, or render fat liquid, or cause physical loveliness to return, or banish weight-inducing poisons, or work against fatty foods, or have the approval of the medical profession in general.

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

Syllabus

IN THE MATTER OF

GEORGE FOSTER, INC., AND GEORGE FOSTER, INDIVIDUALLY AND AS OFFICER OF GEORGE FOSTER, INC.

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

Docket 3322. Complaint, Feb. 3, 1938—Decision, Apr. 6, 1938

Where a corporation and an individual, its president and principal stockholder, engaged in the manufacture of food flavors, food products, cosmetics and toilet supplies, and in the sale and distribution of said products and of other articles of merchandise; in circulars and other advertising literature, distributed through the mails to retailers and prospective retailers and to the consuming public, announcing the various "deals" of said corporation and individual—

- (a) Represented as customary or regular retail prices for their said products prices which were fictitious and greatly in excess of the regular or customary figures at which such products were sold or offered or expected to be offered for sale at retail, through various offers or "deals" at such pretended prices, including its "Regular \$1.25 Value Bottle of Pure-Strong-Famous Vanilla Flavor," and its "50 cent" "Blue Spruce Medicated Balm";
- (b) Described flavorings made from chemical compounds as substitutes for the juice of fruit, nuts, beans or berries, as pure flavorings through referring, as above set forth, to its said "Pure-Strong-Famous Vanilla Flavor," facts being said product was a cheap imitation vanilla flavoring compound;
- (c) Represented that products offered by them had established sales records, through such statement as "With every deal that you buy we give you an additional big selling 50¢ retail item FREE," facts being its said "Blue Spruce Medicated Balm," thus referred to, was not such an item and did not have an established retail sales value;
- (d) Represented that said articles of merchandise offered and sold by them would be given free of cost, through such statements as "A gorgeous and costly Windsor fruit and salad bowl and \$1.00 silverware coupon FREE," and "Included with this shipment, large deluxe \$2.00 sample case with 6 Rogers teaspoons for carrying and displaying the complete deal ABSOLUTELY FREE," facts being no merchandise was given away free by them, but cost thereof was included in specified prices to be paid by purchaser of the said deal or deals of which such merchandise was a part; and
- (e) Represented that their coupons offered in connection with their said deals or merchandising plans possessed designated values or were valuable, through such statements as "\$1.00 Coupon for 6 Genuine Rogers Spoons and a Regular \$1.25 Value Bottle," etc., and "Windsor fruit and salad bowl and \$1.00 silverware coupon," facts being said coupons did not have a \$1.00 value and were not redeemable in said silverware unless accompanied by 20 three-cent stamps;

With result that members of the purchasing public, in accordance with general public understanding of custom of marking or stamping actual retail price or value on various commodities as indication of quality of product thus marked, were led, erroneously and mistakenly, to believe that actual value

Complaint

26 F. T. C.

and selling price of said products were prices stamped or marked thereon, and of thereby placing in hands of others means of deceiving and defrauding purchasing public and of misleading substantial portion of such public into erroneous belief that aforesaid statements and representations were true, and into purchase of substantial quantities of their said products by reason of such erroneous belief, and with effect of unfairly diverting trade to them from competitor manufacturers and distributors who do not misrepresent the price at which their goods are sold or otherwise publish untrue claims for their products; to the substantial injury of competition in commerce among the various States and in the District of Columbia: *Held*, That such methods, acts, and practices were to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Mr. D. C. Daniel 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 George Foster, Inc., a corporation, and George Foster, individually and as an officer of George Foster, Inc., 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. Respondent George Foster, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at 225 East Fourth Street, St. Paul, Minn. Respondent George Foster is an individual and is the president of, and the principal stockholder in, the respondent George Foster, Inc., and formulates, controls, and directs its policies and practices. Respondent George Foster has his offices at the same address as that of the respondent George Foster, Inc. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and have been for more than 1 year last past, engaged in the manufacture of food flavors, food products, cosmetics, and toilet supplies, and in the sale and distribution of said products and of other articles of merchandise. Respondents cause their said products when sold to be transported from the principal place of business of the respondent George Foster, Inc., in the State of Minnesota, to retail dealers and the purchasing public at their respective points of location in the various States of the United States and in the Dis-

trict of Columbia. There is now and has been for more than 1 year last past a course of trade and commerce by said respondents in such products between and among the various States of the United States and in the District of Columbia. Respondents are now, and for more than 1 year last past have been, engaged in substantial competition with other corporations and individuals and with partnerships engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as referred to in paragraph 1 hereof, respondents advertise and have advertised in magazines of interstate circulation, and distribute and have distributed circulars and other advertising literature through the United States mails to retail dealers and prospective retail dealers and to the consuming public announcing their various "deals." The retail dealers to whom respondents sell their said products in turn offer for sale and sell the same to the general purchasing public. Respondents' said advertising matter contains and has contained false and misleading statements and representations of which the following are examples but are not all inclusive:

\$1.00 Coupon for 6 Genuine Rogers Spoons And a Regular \$1.25 Value Bottle of Pure-Strong-Famous Vanilla Flavor.

— — With every deal that you buy we give you an additional big selling 50¢ retail item FREE.

A gorgeous and costly Windsor fruit and salad bowl and \$1.00 silverware coupon FREE.

Also included with this shipment, large deluxe \$2.00 sample case with 6 Rogers teaspoons for carrying and displaying the complete deal ABSOLUTELY FREE.

The labels attached to said bottle of vanilla and to the jar of said "additional big selling 50¢ retail item," which, in fact, is respondents' "Blue Spruce Medicated Balm," are price marked \$1.25 and 50¢ respectively.

PAR. 3. In truth and in fact, the said vanilla flavoring did not, and does not, contain ingredients of a "pure" vanilla flavoring, but was and is a cheap imitation vanilla flavoring compound which did not and does not have a "regular \$1.25 value"; said coupons did not and do not have a \$1.00 value, nor were they redeemable in said silverware unless accompanied by 20 three-cent stamps; "Blue Spruce Medicated Balm" was not and is not an additional big selling 50¢ retail item," but on the contrary, did not and does not have an established retail sales value; the retail prices set forth hereinabove for said vanilla and "Blue Spruce Medicated Balm" are fictitious and greatly in excess of the normal retail values of said products and

the prices at which said products are ordinarily sold or ever intended to be sold to the ultimate consumers thereof; no merchandise is given away "free" by said respondents, but the cost thereof is included in the specified price to be paid by the purchaser of the said "deal" or "deals" of which said merchandise is a part.

PAR. 4. For many years a substantial portion of the consuming public has had and has expressed a marked preference for flavoring extracts, food products, cosmetics, and similar commodities which are composed of superior ingredients produced by manufacturers who sell at prices in excess of the general and usual range of prices for similar products or for products made with inferior ingredients. The said manufacturers, following the custom herein detailed, have marked and stamped the suggested retail prices on said products to indicate the superior quality and character of the product and its higher value.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities and has been led to, and does, place its confidence in the price markings so stamped on commodities and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of the respondent's representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondents' products are the prices stamped or marked thereon, when, in fact, many of the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to. Thus respondents, by distributing said advertising literature containing the said false and misleading statements and representations to said retail dealers, have placed and are placing in the hands of others the means of deceiving and defrauding the purchasing public.

PAR. 5. The use by respondents of the false and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not misrepresent the price at which their products are sold, or otherwise publish claims for their products which are untrue. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors and as a result thereof, substantial injury is being,

and 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.

PAR. 6. The aforesaid methods, acts, and practices of respondents are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 3, 1938, issued, and thereafter served its complaint in this proceeding upon the respondents, George Foster, Inc., a corporation, and George Foster, individually and as an officer of George Foster, Inc., 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, respondents filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent George Foster, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at 225 East Fourth Street, St. Paul, Minn. Respondent George Foster is an individual and is the president of, and the principal stockholder in, the respondent George Foster, Inc., and formulates, controls, and directs its policies and practices. Respondent George Foster has his offices at the same address as that of the respondent George Foster Inc. . Said respondents act together and in cooperation with each other in doing the acts and things hereinafter found. Respondents are now, and have been for more than 1 year last past, engaged in the manufacture of food flavors, food products, cosmetics, and toilet supplies, and in the sale and distribution of said

products and of other articles of merchandise. Respondents cause their said products when sold to be transported from the principal place of business of the respondent George Foster, Inc., in the State of Minnesota, to retail dealers and the purchasing public at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondents in such products between and among the various States of the United States and in the District of Columbia. Respondents are now, and for more than 1 year last past have been, engaged in substantial competition with other corporations and individuals and with partnerships engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents advertise and have advertised in magazines of interstate circulation, and distribute and have distributed circulars and other advertising literature through the United States mails to retail dealers and prospective retail dealers and to the consuming public announcing their various "deals." The retail dealers to whom respondents sell their said products in turn offer for sale and sell the same to the general purchasing public. Respondents' said advertising matter contains and has contained false and misleading statements and representations, of which the following are examples but are not all inclusive:

\$1.00 Coupon for 6 Genuine Rogers Spoons and a Regular \$1.25 Value Bottle of Pure-Strong-Famous Vanilla Flavor.

— With every deal that you buy we give you an additional big selling 50¢ retail item FREE.

A gorgeous and costly Windsor fruit and salad bowl and \$1.00 silverware coupon FREE.

Also included with this shipment, large deluxe \$2.00 sample case with 6 Rogers teaspoons for carrying and displaying the complete deal ABSOLUTELY FREE.

The labels attached to said bottle of vanilla and to the jar of said "additional big selling 50¢ retail item," which, in fact, is respondents' "Blue Spruce Medicated Balm," are price-marked \$1.25 and 50 cents, respectively.

PAR. 3. In truth and in fact, the said vanilla flavoring did not, and does not, contain ingredients of a "pure" vanilla flavoring, but was and is a cheap imitation vanilla flavoring compound which did not and does not have a "regular \$1.25 value"; said coupons did not and do not have a \$1 value, nor were or are they redeemable in said

silverware unless accompanied by twenty 3-cent stamps; "Blue Spruce Medicated Balm" was not and is not an "additional big selling 50¢ retail item," but on the contrary, did not and does not have an established retail sales value; the retail prices set forth hereinabove for said vanilla and "Blue Spruce Medicated Balm" are fictitious and greatly in excess of the normal retail values of said products and the prices at which said products are ordinarily sold or ever intended to be sold to the ultimate consumers thereof; no merchandise is given away "free" by said respondents, but the cost thereof is included in the specified price to be paid by the purchaser of the said "deal" or "deals" of which said merchandise is a part.

PAR. 4. For many years a substantial portion of the consuming public has had and has expressed a marked preference for flavoring extracts, food products, cosmetics, and similar commodities which are composed of superior ingredients produced by manufacturers who sell at prices in excess of the general and usual range of prices for similar products or for products made with inferior ingredients. The said manufacturers, following the custom herein detailed, have marked and stamped the suggested retail prices on said products to indicate the superior quality and character of the product and its higher value.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities and has been led to, and does, place its confidence in the price markings so stamped on commodities and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of the respondents' representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondents' products are the prices stamped or marked thereon, when, in fact, many of the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to. Thus respondents, by distributing said advertising literature containing the said false and misleading statements and representations to said retail dealers, have placed and are placing in the hands of others the means of deceiving and defrauding the purchasing public.

PAR. 5. The use by respondents of such false and misleading statements and representations, as hereinabove found, has had, and now has, the capacity and tendency to mislead and deceive, and has misled, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true

Order

26 F. T. C.

and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondents, as described in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not misrepresent the price at which their products are sold, or otherwise publish claims for their products which are untrue. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors and as a result thereof, substantial injury is being, and 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.

CONCLUSION

The aforesaid methods, acts, and practices of respondents George Foster, Inc., a corporation, and George Foster, individually and as an officer of George Foster, Inc., are to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 the respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act,

It is ordered, That the respondent George Foster, Inc., a corporation, and its officers, and respondent George Foster, individually, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of food flavors, food products, cosmetics, toilet supplies, and any other articles of merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, in any manner:

1. As the customary or regular retail prices for such products, prices which are fictitious and greatly in excess of the regular or customary prices at which said products are sold or offered for sale at retail;

2. That flavorings made from chemical compounds as substitutes for the juice of fruits, nuts, beans or berries, are pure flavorings;

1027

Order

3. That any of their products have established sales records, when such is not the fact;

4. That any of the articles of merchandise offered for sale and sold by them will be given free of cost when the cost thereof is included in and is a part of the sale price of articles of merchandise which are sold in a group;

5. That their coupons possess designated values or are valuable, when such is not the fact.

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

Complaint

26 F. T. C.

IN THE MATTER OF

ROBERT MORRIS, TRADING AS D. P. 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 3131. Complaint, May 15, 1937—Decision, Apr. 9, 1938

Where an individual engaged in sale and distribution of fountain pens and pencils, in commerce between and among the various States and in the District of Columbia—

Described such pens in newspaper advertisements as possessing retail values and prices many times in excess of the actual price at which said individual sold his merchandise to ultimate purchasers, and sold many of articles dealt in with retail prices stamped and printed on labels attached or on containers thereof, which were many times in excess of the actual selling price to consuming public and many times in excess of their true and actual value, through such advertising as offering, for 59 cents, for two-day period only and for "special discount coupon", as pretended, alleged "\$5.00 Value Vacuum 'Morris' Fountain Pens," etc., and, for 29 cents, "\$2.00 Pencils to Match Above Pens";

Facts being such indicated retail prices, which appeared on items of merchandise or on containers thereof, were not intended to be true retail price or true retail value of merchandise thus price-marked, but to be far in excess of price to be charged and actually charged in sale of said articles to consumers purchasing in usual course of trade, and far in excess of true value of such articles, true retail value of which was 59 cents and 29 cents, respectively, and not \$5 and \$2, respectively, as advertised;

With effect of misleading a substantial part of consuming public by inducing them to believe that said items were superior products made by manufacturer to sell at retail at a price closely approximating that stamped thereon, and that said pens had retail values closely approximating their purported retail value and price of \$5, and had a value substantially in excess of their aforesaid actual value of about 59 cents; and with result that such false and misleading statements and representations constituted inducements for a substantial number of purchasers to buy products thus offered, sold, and distributed, and unfairly diverted to said individual substantial volume of trade from competitors, among whom there are many who manufacture ordinary fountain pens and others who make pens of superior quality and truthfully represent selling price or value to consuming public, and with tendency and capacity so to divert:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. S. Brogdyne Teu, II 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 Commis-

Complaint

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Robert Morris, doing business under the trade name and style of "D. P. Pen Company," hereinafter referred to 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 would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Robert Morris is an individual who is now and has been for all times mentioned herein doing business under the trade name and style of D. P. Pen Company, city of Bordentown, State of New Jersey. Respondent is now and has been for more than 1 year last past engaged in the business of selling fountain pens in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said fountain pens, when sold, to be transported from his principal office and place of business in the State of New Jersey, to the purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said fountain pens sold by respondent 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 and with partnerships, firms, and corporations likewise engaged in the business of selling fountain pens 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, has caused and still causes to be inserted in newspapers having a general interstate circulation, advertisements purporting to be descriptive of the merchandise offered for sale and sold by him. The articles offered for sale and sold by the respondent are described in said advertisements as possessing retail values and prices many times in excess of the actual price at which the respondent sells said merchandise to purchasers. Many of said articles have retail prices stamped and printed on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public. The retail prices so stamped or printed as aforesaid are many times in excess of the actual selling price of the said articles to the consuming public, and are many times in

Complaint

26 F. T. C.

excess of their true and actual value. The retail prices so stamped or printed, as aforesaid, are false and fictitious, and in no sense represent either the true value or the true selling price of the article so price-marked.

Among the said items advertised as aforesaid, are the following:

9:30 a. m. to
8 p. m. only

FRI.-SAT., Sept. 11th & 12th

9:30 a. m. to
8 p. m. only

59¢

SPECIAL DISCOUNT COUPON

59¢

THIS CERTIFICATE AND 59¢ ENTITLES THE BEARER TO ONE OF OUR GENUINE INDESTRUCTIBLE \$5.00 VALUE VACUUM "Morris" FOUNTAIN PENS. Visible Ink Supply. YOU SEE the ink! A LIFETIME GUARANTEE WITH EACH PEN.

GET READY FOR SCHOOL OPENING

(cut of pen)

Visible Ink

ONLY "MORRIS" HAS ALL NINE FEATURES REQUIRED IN A FINE WRITING PEN TODAY

- | | |
|--|---|
| 1—"Morris" lifetime guarantee | 6—New flat clip—will not tear pockets. |
| 2—Greater Ink Capacity | 7—All fittings chromium—will not tarnish. |
| 3—One stroke vacuum fill | 8—Latest laminated and pearl colors. |
| 4—Smoother writing point | 9—Full barrel visible ink supply—not mere last drop visibility. |
| 5—Featherweight perfectly balanced pen | |

\$2 PENCILS TO MATCH ABOVE PENS, 29¢

Price after
this sale
\$5.00

ADD
11¢ Extra
for Mail
Orders

LIMIT
3 sets to
Each
Certificate

The retail prices as indicated above, appearing on the items of merchandise or on the containers thereof, were not intended to be the true retail price or the true retail value of the merchandise so price-marked. The retail prices appearing on the articles, or the containers thereof, were intended by the respondent to be far in excess of the prices to be charged, and actually charged, in the sale of said articles

Complaint

to the consumer purchasing in the usual course of trade, and far in excess of the true value of the various articles so price-marked.

PAR. 5. Over a period of many years, manufacturers in many trades have formed a custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or article to the ultimate consumer purchaser; this suggested retail price so stamped or marked is intended to represent the cost of the manufacture of the article, plus a reasonable profit for the manufacturer and retailer, and consequently, to represent the approximate retail sales value of the article. The range of suggested retail prices is intended by the manufacturer to be indicative of the quality and character of the materials used and the process by which the article is manufactured. The public generally understands the custom herein detailed, and has been led to and does place its confidence in the price-marking so stamped and the representations thereby made as to the quality of the product, to the extent that it purchases a substantial volume of merchandise in reliance on the aforesaid custom.

PAR. 6. For many years a substantial part of the consuming public have expressed, have had and still have, a marked preference for fountain pens manufactured of superior materials and produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual run of prices for fountain pens manufactured with the usual and customary materials, or with inferior materials. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said fountain pens or on price labels or tags attached thereto as indicative of the superior quality and character of the fountain pens and their resulting higher values.

Whenever a genuinely superior product so stamped or marked with the retail price thereof is offered for sale at a substantially reduced price, the general purchasing public has been led to believe and does believe, that in purchasing said products it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has had and still has a preference for purchasing genuinely superior products sold at less than the customary retail price thereof over ordinary products sold for the regular price, which is lower than the normal retail price of the superior product in the customary course of trade.

In truth and in fact, the merchandise sold by respondent and described herein is not a superior product, normally sold in the usual channels of trade for the retail price stamped on price labels or

tags attached thereto, or on the container thereof, or for any price closely approaching the said stamped retail price.

PAR. 7. There are among the competitors of respondent many who manufacture ordinary fountain pens, and others who manufacture fountain pens of superior quality, and who truthfully represent said pens and their selling price or value to the consuming public.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the items of merchandise as herein described, with false and fictitious price-marks stamped on price labels or tags attached thereto, is to mislead a substantial part of the consuming public in the several States of the United States, by inducing them to mistakenly and erroneously believe that:

The items of merchandise sold and distributed by respondents were and are superior products, manufactured with the intent and purpose on the part of the manufacturer that said products should be sold at retail at a price closely approximating the price stamped thereon.

PAR. 9. The foregoing false and misleading statements and representations on the part of the respondent are inducements for a substantial number of purchasers to buy the products so offered for sale, sold, and distributed by respondent, and have the tendency and capacity to, and do, unfairly divert to the respondent a substantial volume of trade from competitors of respondent engaged in similar businesses, with the result that substantial quantities of respondent's products are sold to the consuming public on account of said beliefs induced by the false and misleading representations, and as a consequence thereof, a substantial injury has been done to competitors in commerce among the several States of the United States, and in the District of Columbia.

PAR. 10. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 15, 1937, issued and on May 18, 1937, served its complaint in this proceeding upon respondent Robert Morris, an individual trading as the D. P. Pen Company. The

1036

Findings

respondent failed to file answer. After due notice to respondent, hearings were held on behalf of the Commission at which hearings evidence was adduced in support of the charges in the Commission's complaint. Respondent has failed to adduce evidence in opposition to the charges made in the Commission's complaint. All attempts to serve upon respondent a copy of the Commission's brief failed. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence and the Commission's brief, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Robert Morris is an individual doing business under the trade name and style of D. P. Pen Company, with his principal office and place of business in the city of Bordentown, State of New Jersey. He has been for more than 1 year last past engaged in the business of selling fountain pens in commerce between and among the various States of the United States and in the District of Columbia. When the fountain pens are sold the respondent transports, or causes them to be transported, from his principal office and place of business in the city of Bordentown, State of New Jersey, to purchasers thereof located in the various States of the United States other than New Jersey and in the District of Columbia. There is now, and has been for some time past, a course of trade in the fountain pens sold by respondent in commerce 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 respondent is now, and has been, in competition with other individuals and with partnerships, firms, and corporations likewise engaged in the business of selling fountain pens in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the conduct of his business, has caused, and still causes advertisements purporting to be descriptive of the merchandise offered for sale and sold by him to be inserted in newspapers having a general interstate circulation. Said pens are described in such advertisements as possessing retail values and prices many times in excess of the actual price at which the respondent sells his merchandise to ultimate purchasers. Many of the articles have retail prices stamped and printed on the labels attached thereto or on the containers in which they are offered for sale and sold to the public. The retail prices so stamped or printed are many times in excess of the actual

Findings

26 F. T. C.

selling price to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed are false and fictitious and in no sense represent the true value or the true selling price of the article so price-marked. Among the items advertised as herein set out are the following:

9:30 a. m. to
8 p. m. only

9:30 a. m. to
8 p. m. only

FRI.-SAT., Sept. 11th & 12th

59¢

SPECIAL DISCOUNT COUPON

59¢

THIS CERTIFICATE AND 59¢ ENTITLES THE BEARER TO ONE OF OUR GENUINE INDESTRUCTIBLE \$5.00 VALUE VACUUM "MORRIS" FOUNTAIN PENS. Visible Ink Supply. YOU SEE the ink! A LIFETIME GUARANTEE WITH EACH PEN.

GET READY FOR SCHOOL OPENING

(cut of pen)

Visible Ink.

ONLY "MORRIS" HAS ALL NINE FEATURES REQUIRED IN A FINE WRITING PEN TODAY

- | | |
|--|---|
| 1—"Morris" lifetime guarantee | 6—New flat clip—will not tear pockets. |
| 2—Greater Ink Capacity | 7—All fittings chromium—will not tarnish. |
| 3—One stroke vacuum fill | 8—Latest laminated and pearl colors. |
| 4—Smoother writing point | 9—Full barrel visible ink supply—not mere last drop visibility. |
| 5—Featherweight perfectly balanced pen | |

\$2 PENCILS TO MATCH ABOVE PENS, 29¢

Price after
this sale
\$5.00

ADD
11¢ extra
for Mail
Orders

LIMIT
3 sets to
Each
Certificate

The retail prices as indicated above, appearing on the items of merchandise or on the containers thereof were not intended to be the true retail price or the true retail value of the merchandise so price-marked. The retail prices appearing on the articles or the containers were intended by the respondent to be far in excess of the prices to be charged and actually charged in the sale of the articles

1038

Order

to the consumer purchasing in the usual course of trade, and far in excess of the true value of the articles so price-marked. In fact the actual and true retail value of the pens and pencils sold and distributed by respondent is 59¢ and 29¢, respectively, and not \$5.00 and \$2.00, respectively, as advertised by respondent.

PAR. 4. There are among the competitors of respondent many who manufacture ordinary fountain pens and others who manufacture fountain pens of superior quality who truthfully represent the selling price or value to the consuming public.

PAR. 5. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the articles of merchandise as herein described, with false and fictitious price-marks stamped on price labels or tags attached thereto, or on the containers thereof, is to mislead a substantial part of the consuming public in the several States of the United States by inducing them to mistakenly and erroneously believe that the items of merchandise sold and distributed by respondent were and are superior products, manufactured with the intent and purpose on the part of the manufacturer that said products should be sold at retail at a price closely approximating the price stamped thereon; that said pens have retail values closely approximating the purported retail value and price of \$5.00; and that said pens have a value substantially in excess of their true and actual value of approximately 59¢.

PAR. 6. The foregoing false and misleading statements and representations on the part of the respondent are inducements for a substantial number of purchasers to buy the products so offered for sale, sold, and distributed by respondent, and have the tendency and capacity to and do unfairly divert to the respondent a substantial volume of trade from competitors of respondent also engaged in selling and distributing fountain pens in commerce among and between the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent Robert Morris, an individual trading as D. P. Pen Company, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the Commission's brief and the record herein (the respondent having filed no answer to the

Order

26 F. T. C.

proceeding herein and having elected not to introduce any evidence on his behalf or file a brief herein), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Robert Morris, an individual trading as D. P. Pen Company, or doing business under any other trade name, his agents, representatives, servants, and employees in connection with the offering for sale, sale, and distribution of fountain pens or pencils in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing, through fictitious prices marked or stamped on or affixed to said products, or on the containers thereof, or through any other means or device or in any manner, that said prices so marked, stamped, or affixed are the regular or customary retail prices for such products;

2. Representing, as the customary or regular retail prices for such products, prices which are in fact fictitious and greatly in excess of the prices at which said products are regularly and customarily offered for sale and sold at retail.

It is further ordered, That respondent shall, within 60 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 is complying with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

DONALD REICHGOTT, INDIVIDUALLY AND TRADING AS
AMERICAN NOVELTY COMPANY

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

Docket 3260. Complaint, Nov. 4, 1937—Decision, Apr. 9, 1938

Where an individual engaged in sale and distribution of various articles of merchandise, including electric razors and pen and pencil sets, to wholesale dealers and jobbers—

Furnished push cards for distribution of such merchandise to ultimate consumer, wholly by lot or chance, under plan or scheme by which number selected by chance, as disclosed under disc, determined amount paid by player, and in which correct chance selection from card's list of feminine names of name corresponding to that disclosed under master seal after sale of chances, resulted in player's receiving, without further cost, article of merchandise specified on card, and in which those selecting certain indicated numbers also similarly received articles of merchandise, which various articles were of a greater value than cost of single push or punch, and normal retail prices of which were much in excess of such cost;

With result of supplying to and placing in hands of others, through practice of forwarding said cards, descriptive literature and instructions to members of public, means of conducting lotteries, in accordance with such plan, in sale of his merchandise, purchased, sold, and distributed by many, attracted by said method and element of chance involved in sale or distribution thereof, in preference to that offered and sold by competitors, who do not use same or equivalent method, and with effect of unfairly diverting to him trade and custom from said competitors, including many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom, and do not use same or equivalent methods, and with tendency and capacity so to divert:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* 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 Donald Reichgott, individually and trading as American Novelty 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 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 doing business under the trade name and style of American Novelty Company, with his principal office and place of business located at 1841 Broadway, New York, N. Y. He is now, and for several months last past has been, engaged in the sale and distribution of various articles of merchandise, including, among others, electric razors and pen and pencil sets, to wholesale dealers and jobbers and to members of the public located at points in the various States of the United States. Respondent causes and has caused such merchandise when sold to be transported from his principal place of business in New York City to purchasers thereof in the State of New York and in other States of the United States at their respective places of location. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said merchandise, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise is distributed to the ultimate consumers wholly by lot or chance. Said devices and plans of merchandising consist of push cards, the use of which, in connection with the sale and delivery to the purchasing public, was and is substantially as follows: The push cards have a number of partially perforated disks, and when a push is made and the disk is separated from the card a number is disclosed. There are as many separate numbers as there are disks on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The number on said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The price or terms of sale vary, depending upon the number obtained. Numbers from 1 to 10, inclusive, are free, and numbers from 11 to 35 pay in cents the amount of the number, and numbers over 35 pay 35 cents. Directly above each disk there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser

of a disk opposite the corresponding girl's name. The card also has a master seal which, when removed exposes a girl's name corresponding to one of those appearing under said disks. The purchaser who pushed the disk corresponding to the name under the master seal is entitled to a specified article of merchandise, and the purchasers selecting certain indicated numbers also receive a specified article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all sales have been made and the master seal removed. Purchasers who select names other than the name appearing under the master seal, or numbers other than those indicated as winning a prize, do not receive anything for their money other than the privilege of pushing a disk from said card. The said articles of merchandise are of a greater value than the cost of a single push from said card. The fact as to whether a customer receives his chance free or pays for the same, and the fact as to whether a purchaser receives a specified article of merchandise, is thus determined wholly by lot or chance. Other push cards furnished and distributed by respondent for use in the sale and distribution of his merchandise involve the same principle, but vary in detail.

PAR. 3. Respondent forwards his push cards, together with various descriptive literature and with instructions as to how to operate said push cards or explaining what to do in order to obtain said articles of merchandise, to various members of the public, and a substantial amount of such merchandise is sold or distributed by such persons by means of said push cards and in accordance with the instructions furnished by respondent. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, 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, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale or distribution thereof in the manner above described, and are thereby induced to buy and sell or distribute respondent's merchandise in preference to merchandise

Findings

26 F. T. C.

offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of 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, 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 the Federal Trade Commission Act, the Federal Trade Commission, on November 4, 1937, issued, and thereafter served, its complaint in this proceeding upon Donald Reichgott, individually and trading as American Novelty 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 and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and substitute therefor a substitute answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission, on the said complaint and the substitute answer, and the Commission, having duly considered the matter and now 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 doing business under the trade name and style of American Novelty Company, with his principal office and place of business located at 1841 Broadway, New York, N. Y. He is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise, including, among others, electric razors and pen and pencil sets, to wholesale dealers and jobbers and to members of the public located at points in the various States of the United States. Respondent

Findings

causes and has caused such merchandise when sold to be transported from his principal place of business in New York City to purchasers thereof in the State of New York and in various other States of the United States at their respective places of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing the said merchandise, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise is distributed to the ultimate consumers wholly by lot or chance. Said devices and plans of merchandising consist of push cards, the use of which, in connection with the sale and delivery to the purchasing public, was and is substantially as follows: The push cards have a number of partially perforated discs, and when a push is made and the disc is separated from the card a number is disclosed. There are as many separate numbers as there are discs on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said discs are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The price or terms of sale vary, depending upon the number obtained. Numbers from 1 to 10, inclusive, are free, and numbers from 11 to 35 pay in cents the amount of the number, and numbers over 35 pay 35 cents. Directly above each disc there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser of a disc opposite the corresponding girl's name. The card also has a master seal, which, when removed, exposes a girl's name corresponding to one of those appearing above said discs. The purchaser who pushes the disc corresponding to the name under the master seal is entitled to a specified article of merchandise, and the purchasers selecting certain indicated numbers also receive a specified article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all sales have been made and the master seal removed. Purchasers who select names other than the name appearing under the master seal, or numbers other than those indicated as winning a prize, do not receive anything for their money other than the privilege of pushing a disc from said

Conclusion

26 F. T. C.

card. The said articles of merchandise are of a greater value than the cost of a single push from said card. The fact as to whether a customer receives his chance free or pays for the same, and the fact as to whether a purchaser receives a specified article of merchandise, are thus determined wholly by lot or chance. Other push cards furnished and distributed by respondent for use in the sale and distribution of his merchandise involve the same principle, but vary in detail.

PAR. 3. Respondent forwards his push cards, together with various descriptive literature and with instructions as to how to operate said push cards or explaining what to do in order to obtain said articles of merchandise, to various members of the public, and a substantial amount of such merchandise is sold or distributed by such persons by means of said push cards and in accordance with the instructions furnished by respondent. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above found, 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, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale or distribution thereof in the manner above described, and are thereby induced to buy and sell or distribute respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent, Donald Reichgott, individually and trading as American Novelty Company, 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 the Federal Trade Commission Act.

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Donald Reichgott, individually and trading as American Novelty Company, or trading under any other name, his agents, representatives and employees, in connection with the offering for sale, sale and distribution of electric razors, pen and pencil sets, and other articles of merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punch boards or other lottery devices for the purpose of enabling such persons to dispose of or sell such or similar products by the use thereof;

2. Mailing, shipping, or transporting to his agents or to distributors or to the members of the public, push or pull cards, punch boards or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or similar products by the use thereof;

3. Selling or otherwise disposing of such or similar products by the use of push or pull cards, punchboards or other lottery devices.

It is further ordered, That, within 60 days from the date of the service of this order upon said respondent, he shall 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

26 F. T. C.

IN THE MATTER OF
JOE LIEBOWITZ

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

Docket 3282. Complaint, Dec. 13, 1937—Decision, Apr. 9, 1938

Where an individual engaged in the manufacture of ladies' undergarments and other allied products, and in sale and distribution of such undergarments to retail dealers and other customers in the various States—

Attached and sewed to certain of his aforesaid products a label bearing language "100% Pure Silk," notwithstanding fact that said products, thus represented, designated and referred to, were not composed of pure silk, product of the cocoon of the silk worm, and were not "pure silk," as long understood by retail trade and consuming public generally, i. e., products composed entirely of silk with no weighting material whatsoever, and, as such, regarded by trade and public generally as superior to and much preferred over silk products containing weighting, but were predominantly, or to a substantial degree, composed of non-silk weighting material;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said products were pure silk, and to cause them to purchase same as result of such belief, and with effect of unfairly diverting trade to him from competitors who do not resort to such methods and practices and do not misrepresent material from which their respective products are made:

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

Mr. George W. Williams 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 Joe Liebowitz, 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, Joe Liebowitz, is an individual with his office and principal place of business located at 1007 Chandler Avenue, Linden, N. J., and is engaged, and for many years last past has been engaged in the business of manufacturing ladies' undergar-

Complaint

ments and other allied products. He sells, and has sold and distributed, such undergarments to retail dealers and other customers located in the various States of the United States. He causes said products, when sold, to be shipped from his place of business in Linden, N. J., to the purchasers thereof located in the various States of the United States other than the State of New Jersey. There is now, and has been at all times mentioned herein, a course of trade and commerce by said respondent in said products so sold by him between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been in substantial competition with other persons and with corporations, firms, and partnerships engaged in the sale and distribution of ladies' undergarments and other allied products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and selling certain of his products, attaches, affixes, and sews to said products a label bearing the following language, "100% Pure Silk."

The representations made on such label by the respondent as in this paragraph set out serve as representations to retail dealers and to members of the purchasing public that such products so advertised and offered for sale were pure silk. The representations thus made were false and misleading in that said products so represented, designated and referred to were not composed of pure silk, the product of the cocoon of the silk worm, but were predominantly or to a substantial degree composed of weighting material which is not silk.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the retail dealers and consuming public generally a definite and specific meaning, to wit: the product of the cocoon of the silkworm. The expression "pure silk" for many years last past has had in the mind of the retail dealers and consuming public generally a definite and specific meaning to wit: a fabric composed entirely of pure silk and without any weighting whatsoever. Silk products for many years have held and still hold a great public esteem and confidence for their preeminent qualities. Products composed entirely of pure silk and without weighting are regarded by the trade and the public generally as superior to and much to be preferred over silk products that contain weighting.

PAR. 4. There are among the competitors of respondent mentioned in paragraph 1 hereof individuals, corporations, partnerships, and firms engaged in the manufacture and sale of ladies' undergar-

Findings

26 F. T. C.

ments and other allied products who do not misrepresent the nature of the material from which such garments are made.

PAR. 5. The use by respondent of the representations set forth herein have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such products are, and were, pure silk, and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. The use by respondent of the representations aforesaid has unfairly diverted, and does unfairly divert, trade to the respondent from its said competitors, and thereby substantial injury is being, and has been done, by respondent to competition in commerce among and between the various States of the United States.

PAR. 6. The above alleged acts and practices of respondent, as hereinabove alleged, are all to the prejudice of the public and respondent's said 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 13th day of December 1937, issued and subsequently served its complaint in this proceeding upon respondent Joe Liebowitz, an individual, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 10, 1938, the respondent filed his answer, in which answer he admitted all the material allegations of the complaint to be true and stated that he waived hearing on the charges set forth in the said complaint and that, without further evidence or other intervening procedure, the Commission might issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter this proceeding came on for final hearing before the Commission on said complaint and answer, and the Commission having duly considered the matter and now 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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joe Liebowitz, is an individual, with his office and place of business located at 1007 Chandler Avenue, Linden, N. J. He is, and for many years last past has been, engaged in the business of manufacturing ladies' undergarments and other allied products. He sells and distributes such undergarments to retail dealers and other customers located in the various States of the United States. He causes said products, when sold, to be shipped from his place of business in Linden, N. J., to the purchasers thereof located in the various States of the United States other than the State of New Jersey. There is now, and has been at all times mentioned herein, a course of trade and commerce by said respondent in said products so sold by him between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been, in competition with other persons, corporations, firms, and partnerships likewise engaged in the sale and distribution of ladies' undergarments and other allied products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling certain of his aforesaid products, attaches, affixes and sews to said products a label bearing the following language: "100% Pure Silk."

The aforesaid statement made on such labels by the respondent serves as a representation to retail dealers and to members of the purchasing public that such products so labeled, advertised, and offered for sale are "pure silk." The representation thus made is false and misleading, in that, said products so represented, designated and referred to are not composed of pure silk, the product of the cocoon of the silkworm, but are predominantly or to a substantial degree composed of weighting material which is not silk.

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the retail dealers and consuming public generally, a definite and specific meaning, to wit: A product of the cocoon of the silkworm. The expression "pure silk" for many years last past has had in the minds of the retail dealers and consuming public generally, a definite and specific meaning, to wit: A fabric composed entirely of silk without any weighting material whatsoever. Silk products for many years have held, and still hold, a great public esteem and confidence for their preeminent qualities. Products composed entirely of pure silk and without weighting are regarded by the trade and the public generally as superior to and much preferred over silk products that contain weighting.

Order

26 F. T. C.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1, individuals, corporations, partnerships, and firms engaged in the manufacture and sale of ladies' undergarments and other allied products, who do not misrepresent the nature of the material from which such garments are made.

PAR. 5. The use by respondent of the statements and representations set forth herein has had, and has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such products are "pure silk," and causes them to purchase said products as a result of such erroneous belief. The use by respondent of the representations aforesaid has unfairly diverted, and does unfairly divert, trade to respondent from those of his said competitors who do not resort to such methods and practices and who do not misrepresent the material from which their respective products are made.

CONCLUSION

The aforesaid acts and practices of the respondent, Joe Liebowitz, an individual, are to the prejudice and injury of the public and of respondent's said 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 and the answer filed herein on March 10, 1938, by respondent admitting all the material allegations to be true and waiving the taking of further evidence and other intervening procedure, and the Commission having made its findings as to the facts and 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, Joe Liebowitz, an individual, his agents, servants, and employees, in connection with the offering for sale, sale and distribution of ladies' undergarments and other allied products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the terms "pure silk" and "100% pure silk," or any other terms or words of similar import and meaning, to describe or designate any fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm:

1052

Order

2. Using the word "silk," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm, unless, in the case of a fabric or product composed in part of silk and in part of rayon or material or materials other than silk, there is used in immediate connection and conjunction therewith, and in letters of at least equal size and conspicuousness, a word or words accurately describing the fiber, material or materials from which said fabric or product was actually made; and provided, that the fiber or material content of such fabric or product be accurately disclosed by designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent.

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

IN THE MATTER OF

THOMAS R. MOSS, INDIVIDUALLY, AND TRADING AS
OKEENA NOVELTY COMPANY AND MANUFACTURERS
SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3332. Complaint, Feb. 10, 1938—Decision, Apr. 9, 1938*

Where an individual engaged in offer and sale of radios, bridge sets, mixers, dishes, grill sets, and other articles of merchandise to purchasers in the various States and in the District of Columbia—

- (a) Sold and distributed his products through merchandising plan involving distribution of advertising literature, push cards, order blanks, advertisements illustrating his products, and circulars explaining his said plan, under which particular article or articles included, as set forth on cards' explanatory legends, were awarded to player successful in selecting by chance, from feminine names displayed thereon, particular name revealed, after sale of chances, by removal of master seal, at cost to said player of particular chance, as determined by number punched, and card's number price scale, thereon displayed, and under which operators of said cards were compensated by receipt of such merchandise;

With result that purchasing public was thus induced to buy pushes in hope of selecting prize-winning name or number and thereby obtaining article of merchandise of greater value than amount paid, as likewise determined by lot or chance, and many persons, attracted by his aforesaid method and element of chance involved in sale of his said merchandise, as above set forth, were induced to buy and sell same in preference to that offered and sold by said competitors, who do not use same or equivalent methods, and with further result of supplying means of conducting lotteries in sale of his merchandise in furnishing such push cards to operators thereof, in violation of long standing public policy of common law and criminal statutes and that of United States Government, and with effect of unfairly diverting to said individual trade and custom from competitors, including many who are unwilling to adopt and use such or any method involving game or sale of chance to win by chance, or other method contrary to public policy, and refrain therefrom, and with capacity and tendency so to divert; and

- (b) Included word "Manufacturers" in one of trade names employed by him in carrying on a part of his said business, and also used said word and word "Factories" in such phrases as "Associated Factories" and "Manufacturers and Distributors," in conjunction with or separate from trade name, to describe his said business, and in soliciting sales of his said products, and displayed said trade name and aforesaid words and phrases on letterheads, envelopes, catalogs, circulars, and other matter distributed to customers and prospective customers;

Notwithstanding fact that he did not, either independently or in association with others, make products sold by him, and had never done so, and did not own or operate or directly control or have any interest in, any mill or factory wherein such products were made, but filled orders received by him from factories and mills which he neither owned, operated, nor controlled;

1058

Complaint

With effect of misleading and deceiving purchasers by causing them to believe that he actually owned and operated, independently or in association with others, or directly controlled, factories or mills in which products sold by him were made, or that he himself made same, and, on account of such belief, of causing purchasers, certain of whom prefer to buy directly from manufacturer by reason of advantages, including price, uniformity and reliability believed to inhere in such purchasing, to buy said products, and of unfairly diverting trade to him from individuals and concerns who actually manufacture their products, or who sell and distribute same between and among various States and in District of Columbia and do not falsely represent themselves to be manufacturers or mill operators:

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

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. C. P. Moss, of Dyersburg, Tenn., 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 Thomas R. Moss, individually, and trading as Okeena Novelty Company, and Manufacturers Sales 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 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 an individual trading under the names and styles of Okeena Novelty Company and Manufacturers Sales Company, with his principal office and place of business located on West Court Street, in the city of Dyersburg, Tenn. Respondent is now, and for some time last past has been, engaged in offering for sale and selling radios, bridge sets, mixers, dishes, grill sets, and other articles of merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. He causes and has caused said merchandise when sold to be shipped or transported from his place of business in the State of Tennessee into and through other States of the United States and the District of Columbia to purchasers thereof at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and with part-

Complaint

26 F. T. C.

nerships and corporations engaged in the sale and distribution of like and similar articles of merchandise, in commerce 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 soliciting the sale of and in selling and distributing his merchandise, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent causes and has caused to be distributed to the purchasing public, through the United States mails in interstate commerce, certain advertising literature, including, among other things, push cards, order blanks, advertisements containing illustrations of his merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names, with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated discs, on each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push cards have a master seal, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push card bears printed legends or instructions, one of which is as follows:

SELECT YOUR FAVORITE
GIRL'S NAME
AND RECEIVE A
MOSS DELUXE CARD TABLE
WITH "BUILT-IN" COMBINATION
ASHTRAYS and COASTERS

1¢ to 25¢
NO HIGHER

Nos. From 1 to 25
PAY WHAT YOU DRAW
Nos. Over 25
Pay Only 25¢
Write Players Name on Back
Opposite Name Selected

1058

Complaint

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope that they may select a prize-winning name or number and thus obtain an article of merchandise of a greater value than the amount paid. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is also determined wholly by lot or chance. Respondent furnishes his representatives with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

INSTRUCTIONS: There are 45 mixed numbers in this card, printed from 1 upwards. Numbers under 25 pay what number calls for. All numbers over 25 pay only 25¢. When card is completely sold, open large seal at top, and person selecting name under seal, and person selling this card, each receive a Moss DeLuxe Card Table, with 2 Bilt-In Combination Ash Trays and Coasters. Tables with 4 Bilt-In Combination Ash Trays and Coasters can be had, if desired, for 50¢ extra per table.

TOTAL \$10.00

Respondent furnishes or sells various push cards for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise or lottery scheme. Said push cards are similar and vary in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise 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 his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than

Complaint

26 F. T. C.

the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, 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, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof, in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, as hereinabove described, respondent has included within one of his trade names, Manufacturers Sales Company, under which to carry on a part of his business, the word "Manufacturers." Respondent has also used and is using the word "factories" within the phrase "associated factories," and the word "manufacturers" within the phrase "manufacturers and distributors," in conjunction with, or separate from, his said trade names, with which to describe his said business. Respondent has used continuously for some time last past, and is now using, said trade name containing the word "Manufacturers," and has likewise used the words "associated factories" and "manufacturers and distributors," in soliciting the sale of and selling his products in commerce as hereinabove described. Respondent has caused his said trade name, Manufacturers Sales Company, and the words "associated factories" and "manufacturers and distributors" to appear on his letterheads, envelopes, catalogs, circulars, and other matter. All of said printed matter has been, and is, distributed in and among the various States to customers and prospective customers of the respondent. Such statements and designations serve as representations that respondent owns, operates, or controls the factory or mill wherein the products which he sells are manufactured, and that the respondent is associated with others in the manufacture of his said products.

In truth and in fact, said respondent does not, either independently or in association with others, make or manufacture the products sold by him, nor has he ever made or manufactured said products, either independently or in association with others. Respondent does not own or operate, or directly and absolutely control, or have any interest in any mill or factory wherein the products sold by him

1058

Complaint

are made or manufactured. Respondent has, at all times referred to herein, filled, and now fills, orders received by him with products made or manufactured in factories or mills which he does not own, operate, or control.

PAR. 6. There is a preference on the part of certain purchasers or prospective purchasers located in different States of the United States and in the District of Columbia for buying said products and like or similar products directly from the manufacturer or mill producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said products that a saving of the middleman's profit may be obtained, that a more uniform line of goods may be purchased, and that an advantage is obtained by purchasing goods directly from a manufacturer or a mill operator. Said purchasers or prospective purchasers also believe that more reliance can be placed on a manufacturer or mill operator with regard to carrying out of contracts than can be placed upon one not a manufacturer or mill operator, and that dealing with a manufacturer or mill operator is preferable and more advantageous to the purchaser than is dealing with one not a manufacturer or mill operator. The use by the respondent of the words "manufacturers," "manufacturers and distributors," and "associated factories," as described hereinabove, has a tendency and capacity to mislead and deceive purchasers by causing them to believe that the respondent, independently or in association with others, actually owns and operates, or directly and absolutely controls, the factories or mills in which the products sold by respondent are made or manufactured, or that respondent himself makes or manufactures his products, and to purchase respondent's products on account of such beliefs. The aforesaid representations by respondent have a tendency and capacity to, and do, unfairly divert trade to respondent from individuals, partnerships and corporations who are actually manufacturing products like or similar to the products of respondent, or who sell and distribute like or similar products, both of which classes sell their respective products in commerce among and between the various States of the United States and in the District of Columbia, and who do not represent themselves to be manufacturers or mill operators when they are not such in fact.

PAR. 7. The aforesaid acts and practices of 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 10, 1938, issued, and thereafter served, its complaint in this proceeding upon the respondent Thomas R. Moss, individually, and trading as Okeena Novelty Company and Manufacturers' Sales 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 and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and substitute therefor a substitute answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is an individual trading under the names and styles of Okeena Novelty Company and Manufacturers' Sales Company, with his principal office and place of business located on West Court Street, in the city of Dyersburg, Tenn. Respondent is now, and for some time last past has been, engaged in offering for sale and selling radios, bridge sets, mixers, dishes, grill sets, and other articles of merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. He causes and has caused said merchandise when sold to be shipped or transported from his place of business in the State of Tennessee into and through the various States of the United States and the District of Columbia to purchasers thereof at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

Findings

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise through interstate commerce, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent causes and has caused to be distributed to the purchasing public, through the United States mails in interstate commerce, certain advertising literature, including, among other things, push cards, order blanks, advertisements containing illustrations of his merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names, with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated discs, on each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push cards have a master seal, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push cards bear printed legends or instructions, one of which is as follows:

SELECT YOUR FAVORITE
GIRL'S NAME
AND RECEIVE A
MOSS DELUXE CARD TABLE
WITH "BILT-IN" COMBINATION
ASHTRAYS and COASTERS

1¢ to 25¢
NO HIGHER

Nos. From 1 to 25
PAY WHAT YOU DRAW
Nos. Over 25
Pay Only 25¢
Write Players Name on Back
Opposite Name Selected

Findings

26 F. T. C.

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope that they may select a prize-winning name or number and thus obtain an article of merchandise of a greater value than the amount paid. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is also determined wholly by lot or chance. Respondent furnishes his representatives with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

INSTRUCTIONS: There are 45 mixed numbers in this card, printed from 1 upwards. Numbers under 25 pay what numbers call for. All numbers over 25 pay only 25¢. When card is completely sold, open large seal at top, and person selecting name under seal, and person selling this card, each receive a Moss DeLuxe Card Table, with 2 Bilt-In Combination Ash Trays and Coasters. Tables with 4 Bilt-In Combination Ash Trays and Coasters can be had, if desired, for 50¢ extra per table.

TOTAL \$10.00

Respondent furnishes or sells various push cards for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise or lottery scheme. Said push cards are similar, varying only in detail, and the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's merchandise 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 his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the

normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above found, 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, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof, in the manner above found, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, as hereinabove described, respondent has included within one of his trade names, Manufacturers' Sales Company, under which to carry on a part of his business, the word "Manufacturers'." Respondent has also used and is using the word "factories" within the phrase "associated factories," and the word "manufacturers" within the phrase "manufacturers and distributors," in conjunction with, or separate from, his said trade names, with which to describe his said business. Respondent has used continuously for some time last past, and is now using, said trade name containing the word "Manufacturers'," and has likewise used, and is now using, the words "associated factories" and "manufacturers and distributors," in soliciting the sale of and selling his products in commerce as hereinabove found. Respondent has caused his said trade name, Manufacturers' Sales Company, and the words "associated factories" and "manufacturers and distributors" to appear on his letterheads, envelopes, catalogs, circulars, and other matter. All of said printed matter has been, and is, distributed in and among the various States of the United States to customers and prospective customers of the respondent. Such statements and designations serve as representations that respondent owns, operates, or controls the factory or mill wherein the products which he sells are manufactured, and that the respondent is associated with others in the manufacture of his said products.

In truth and in fact, said respondent does not, either independently or in association with others, make or manufacture the products sold by him, nor has he ever made or manufactured said products, either independently or in association with others. Respondent does not own or operate, or directly and absolutely control, or have any inter-

Conclusion

26 F. T. C.

est in any mill or factory wherein the products sold by him are made or manufactured. Respondent has, at all times found herein, filled, and now fills, orders received by him with products made or manufactured in factories or mills which he does not own, operate, or control.

PAR. 6. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia for buying said products and like or similar products directly from the manufacturer or mill producing the same. There is an impression and belief existing among certain of said purchasers and prospective purchasers of said products that a saving of the middleman's profit may be obtained, that a more uniform line of goods may be purchased, and that an advantage is obtained by purchasing goods directly from a manufacturer or mill operator. Said purchasers and prospective purchasers also believe that more reliance can be placed on a manufacturer or mill operator with regard to carrying out of contracts than can be placed upon one not a manufacturer or mill operator, and that dealing with a manufacturer or mill operator is preferable and more advantageous to the purchaser than is dealing with one not a manufacturer or mill operator. The use by the respondent of the words "manufacturers," "manufacturers and distributors," and "associated factories," as found hereinabove, has a tendency and capacity to mislead and deceive, and has misled and deceived, purchasers by causing them to believe that the respondent, independently or in association with others, actually owns and operates, or directly and absolutely controls, the factories or mills in which the products sold by respondent are made or manufactured, or that respondent himself makes or manufactures his products, and to purchase respondent's products on account of such beliefs. The aforesaid representations by respondent have a tendency and capacity to, and do, unfairly divert trade to respondent from individuals, partnerships, and corporations who are actually manufacturing products like or similar to the products of respondent, or who sell and distribute like or similar products, both of which classes sell their respective products in commerce between and among the various States of the United States and in the District of Columbia, and who do not represent themselves to be manufacturers or mill operators when they are not such in fact.

CONCLUSION

The aforesaid acts and practices of respondent, Thomas R. Moss, individually and trading as Okeena Novelty Company, and Manufacturers' Sales Company, are all to the injury and prejudice of the

1058

Order

public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Thomas R. Moss, individually, and trading as Okeena Novelty Company and Manufacturers' Sales Company, or trading under any other name, his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of radios, bridge sets, mixers, dishes, grill sets, or any other article of merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, push or pull cards, punchboards or other lottery devices, for the purpose of enabling such persons to dispose of or sell such or similar products by the use thereof;
2. Mailing, shipping or transporting to his agents or to distributors or to members of the public, push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or similar products by the use thereof;
3. Selling or otherwise disposing of such or similar products by the use of push or pull cards, punchboards or other lottery devices;
4. Representing, through the use of the word "manufacturers" in his trade names or in any other printed matter, or through the use of the word "factories" or through the use of any words or terms of similar import and meaning, or through any other means or devices or in any manner, that said respondent is the manufacturer of the products sold by him, unless and until respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured by him.

It is further ordered, That, within 60 days from the date of the service of this order upon said respondent, he 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.

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

COMPLAINT, MODIFIED FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
 VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹

Docket 2303. Complaint, Feb. 20, 1935—Decision, Apr. 13, 1938¹

Where an individual engaged in offer and sale of certain rubber, sanitary, and waterproof specialties, including infant bibs, baby pants, and crib sheets; in describing same in certain advertisements, pamphlets, and booklets—

- (a) Represented that they were antiseptic and actually killed bacteria and germs, facts being that while they did have antiseptic properties and combatted growth of germs and bacteria which came in direct contact with them under normal conditions of use, and had power to inhibit to a large extent growth and activity of bacteria brought in such contact, and to kill many such germs and bacteria, they did not actually thus kill all germs and bacteria;
- (b) Represented that said products were antiaacid and neutralized perspiration and other body wastes and completely deodorized all odors, facts being that while they had property of neutralizing, to a substantial extent, odor of such wastes when brought in close contact with them under normal conditions of use and had deodorant properties in combatting obnoxious odors developing from fermentation or putrification of such wastes when brought in such contact as aforesaid, they were not completely effective so as to deodorize and neutralize all such odors;

With tendency and capacity to mislead and deceive purchasing public into erroneous and mistaken beliefs that said products actually killed all germs and bacteria and were completely effective in neutralizing odors as aforesaid, and would completely deodorize all such odors, irrespective of their origin or character, and into purchase of substantial quantities of said products in and on account of such erroneous and mistaken beliefs, induced as aforesaid, and with result of furnishing to dealers in its said products means and instrumentality whereby they might misrepresent true nature and character of same and extent to which they were effective in use, and increase sale thereof to purchasing public thereby, and with tendency and capacity unfairly to divert trade to him from competitors who do not make use of any such misleading statements and representations with respect to nature and effectiveness in use of their respective competitive products:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

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

¹ See, for original findings and order, 22 F. T. C. 24.

107c

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 Climax Rubber 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 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*²

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business as such, with its 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 its 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 1 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 its 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.

² Count II of the complaint, charging the methods, acts, and practices alleged as in violation of the standards of fair competition of the Sanitary and Waterproof Specialties Manufacturing Industry, and particularly in violation of Article VI, Sec. 3, of the Code for such industry, and as in violation of Sec. 3 of the National Industrial Recovery Act, and as unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act, as amended, was dismissed in the original order to cease and desist under Count I, in 22 F. T. C. 24, at 32, and is accordingly not republished at this time.

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

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on February 20, 1935, issued and served its complaint in this proceeding upon respondent Jacob Stein, an

1070

Findings

individual trading under the name and style of Climax Rubber Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs and oral argument of counsel in support of the complaint and in opposition thereto, and the Commission, on January 16, 1936, having duly considered the matter, found that the proceeding was in the interest of the public and made its findings as to the facts and its conclusion therefrom and issued its order to cease and desist. Subsequently, the Commission reopened the case and testimony and other evidence in support of the complaint were introduced by Edward W. Thomerson, attorney for the Commission, and in opposition thereto by Nathaniel P. Phillips, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and a stipulation as to the facts, in addition to all the testimony and other evidence already received in the entire proceeding, was entered into subject to the approval of the Commission and said testimony and other evidence were duly recorded and filed in the office of the Commission and said stipulation was approved by the Commission. Thereafter, the proceeding regularly came on for final consideration by the Commission on said complaint, answer thereto, all the testimony and other evidence and the aforesaid stipulation as to the facts, and the Commission having duly considered the record finds that the proceeding is in the interest of the public and makes this its modified findings as to the facts and conclusion drawn therefrom:

MODIFIED 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 rubber 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 1 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. In the course and conduct of his business as described herein, and for the purpose of promoting and inducing the sale and distribution of his aforesaid various rubber sanitary and waterproof specialties, the respondent has made use of certain advertising pamphlets and booklets wherein are used statements and representations purporting to be descriptive of said products and their effectiveness in use. In said pamphlets and booklets the respondent has stated and represented that said products are antiseptic and antiacid, and that they actually kill bacteria and germs, neutralize perspiration and other body wastes, and completely deodorize all odors. Such statements not only serve as representations that said products are antiseptic and antiacid and will kill bacteria and germs; that said products neutralize perspiration and other body wastes; and that said products completely deodorize all odors; but they have the capacity and tendency to confuse members of the purchasing public as to the extent to which said products are in fact antiseptic in character, the extent to which said products kill bacteria and germs, and the extent to which said products neutralize the odor from perspiration and other body wastes. Such purchasers may, on account of said tendency and capacity, be led to erroneously and mistakenly believe that said products actually kill all germs and bacteria and are completely effective in neutralizing the odors of perspiration, urine, and other body wastes, and will completely deodorize all odors irrespective of origin or character.

PAR. 3. In truth and in fact, said products do have antiseptic properties and do combat the growth of germs and bacteria which come in direct contact with said products under normal conditions of use. Said products do have the power to inhibit, to a large extent, the growth and activity of bacteria brought in direct contact with them and to kill many such germs and bacteria. Said products do not, however, actually kill all germs and bacteria coming in direct contact with them. Said products are not completely effective so as to deodorize or neutralize all odors of perspiration, urine, or other body wastes. Said products do have the property of neutralizing to a substantial extent the odor of perspiration, urine, and other body wastes when such wastes are brought in close contact with said products under normal conditions of use. While such

1070

Order

products do not completely deodorize all odors, they do have deodorant properties in that said products combat the obnoxious odors developing from the fermentation or putrefication of urine, perspiration, and other wastes when said wastes are brought in close contact with said products under normal conditions of use.

PAR. 4. The use by the respondent of said misleading statements and representations as to the nature, character, and effectiveness of said products in use, has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken beliefs that said products actually kill all germs and bacteria and are completely effective in neutralizing the odors of perspiration, urine, and other body wastes, and will completely deodorize all odors irrespective of origin or character, and into the purchase of substantial quantities of respondent's products in and on account of said erroneous and mistaken beliefs induced as aforesaid. Said misleading statements and representations made by the respondent also furnish to dealers in respondent's products a means and instrumentality whereby said dealers may misrepresent the true nature and character of said products and the extent to which they are effective in use and to increase the sales of respondent's products to the purchasing public on account of such misrepresentations. The aforesaid representations so made by the respondent have the tendency and capacity to unfairly divert trade to the respondent and to dealers in his products from respondent's competitors who do not make use of any misleading statements and representations with respect to the nature and effectiveness in use of their respective competitive products.

CONCLUSION

The aforesaid acts and practices of the respondent, Jacob Stein, trading as Climax Rubber Company, 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."

MODIFIED ORDER TO CEASE AND DESIST

Whereas, The Commission heard this proceeding upon the record and upon briefs and oral argument of counsel for the Commission and for the respondent and on January 16, 1936 made its findings as to the facts and its conclusion that said respondent had 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," and issued its order to cease and desist based thereon; and

Whereas, The Commission on February 12, 1936 reopened the case for the purpose of receiving further testimony and other evidence; and

Whereas, Such testimony and other evidence were introduced by Nathaniel Phillips, attorney for the respondent, and Edward W. Thomerson, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it; and

Whereas, A stipulation as to certain facts was entered into between W. T. Kelley, Chief Counsel of the Commission, and the respondent, which stipulation has been approved by the Commission; and

Whereas, The Commission has on this date modified its said findings as to the facts and has duly considered the entire record herein and being now fully advised in the premises;

It is ordered, That the order to cease and desist issued on January 16, 1936 be, and the same is hereby, modified so as to read as follows:

It is ordered, That the respondent, Jacob Stein, trading and doing business under the name of Climax Rubber Company, or under any other name, his agents, representatives, servants, and employees, in connection with the sale and distribution of rubber sanitary and waterproof specialties, including infant's bibs, baby pants, and crib sheets, in interstate commerce or in the District of Columbia, do cease and desist from representing, directly or indirectly:

1. That said products actually kill all germs and bacteria, provided, however, that the respondent is not hereby prohibited from representing that said products have antiseptic properties and combat the growth of germs and bacteria;

2. That said products are completely effective in neutralizing all odors of perspiration, urine, and other body wastes, or that said products completely deodorize all odors, provided the respondent is not hereby prohibited from representing that said products combat obnoxious odors developing from the fermentation or putrefaction of urine, perspiration, or other body wastes.

It is further ordered, That the respondent shall, within 30 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 this order.

Syllabus

IN THE MATTER OF
MARCELLE CANDIES, INC.

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

Docket 2913. Complaint, Aug. 29, 1936—Decision, Apr. 13, 1938

Where a corporation engaged in manufacture and sale of "draw" or "deal" candy, including assortments composed of number of half-pound trays, number of one-pound boxes; and punchboard or push card with punches or pushes divided into sections, through use of which boards or cards said candy was sold to ultimate consumer-purchaser under scheme by which, in accordance with explanatory statement thereon displayed, purchaser of one of 5-cent chances received, or failed to receive, one of said trays, in accordance with chance selection, or failure to select, one of various designated, concealed numbers, as announced on card or board, and received, by punching or pushing last number in section, one of pound boxes, and thus secured, by lot or chance and in event of correct selection for tray, merchandise exceeding 5-cent cost of chance—

Sold said assortments and cards or boards to wholesale dealers and jobbers, so assembled and packed that they could be and were used and displayed by numerous retail dealer buyers, for distribution to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge that majority of said assortments, as thus packaged by it, were to be, and could be, thus resold to public by lot or chance by said retail dealers, in violation of public policy; in competition with other manufacturers and dealers, many of whom regard such sale and distribution as morally bad and as encouraging gambling and injurious to candy industry as merchandising chance or lottery instead of candy, and some of whom refuse, for reasons set forth, to sell candy so packed that it can be resold to public by lot or chance;

With result of supplying to and placing in the hands of retail merchants means of violating the laws of the several States in sale and distribution of such "draw" or "deal" assortments of candy, preferentially purchased by consumers because of gambling feature connected with sale thereof, and which, in providing means or opportunity of obtaining a prize or becoming a winner by lot or chance, teach and encourage gambling among children, comprising substantial number of purchasers and consumers of such candy, and sale of which in same market with "straight" goods is followed by marked decrease in sales of latter, due to gambling or lottery feature connected with other, and with effect of unfairly diverting from such refusing competitors, thereby put to competitive disadvantage, trade to it and others using similar methods, by reason of retailers' purchase of such candy from it and such others as more salable under "draw" or "deal" method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

Complaint

26 F. T. C.

Mr. Ernest P. Rogers of Hirsch & Smith, of Atlanta, Ga., 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 Marcelle Candies, 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. The respondent, Marcelle Candies, Inc., is a corporation organized and operating under the laws of the State of Georgia, with its principal office and place of business located at 223 Peachtree Street, N. W. Atlanta, Ga. The respondent is now and for more than 1 year last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers, located at points in the various States of the United States, and causes and has caused its said products, when so sold, to be transported from its principal place of business in the city of Atlanta, Ga., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candies between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candies and in the sale and distribution thereof in commerce 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 sells and has sold to wholesale and retail dealers assortments of candies so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

(a) Several of the said assortments manufactured and distributed by respondents are composed of a number of half-pound trays of candy and a number of 1 pound boxes of candy, together with a device commonly called a "punchboard" or "push card" with the punches or pushes divided into sections. The said boxes of candy are distributed to the consuming public by means of said "punch-

1077

Complaint

board" or "push card" in the following manner: Sales are 5 cents each, and when a punch or push is made from said "punchboard" or "push card" a number is disclosed. The numbers begin with one and continue to the number of punches or pushes there are on the board or card but the numbers are not arranged in numerical sequence. The board or card bears a statement or statements informing purchasers and prospective purchasers as to which numbers receive the half-pound trays of candy and a statement or statements informing purchasers and prospective purchasers that the last punch or push in each section receives one of the one pound boxes of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the half-pound trays of candy or by punching or pushing the last number in a section receives nothing for his money other than the privilege of punching or pushing a number from the board or card. The trays and boxes of candy are worth more than 5 cents each and a purchaser who obtains one of the numbers calling for a tray or box of candy receives the same for the price of 5 cents. The numbers on said board or card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular punch or push separated from the board or card. The trays and boxes of candy in said assortment are thus distributed to purchasers of punches or pushes from said board or card wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale 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 product in accordance with the sales plan hereinabove set forth, and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a tray or box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dan-

gerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy 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, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy 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 candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; 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 an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity 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 an equivalent method.

PAR. 6. 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 or any other method that is contrary to public policy.

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.

Findings

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 29, 1936, issued and served its complaint upon the respondent, Marcelle Candies, 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 other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski and Henry C. Lank, attorneys for the Commission, and in opposition thereto by Ernest P. Rogers, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it. The said testimony and other evidence 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 answer thereto, testimony and other evidence, and brief in support of the complaint (brief in opposition thereto having been waived, and oral argument not having been requested), and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Marcelle Candies, Inc., is a corporation, organized and operating under the laws of the State of Georgia, with its principal office and place of business located at 223 Peachtree Street, N. W., Atlanta, Ga. Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located in the States in the southeastern part of the United States, including, among others, the States of Florida, Georgia, Alabama, North Carolina, South Carolina, Mississippi, Tennessee, and Louisiana. It causes its said products, when so sold, to be transported from its principal place of business in Atlanta, Ga., to purchasers thereof in the State of Georgia and in such other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In so carrying on said business, respondent is, and has been, engaged 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. The gross annual volume of respondent's business is approximately \$200,000.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent has sold in commerce between and among the States of the United States to wholesale dealers and jobbers, various 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. The said assortments were described by an official of the respondent called as a witness at the instance of the Commission, and are described in the circular distributed by the respondent which was offered as an exhibit. One of said assortments is hereinafter described for the purpose of showing the method used by the respondent, but this description does not include all of the assortments, nor the details of the several sales plans which respondent has been using in the distribution of candy by lot or chance:

(a) One of said assortments manufactured and distributed by respondent is composed of a number of half pound trays of candy, and a number of 1 pound boxes of candy, together with a device commonly called a "punchboard" or a "push card," with the punches or pushes divided into sections. The said trays and packages of candy are distributed to the consuming public by means of said "punchboard" or "push card" in the following manner:

Sales are 5 cents each and when a punch or push is made from said punchboard or push card, a number is disclosed. The numbers begin at 1 and continue to the number of punches or pushes there are on the board or card, but the numbers are not arranged in numerical sequence. The board or card bears a statement or statements informing purchasers and prospective purchasers as to which numbers receive the half pound trays of candy and a statement or statements informing purchasers and prospective purchasers that the last punch or push in each section receives two of the 1-pound boxes of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the half pound trays of candy or by punching or pushing the last number in a section receives nothing for his money other than the privilege of punching or pushing a number from the board or card. The trays and boxes of candy are worth more than 5 cents each and a purchaser who obtains one of the numbers calling for a tray or box of candy receives the same for the price of 5 cents. The numbers on said board or card are effectively concealed from

Findings

purchasers and prospective purchasers until a selection has been made, and the particular punch or push separated from the board or card. The trays of candy in said assortment are thus distributed to purchasers of punches or pushes from said board or card wholly by lot or chance.

PAR. 3. Candy assortments involving the lot or chance feature as described in paragraph 2 above are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without any lot or chance feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" merchandise. These terms will be used hereafter in these findings to distinguish the various types of assortments.

PAR. 4. The wholesale dealers and jobbers, to whom respondent sells its assortments, resell the same to retail dealers. Numerous retail dealers purchase the said assortments from wholesale dealers and jobbers, and the majority of such retail dealers display said assortments for sale to the public as packed by the respondent, and the candy contained in the majority of said assortments is sold and distributed to the consuming public by means of said push cards or punch boards in the manner hereinbefore described.

PAR. 5. All sales made by respondent to wholesale dealers and jobbers are absolute sales and respondent retains no control over said assortments after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such manner that they are, and have been, used, and may be used, by retail dealers for distribution to the purchasing public by lot or chance without alteration or rearrangement.

In the sale and distribution to wholesale dealers and jobbers of the assortments of candy hereinbefore described, respondent had knowledge that the majority of said assortments were to be resold to the purchasing public by retail dealers by lot or chance, and it packaged such candy in the way and manner described so that, without alteration, addition thereto, or rearrangement thereof, it would be, and could be, resold to the public by lot or chance by said retail dealers. Such packing and distribution is contrary to public policy.

Consumers prefer to purchase the "draw" or "deal" candy, because of the gambling feature connected with its sale. The sale and distribution of "draw" or "deal" 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.

Order

26 F. T. C.

PAR. 6. There are, in the United States, many manufacturers of candy who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" merchandise in interstate commerce in competition with the "draw" or "deal" candy, and manufacturers of "straight" merchandise have noted a marked decrease in the sales of their products whenever or wherever the "draw" or "deal" assortments have appeared in their market. This decrease in the sale of "straight" merchandise is due to the gambling or lottery feature connected with the "draw" or "deal" candy.

PAR. 7. The sale and distribution of candy by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery, gaming device, or gift enterprise. Many competitors regard such sale and distribution as morally bad and as encouraging gambling, and as injurious to the candy industry, because it results in the merchandising of a chance or lottery, instead of candy. The sale and distribution of candy, by respondent in assortments as hereinabove found supplies to and places in the hands of retail merchants a means of violating the laws of the several States. Because of these reasons, some competitors of respondent refuse to sell candy so packed that it can be resold to the public by lot or chance. These competitors are thereby put to a competitive disadvantage. The retailers, finding that they can dispose of more candy by the "draw" or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is unfairly diverted from said competitors to respondent and others using similar methods.

CONCLUSION

The aforesaid acts and practices of the respondent Marcelle Candies, Inc., are 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and brief of counsel for the Commission (brief for the re-

1077

Order

spondent having been waived and oral argument not having been requested); 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 Marcelle Candies, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce, and in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing 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 dealers packages or assortments of candy which are used, or which 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 and distribution of the candy contained in said assortments to the public;

3. Supplying to or placing in the hands of dealers assortments of candy, together with a device commonly called a punchboard or push card for use, or which may be used, in distributing or selling the said candy to the public at retail;

4. Furnishing to dealers a device commonly called a punchboard or push card, together with packages or assortments of candy, or separately, which punchboard or push card is to be used, or may be used, in distributing or selling said candy to the public.

It is further ordered, That the respondent Marcelle Candies, Inc., shall, within 30 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 and is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
DERMAY PERFUMERS, INC.

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

Docket 3257. Complaint, Nov. 1, 1937—Decision, Apr. 13, 1938

Where a corporation engaged in sale and distribution of perfumery and toilet articles to purchasing and consuming public—

- (a) Represented through word "Factory" on letterheads and invoices, and otherwise, that it was manufacturer of products offered and sold by it, facts being it neither made nor compounded same, nor owned, operated nor controlled a factory or mill so doing; with capacity and tendency to mislead and deceive purchasers into erroneous belief that in buying such products from it they were dealing with manufacturer thereof and thereby saving middleman's profit and obtaining other advantages;
- (b) Displayed word "Paris" on its merchandise and on labels of packaged products, and represented through matter appearing on letterheads and labels of products and in other ways, that they originated in, or were imported from, France, facts being it had no Paris place of business and its said products were made and compounded in United States; with tendency and capacity to mislead and deceive purchasers into erroneous belief that in buying same they were purchasing perfumes or toilet articles made or compounded in France and imported therefrom, such as long in great demand among trade and consuming public and considered superior by many to the domestic product, and purchased in preference thereto;
- (c) Represented that its said products had values greatly in excess of their actual retail selling prices and values, through price-marks placed thereon which were greatly in excess of such actual prices and values and in no sense represented either, with result that members of purchasing public were led into erroneous and mistaken belief that said products' actual values and selling prices were stamped or marked thereon, in accordance with custom of marking or stamping such actual retail price or value on commodities, as understood and relied on by public as indication of quality to extent of purchasing merchandise in substantial volume in dependence thereon;

With effect of misleading substantial portion of purchasing public into erroneous belief that such representations were true and into purchase of substantial quantities of said products as result thereof, and of unfairly diverting trade to it from competitor manufacturers and distributors who do not misrepresent status or nature of their respective businesses, the origin of their products, or prices at which same are sold, or otherwise publish untrue claims therefor, in their advertisement, sale and distribution of competitive products in commerce among the various States and in the District of Columbia:

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

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Elliot B. Paley, of New York City, for respondent.

1086

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 Dermay Perfumers, 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, Dermay Perfumers, Inc., is a corporation, organized in 1924 and doing business under the laws of the State of New York. Its principal office and place of business is at 347 Fifth Avenue, New York, N. Y.

Respondent is now, and since the date of incorporation has been, engaged in the sale and distribution of perfumery and toilet articles to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and since the date of its incorporation has caused, its products, when sold, to be shipped from its place of business in New York, N. Y., to the purchasers thereof located in the various other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade in perfumery and toilet articles, by the respondent, between and among the various States of the United States and in the District of Columbia.

Respondent is, and since 1924 has been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumery and toilet articles in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. During the time respondent has been in business as described in paragraph 1 hereof, it has represented, and still represents, by means of certain printed matter appearing on its letterheads and invoices, and in various other ways, that it is the manufacturer of the products which it offers for sale and sells.

On its letterheads and invoices the following appears:

Dermay, Inc.,
PERFUMERS
General Offices and Factory
625 West 43rd Street
New York, N. Y.

Complaint

26 F. T. C.

In truth and in fact, the respondent does not manufacture or compound the products which it offers for sale and sells, nor does it own and operate, or directly and absolutely control a factory or mill wherein its said products are manufactured or compounded.

It is a common belief among the purchasing public that such merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price and that other advantages can be secured by so purchasing. The representations made by respondent, as alleged herein, have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the erroneous belief that when they purchase said products from respondent they are dealing with the manufacturer of said products and thereby are saving the middleman's profit and obtaining other advantages.

PAR. 3. In the course and conduct of its business, as aforesaid, the respondent has represented and still represents, by means of printed matter appearing on its letterheads, the labels attached to its products, and in other ways, that certain of its products originate in or are imported from France, and that it has a place of business in Paris, France. The word "Paris" appears on its letterheads and on the labels affixed to its packaged products.

In truth and in fact the respondent's products do not originate in and are not imported from France nor does it have a place of business in Paris, France. Its products are manufactured and compounded in the United States of America.

Perfumes and certain toilet articles of French origin have for many years enjoyed widespread popularity and goodwill and have been very much in demand among the trade and consuming public throughout the United States. Many persons believe that perfumes and certain toilet articles manufactured in France are superior in quality and in many other ways to perfumes and toilet articles manufactured and compounded in the United States and prefer to purchase perfumes and certain toilet articles of French origin in preference to perfumes and toilet articles manufactured or compounded in the United States. The aforesaid representations of the respondent have the tendency and capacity to mislead and deceive the purchasers into the erroneous belief that when they purchase respondent's products they are purchasing products which were, in fact, manufactured or compounded in France and imported into the United States.

PAR. 4. By price marks placed upon certain of its said products, respondent represents to customers and prospective customers that said products have values greatly in excess of the actual retail selling prices and in excess of the actual values thereof.

Complaint

The price marks placed upon said products, as aforesaid, are greatly in excess of the actual retail selling prices of said products and are in excess of the true and actual values thereof and in no sense represent either the true values or true selling prices of the products so marked but are greatly in excess of the prices at which the same are sold or intended to be sold in the usual course of trade.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities and has been led to, and does, place its confidence in the price markings so stamped on commodities and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of the respondent's representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondent's products are the prices stamped or marked thereon when, in fact, the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of perfumes and toilet articles who do not misrepresent the status or nature of their respective businesses, the origin of their products, or the price at which their products are sold, or otherwise publish claims for their products which are untrue. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors and as a result thereof, substantial injury is being, and has been, 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 aforesaid acts and practices of 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 1, 1937, issued, and on November 3, 1937, served its complaint in this proceeding upon respondent, Dermal Perfumers, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs having been waived and oral argument not having been requested, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dermal Perfumers, Inc., is a corporation, organized in 1924 and doing business under the laws of the State of New York. Its principal office and place of business are at 347 Fifth Avenue, New York, N. Y.

Respondent is now, and since the date of incorporation has been, engaged in the sale and distribution of perfumery and toilet articles to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and since the date of its incorporation has caused, its products, when sold, to be shipped from its place of business in New York, N. Y., to the purchasers thereof located in the various other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in perfumery and toilet articles, by the respondent, between and among the various States of the United States and in the District of Columbia.

Respondent is, and since 1924 has been, in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of perfumery and toilet articles in commerce between and among the various States of the United States and in the District of Columbia.

Findings

PAR. 2. During the time respondent has been in business as described in paragraph 1 hereof, it has represented, and still represents, by means of certain printed matter appearing on its letterheads and invoices, and in various other ways, that it is the manufacturer of the products which it offers for sale and sells.

On its letterheads and invoices the following appears:

Dermay, Inc.,
PERFUMERS
General Offices and Factory
625 West 43rd Street
New York, N. Y.

The respondent does not manufacture or compound the products which it offers for sale and sells, nor does it own and operate, or directly and absolutely control a factory or mill wherein its said products are manufactured or compounded.

It is a common belief among the purchasing public that such merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price and that other advantages can be secured by so purchasing. The representations made by respondent, as alleged herein, have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the erroneous belief that when they purchase said products from respondent they are dealing with the manufacturer of said products and thereby are saving the middleman's profit and obtaining other advantages.

PAR. 3. In the course and conduct of its business, as aforesaid, the respondent has represented and still represents, by means of printed matter appearing on its letterheads, the labels attached to its products, and in other ways, that certain of its products originate in or are imported from France, and that it has a place of business in Paris, France. The word "Paris" appears on its letterheads and on the labels affixed to its packaged products.

The respondent's products do not originate in and are not imported from France nor does it have a place of business in Paris, France. Its products are manufactured and compounded in the United States of America.

Perfumes and certain toilet articles of French origin have for many years enjoyed widespread popularity and goodwill and have been very much in demand among the trade and consuming public throughout the United States. Many persons believe that perfumes and certain toilet articles manufactured in France are superior in quality and in many other ways to perfumes and toilet articles manufactured and compounded in the United States and prefer to purchase perfumes and certain toilet articles of French origin in preference to perfumes and toilet articles manufactured or compounded

in the United States. The aforesaid representations of the respondent have the tendency and capacity to mislead and deceive the purchasers into the erroneous belief that when they purchase respondent's products they are purchasing products which were, in fact, manufactured or compounded in France and imported into the United States.

PAR. 4. By price marks placed upon certain of its said products, respondent represents to customers and prospective customers that said products have values greatly in excess of the actual retail selling prices and in excess of the actual values thereof.

The price marks placed upon said products, as aforesaid, are greatly in excess of the actual retail selling prices of said products and are in excess of the true and actual values thereof and in no sense represent either the true values or true selling prices of the products so marked but are greatly in excess of the prices at which the same are sold or intended to be sold in the usual course of trade.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities, and has been led to, and does, place its confidence in the price markings so stamped on commodities and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of the respondent's representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondent's products are the prices stamped or marked thereon when, in fact, the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of perfumes and toilet articles who do not misrepresent the status or nature of their respective businesses, the origin of their products, or the price at which their products are sold, or otherwise publish claims for their products which are untrue, who likewise advertise, sell and distribute perfumes and toilet articles in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being, unfairly diverted to respondent from such competitors.

1086

Order

CONCLUSION

The aforesaid acts and practices of respondent, Dermay Perfumers, Inc., a corporation, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Dermay Perfumers, Inc., a corporation, its agents, representatives and employees, in connection with the offering for sale, sale and distribution of perfumes and other toilet articles in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the word "Factory," or through the use of any word or term of similar import and meaning, or through any other means or device, or in any manner, that said respondent is the manufacturer of the products sold by it, unless and until it actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured by it;

2. Representing, through the use of the word "Paris," or through the use of any word or term, or through any other means or device, or in any manner, that it has a place of business in Paris, France, and that its perfumes and other toilet articles compounded, bottled and packaged in the United States are made or compounded in France, or in any other foreign country, or that they are imported products;

3. Representing, through the use of fictitious price marks, or through the use of any other means or device, or in any manner, that its perfumes and toilet articles have retail values or prices which are in excess of the prices at which said perfumes, and toilet

Order

26 F. T. C.

articles are actually and customarily offered for sale and sold to the ultimate purchaser.

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.

Syllabus

IN THE MATTER OF

ALFRED BOEHM, DOING BUSINESS AS LYNX KNITTING
COMPANY

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

Docket 3286. Complaint, Dec. 22, 1937—Decision, Apr. 13, 1938

Where an individual engaged in sale and distribution of hosiery through house-to-house canvassers, principally, in the various States and in the District of Columbia—

(a) Represented himself to be the manufacturer thereof, through inclusion of word "Knitting" in his trade name and display thereof on his letterheads, order blanks, and in advertising matter in various magazines and otherwise, facts being he did not make same, nor own and operate nor directly and absolutely control any mill and factory in which same was made, but purchased said products from various hosiery manufacturers;

With tendency and capacity to mislead and deceive purchasers thereof into false and erroneous belief that in buying from him they were dealing with manufacturer and thereby gaining an advantage in price by saving middleman's profit and in other ways; and

(b) Represented, in advertising for distributors in the "Agents Wanted" columns of various magazines of interstate circulation, and through form letters and otherwise, and to the purchasing public generally, that his said hosiery was proof against spots, splashes, and snagging, facts being it was neither spot, splash, nor snag proof;

(c) Represented, as aforesaid, that said hosiery was composed wholly of silk, facts being it was not composed wholly of silk, as long definitely and specifically understood by substantial number of purchasing public, as meaning product of cocoon of silkworm, employed for many years in manufacture of various articles of wearing apparel, considered, when thus made, of superior quality, and in great public demand, and commonly thus described and thus understood, as and when made wholly therefrom; and

(d) Represented, as aforesaid, that he furnished his distributors with free sample outfits, facts being he did not thus furnish such outfits to his canvassers, but such outfits were paid for by them in cash and by services rendered;

With effect of misleading retailers, distributors, and substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of substantial quantities of such hosiery because of said erroneous belief, and of unfairly diverting trade to him from competitor manufacturers and distributors of hosiery who do not misrepresent character or type of business in which engaged, quality, nature, and composition of their products, nor inducements offered to prospective distributors, in advertising, selling and distributing their said products among various States and in the District of Columbia:

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

Complaint

26 F. T. C.

Before *Mr. W. W. Sheppard*, trial examiner.
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 Alfred Boehm, an individual, doing business as Lynx Knitting 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 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, Alfred Boehm, is an individual doing business as Lynx Knitting Company. His office and place of business are at 5-7 White Street, New York, N. Y. He is now, and for several years last past has been, engaged in the sale and distribution of hosiery, principally through house-to-house canvassers, in the various States of the United States and in the District of Columbia.

When orders are received by respondent, his said products are shipped from his place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been for several years last past, a course of trade in commerce, in said hosiery, sold and distributed by respondent, between and among the various States of the United States and in the District of Columbia.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of hosiery in commerce 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, the respondent has represented and now represents himself to be the manufacturer of the hosiery he offers for sale and sells. Said representation is made by respondent through use of the word "Knitting" in his trade name which appears on his letterheads, order blanks, in advertising matter appearing in various magazines, and through other means.

In truth and in fact, the respondent does not manufacture the hosiery he offers for sale and sells, nor does he own and operate or

1095

Complaint

directly and absolutely control the mill or factory in which said hosiery is manufactured. Respondent purchases said hosiery from Golden Belt Manufacturing Company, Durham, N. C., Great American Knitting Mills, Bechtelsville, Pa., Newnan Hosiery Company, Newnan, Ga., Best Made Hosiery Company, Quakertown, Pa., and other hosiery manufacturers.

PAR. 3. It is the common belief among wholesalers, retailers, and the purchasing public, that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price, and that other advantages can be secured by dealing direct with the manufacturer. The representations made by respondent, as alleged in paragraph 2 hereof, have the tendency and capacity to deceive and mislead the purchasers of respondent's hosiery into the false and erroneous beliefs that when they purchase said hosiery from respondent they are dealing with the manufacturer of said hosiery and are thereby gaining an advantage in price by saving the middleman's profit and are gaining other advantages.

PAR. 4. Respondent's said hosiery is offered for sale and sold chiefly through house-to-house canvassers. As an inducement to persons to become his distributors and offer his said hose for sale, and to the purchasing public to buy said hosiery, the respondent has advertised and is now advertising in the "Agents Wanted" columns of various magazines having an interstate circulation, through form letters, and in various other ways, as follows:

**LYNX HOSE ONCE BOUGHT ALWAYS SOUGHT—RINGLESS—SPLASH
PROOF—ANTI-SNAG PROCESS.**

These unusual features create immediate interest, quick sales and satisfied customers. 14 years of square dealing with our customers and salespeople. Wonderful line of men's and women's hosiery. Large variety of styles and colors. Liberal commission. Prompt delivery. Free outfit with sample hose starts you off. Write us at once.

New "anti-snag" silk hose * * * They are also rain and splash-proof.
* * * Every woman will want those hose made by the anti-snag process.
The rain may splash on these hose but there will be no spots on them.

* * * You can get samples of Lynx guaranteed hose free of cost to
you * * *

None of our ladies' silk hose contain any rayon, celanese or any artificial silk of any kind.

By means of the foregoing statements, the respondent represents to distributors, prospective distributors, and the purchasing public generally that his said hosiery is proof against spots, splashes and snagging; that said hosiery is composed wholly of silk; and that he furnishes his distributors with free sample outfits. In truth and in fact, respondent's said hosiery is not spot, splash or snag proof; it is not composed wholly of silk, the product of the cocoon of the silk

worm, but is composed in part of a material or materials other than silk. Respondent does not in fact furnish free sample outfits to his canvassers but said outfits are paid for by the said canvassers in cash and by services rendered.

PAR. 5. The word "silk" has long had to the minds of a substantial number of the purchasing public, and still has, a very definite and specific meaning, i. e., the product of the cocoon of the silk worm. Said product is now, and for many years has been, employed in the manufacture of various articles of wearing apparel including hosiery. Wearing apparel manufactured from silk is regarded generally as apparel of a superior quality and is in great public demand. At all times mentioned herein, the term "silk" has been commonly used to describe articles of wearing apparel manufactured wholly from silk and as a result thereof the purchasing public has come to understand that the apparel so described is manufactured wholly from silk, the product of the cocoon of the silk worm.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and does mislead retailers, distributors, and a substantial portion of the purchasing public into the erroneous beliefs that such representations are true and into the purchase of substantial quantities of said hosiery because of such erroneous beliefs.

There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of hosiery who do not misrepresent the character or type of business in which they are engaged, the quality, nature, and composition of their products, nor the inducements offered to prospective distributors, who likewise advertise, sell and distribute hosiery in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being, unfairly diverted to respondent from said competitors. Thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 7. The above alleged acts and practices of respondent are all to the injury and 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 the Federal Trade Commission Act, the Federal Trade Commission, on December 22, 1937, issued, and

1085

Findings

on December 23, 1937, served its complaint in this proceeding upon respondent, Alfred Boehm, an individual, doing business under the trade name Lynx Knitting 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 and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs having been waived and oral argument not having been requested, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Alfred Boehm, is an individual doing business under the trade name Lynx Knitting Company. His office and place of business are at 5-7 White Street, New York, N. Y. He is now, and for several years last past has been, engaged in the sale and distribution of hosiery, principally through house-to-house canvassers, in the various States of the United States and in the District of Columbia.

When orders are received by respondent, his said products are shipped from his place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been for several years last past, a course of trade in said hosiery sold and distributed by respondent, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships and corporations likewise engaged in the sale and distribution of hosiery in commerce 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, the respondent has represented and now represents himself to be the manufacturer of the hosiery he offers for sale and sells. Said representation is made by respondent through

use of the word "Knitting" in his trade name which appears on his letterheads, order blanks, in advertising matter appearing in various magazines, and through other means.

In truth and in fact, the respondent does not manufacture the hosiery he offers for sale and sells, nor does he own and operate or directly and absolutely control any mill or factory in which said hosiery is manufactured. Respondent purchases said hosiery at wholesale from Golden Belt Manufacturing Company, Durham, N. C., Great American Knitting Mills, Bechtelsville, Pa., Newnan Hosiery Company, Newnan, Ga., Best Made Hosiery Company, Quakertown, Pa., and other hosiery manufacturers.

PAR. 3. It is the common belief among wholesalers, retailers, and the purchasing public, that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price, and that other advantages can be secured by dealing direct with the manufacturer. The representations made by respondent, as alleged in paragraph 2 hereof, have the tendency and capacity to deceive and mislead the purchasers of respondent's hosiery into the false and erroneous beliefs that when they purchase said hosiery from respondent they are dealing with the manufacturer of said hosiery and are thereby gaining an advantage in price by saving the middleman's profit and are gaining other advantages.

PAR. 4. Respondent's said hosiery is offered for sale and sold chiefly through house-to-house canvassers. As an inducement to persons to become his distributors and offer his said hose for sale, and to the purchasing public to buy said hosiery, the respondent has advertised and is now advertising in the "Agents Wanted" columns of various magazines having an interstate circulation, through form letters, and in various other ways, as follows:

**LYNX HOSE ONCE BOUGHT ALWAYS SOUGHT
RINGLESS—SPLASH PROOF—ANTI-SNAG PROCESS**

These unusual features create immediate interest, quick sales and satisfied customers. 14 years of square dealing with our customers and salespeople.

Wonderful line of men's and women's hosiery. Large variety of styles and colors. Liberal commission. Prompt delivery. Free outfit with sample hose starts you off. Write us at once.

New "anti-snag" silk hose * * * They are also rain and splash-proof.
* * * Every woman will want these hose made by the anti-snag process.
The rain may splash on these hose but there will be no spots on them.

* * * You can get samples of Lynx guaranteed hose free of cost to you * * *.

None of our ladies' silk hose contain any rayon, celanese or any artificial silk of any kind.

Conclusion

By means of the foregoing statements, the respondent represents to distributors, prospective distributors, and the purchasing public generally that his said hosiery is proof against spots, splashes and snagging; that said hosiery is composed wholly of silk; and that he furnishes his distributors with free sample outfits. Such representations are false, misleading, and deceptive. In truth and in fact, respondent's said hosiery is not spot, splash, or snag proof. It is not composed wholly of silk, the product of the cocoon of the silkworm, but is composed in part of a material or materials other than silk. Respondent does not in fact furnish free sample outfits to his canvassers but said outfits are paid for by the said canvassers in cash and by services rendered.

PAR. 5. The word "silk" has long had to the minds of a substantial number of the purchasing public, and still has, a very definite and specific meaning, i. e., the product of the cocoon of the silkworm. Said product is now, and for many years has been, employed in the manufacture of various articles of wearing apparel including hosiery. Wearing apparel manufactured from silk is regarded generally as apparel of a superior quality and is in great public demand. At all times mentioned herein, the term "silk" has been commonly used to describe articles of wearing apparel manufactured wholly from silk and as a result thereof the purchasing public has come to understand that the apparel so described is manufactured wholly from silk, the product of the cocoon of the silkworm.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and does mislead retailers, distributors and a substantial portion of the purchasing public into the erroneous beliefs that such representations are true and into the purchase of substantial quantities of said hosiery because of such erroneous beliefs.

There are, among the competitors of respondent, as mentioned in Paragraph 1 hereof, manufacturers and distributors of hosiery who do not misrepresent the character or type of business in which they are engaged, the quality, nature and composition of their products, nor the inducements offered to prospective distributors, who likewise advertise, sell and distribute hosiery in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent, Alfred Boehm, an individual, doing business under the trade name Lynx Knitting

Company, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Alfred Boehm, an individual, doing business under the trade name Lynx Knitting Company, or under any other trade name, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of hosiery in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the word "Knitting" in his trade name or through the use of any word or term of similar import and meaning, or through any other means or device, or in any manner, that said respondent is the manufacturer of the products sold by him, unless and until he actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured by him;

2. Representing that said hosiery is proof against spots, splashes and snagging;

3. Representing that he furnishes his distributors or agents with free samples or outfits, when in fact said samples or outfits are paid for by the distributors in money or in services;

4. The use of the word "silk," or any other word or words of similar import and meaning, to describe or designate hosiery which is not composed wholly of silk, the product of the cocoon of the silkworm, unless, in the case of hosiery composed in part of silk and in part of rayon or material or materials other than silk, there is used in immediate connection and conjunction therewith, and in letters of at least equal size and conspicuousness, a word or words accurately describing the fiber, material or materials from which said hosiery was actually

1095

Order

made; and provided, that the fiber or material content of such hosiery be accurately disclosed by designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent.

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

IN THE MATTER OF
PYROTECHNIC INDUSTRIES, INC., ET AL.

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

Docket 3309. Complaint, Jan. 25, 1938—Decision, Apr. 14, 1938

Where an association of fireworks manufacturers; and the members thereof, producers, together, of approximately 85 percent of the total production of commercial fireworks in the United States, theretofore in active and substantial competition with one another and with other manufacturers in making and seeking to make sales of fireworks in commerce between and among the several States, as were jobbers and retailers in sale of said products;

Entered into and carried out understandings and combinations with intent and effect of unlawfully restricting, suppressing, and eliminating competition in manufacture, jobbing, and retail of fireworks in commerce among and in the several States; and, in pursuance of said understandings, etc., and in furtherance thereof, and acting through and by means of said association, its officers and agents—

- (a) Agreed to fix and maintain, and fixed and maintained uniform prices and discounts in sale of fireworks to jobbers, and uniform prices and discounts at which jobbers should sell such products to retailers, and minimum retail prices thereof;
- (b) Agreed to designate, and designated concerns which should, and should not, be sold by such manufacturers as jobbers, and to compile and maintain, and compiled and maintained lists of concerns which should be, and were, recognized as chain stores allowed certain special discounts in addition to those granted other purchasers similarly situated, and to fix and maintain, and fixed and maintained special discounts to those concerns which purchased certain specified amounts of fireworks from combined member establishments;
- (c) Organized and held meetings of groups of fireworks jobbers in various parts of United States to devise means of asserting influence, and coercion and other means of inducing, requiring and coercing them to abide by said agreements and combinations, and effected and procured promises and agreements by various means from various jobbers throughout the United States, and from fireworks distributors' associations, to support and enforce aforesaid agreements, etc.; and
- (d) Agreed and attempted to maintain aforesaid understandings and combinations to unlawfully restrict, suppress, and eliminate competition in manufacture, jobbing, and retail sale of fireworks in United States, and agreed to refuse, and refused, to sell said products to certain concerns and thereby boycotted same and cut off or seriously impaired their supply of fireworks, and used and engaged in other acts and cooperative and concerted action and coercive methods and policies in promoting, establishing and carrying out aforesaid understandings, etc., through and by means of said association, its members, officers, and agents, for purpose of suppressing and preventing competition and restricting and restraining sale of fireworks in trade or commerce, as hereinabove set forth;

1104

Complaint

With effect of unduly and unlawfully restricting and restraining such sale in trade and commerce among and in the several States, substantially enhancing and maintaining prices at artificial levels, and otherwise depriving public of benefits that would flow from free and normal competition among and between said members, and among and between jobbers and retailers of such products in commerce, and with effect of eliminating competition, and tendency and capacity to create monopoly in sale of said products:

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

Mr. Fletcher G. Cohn for the Commission.

Mr. Charles Henry Fleming, of Washington, D. C., for Pyrotechnic Industries, Inc.

Mr. Henry K. Heyman, of New York City, for Unexcelled Manufacturing Co., Inc.

Sherburne, Powers & Needham, of Boston, Mass., for National Fireworks, Inc., National Fireworks Distributing Co., Los Angeles Fireworks Co., Ltd. and Victory Fireworks & Specialty Co.

Nyburg, Goldman & Walter, of Baltimore, Md., for Triumph Fusee & Fireworks Co.

Mr. George E. Hall, of New Haven, Conn., for M. Backes' Sons, Inc.

Mr. Morris M. Schnitzer, of Newark, N. J., for Essex Specialty Co., Inc.

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 Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., 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. Respondent Pyrotechnic Industries, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office located in the Investment Building, Washington, D. C. Said respondent is an association of fireworks manufacturers, with a membership composed of respondents Unexcelled Manufacturing Company, Inc.,

Complaint

26 F. T. C.

Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company.

Respondent Unexcelled Manufacturing Company, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at 22 Park Place, New York, N. Y.; it is engaged in the manufacture and sale of commercial and display fireworks.

Respondent National Fireworks, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of Massachusetts, with its principal place of business located at 60 North Washington Street, Boston, Mass.; it is engaged, among other activities, in the manufacture and sale of fireworks.

Respondent National Fireworks Distributing Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Arizona, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of respondent National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Los Angeles Fireworks Company, Ltd. is a corporation, organized, existing, and doing business by virtue of the laws of the State of California, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Victory Fireworks & Specialty Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Triumph Fusee & Fireworks Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, and with its principal office and place of business located at Elkton, Md.; it is engaged in the manufacture and sale of fireworks.

Respondent M. Backes' Sons, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of Connecticut, with its principal office and place of business located at Wallingford, Conn.; it is engaged primarily in the manufacture and sale of fireworks.

Complaint

Respondent Essex Specialty Company, Inc. is a corporation organized, existing, and doing business by virtue of the laws of the State of New Jersey, with its principal office and place of business located in Berkley Heights, N. J.; it is engaged, among other activities, in the manufacture and sale of commercial fireworks.

PAR. 2. Respondents Unexcelled Manufacturing Company, Inc., Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., and National Fireworks, Inc., with its three subsidiaries, National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company, compose the entire membership of respondent Pyrotechnic Industries, Inc., and produce approximately 85 percent of the total production of commercial fireworks in the United States.

PAR. 3. The aforementioned respondents, Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., hereinafter referred to as "members" of respondent Pyrotechnic Industries, Inc., hereinafter referred to as the "association," in the course and conduct of their businesses, have made, and are making, numerous shipments of fireworks to jobbers and other customers in States of the United States other than the states in which their respective manufacturing and distributing plants are located. In the course and conduct of the businesses of said respondent members, they have been, and are now, engaged in commerce between, among, in, and with the several States of the United States.

Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter alleged, respondent members were in active and substantial competition with each other and with other manufacturers of fireworks in making, and seeking to make, sales of fireworks in commerce between, among, in and with the several States of the United States, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time. Also, prior to the adoption of said understandings, agreements, combinations, conspiracies and practices on the part of respondent members, acting through and by means of respondent association, its officers, representatives, and agents, jobbers of fireworks in the United States were in active and substantial competition with each other in the sale of same, as likewise were retailers of fireworks, with one another, in trade and commerce between, among, in and with the several States of the United States, and but

for the facts hereinafter alleged, such active and substantial competition would have continued to the present time.

Respondent association was organized on the 29th day of January 1935, and beginning with the second meeting of said respondent association on April 12, 1935, respondent members, acting through and by means of respondent association, entered into and thereafter carried out understandings, agreements, combinations and conspiracies for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing and retail sales of fireworks in trade and commerce between, among, in, and with the several States of the United States.

PAR. 4. Pursuant to said understandings, agreements, combinations and conspiracies and in furtherance thereof, said respondent members, acting through and by means of respondent association, its officers and agents, have done and performed, and still do and perform, among other acts and things, the following:

1. Agreed to fix and maintain and have fixed and maintained uniform prices in the sale of fireworks to jobbers of fireworks in the United States;

2. Agreed to fix and maintain, and have fixed and maintained, uniform discounts in the sale of fireworks by manufacturers to jobbers of fireworks in the United States;

3. Agreed to fix and maintain, and have fixed and maintained, uniform prices and discounts at which jobbers of fireworks should sell same to retailers in the United States;

4. Agreed to designate and have so designated what concerns should and should not be sold by manufacturers of fireworks as jobbers;

5. Organized and held meetings of groups of fireworks jobbers in various parts of the United States, according to the particular subdivisions of the United States in which they were situated, to devise means of asserting influence, pressure, coercion, and other means of inducing, requiring, and coercing said fireworks jobbers to abide by and adhere to the agreements, combinations, and conspiracies of respondent members;

6. Effected and procured promises and agreements from various jobbers of fireworks throughout the United States by diverse and various means, including fireworks distributors associations, to support, adhere to, and enforce said agreements, combinations and conspiracies of respondent members;

7. Agreed to maintain and have attempted to maintain the understandings, agreements, combinations, and conspiracies of said respondent members by means of varied and diverse methods of polic-

1104

Complaint

ing manufacturers, jobbers, and retailers of fireworks in the United States;

8. Agreed to compile and maintain and have compiled and maintained lists of the concerns which should be, and are, recognized as chain stores which are allowed certain special discounts in addition to those granted other purchasers;

9. Agreed to fix and maintain and have fixed and maintained minimum retail prices of fireworks throughout the United States;

10. Agreed to refuse to sell and have refused to sell fireworks to certain concerns thus boycotting said concerns and cutting off or seriously impairing their supply of fireworks;

11. Agreed to fix and maintain and have fixed and maintained special discounts to those concerns which purchase certain specified amounts of fireworks from the combined establishments of respondent members;

12. Used and engaged and continue to use and engage in other acts, cooperative and concerted action, coercive methods and policies, in promoting, establishing, and carrying out said understandings, agreements, combinations, and conspiracies of said respondent members, acting through and by means of respondent association, its members, officers, and agents, for the purpose of suppressing and preventing competition and restricting and restraining the sale of fireworks in trade and commerce between, among, in and with the several States of the United States.

PAR. 5. Each of said respondent members acted in concert and in cooperation with one or more of the other respondent members, by means of and through respondent association, its officers, representatives, and agents, in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 6. Said understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove alleged have had and do have the effect of unduly and unlawfully restricting and restraining the sale of fireworks in trade and commerce between, among, in, and with the several States of the United States; of unduly and unlawfully restricting and restraining trade in said fireworks in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from free and normal competition among and between the member respondents, among and between jobbers and among and between retailers in the sale of fireworks in said commerce; of eliminating competition, with the tend-

ency and capacity of creating monopoly, in the sale of fireworks, in said commerce.

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof as above alleged 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 25th day of January, A. D. 1938, issued, and subsequently served, its complaint in this proceeding upon respondents, Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., 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 respondents filed in the office of the Commission their answers admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answers, briefs, and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Pyrotechnic Industries, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office located in the Investment Building, Washington, D. C. Said respondent is an association of fireworks manufacturers, with a membership composed of respondents Unexcelled Manufacturing Company, Inc., Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., National Fireworks, Inc., National Fireworks Dis-

Findings

tributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company.

Respondent Unexcelled Manufacturing Company, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at 22 Park Place, New York, N. Y.; it is engaged in the manufacture and sale of commercial and display fireworks.

Respondent National Fireworks, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Massachusetts, with its principal place of business located at 60 North Washington Street, Boston, Mass.; it is engaged, among other activities, in the manufacture and sale of fireworks.

Respondent National Fireworks Distributing Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Arizona, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of respondent National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Los Angeles Fireworks Company, Ltd., is a corporation, organized, existing, and doing business by virtue of the laws of the State of California, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Victory Fireworks & Specialty Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, with its principal office and place of business located at 60 North Washington Street, Boston, Mass., and is a subsidiary of National Fireworks, Inc.; it is engaged in the sale of fireworks manufactured by National Fireworks, Inc.

Respondent Triumph Fusee & Fireworks Company is a corporation organized, existing, and doing business by virtue of the laws of the State of Maryland, and with its principal office and place of business located at Elkton, Md.; it is engaged in the manufacture and sale of fireworks.

Respondent M. Backes' Sons, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Connecticut, with its principal office and place of business located at Wallingford, Conn.; it is engaged primarily in the manufacture and sale of fireworks.

Respondent Essex Specialty Company, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of New Jersey, with its principal office and place of business located

Findings

26 F. T. C.

in Berkley Heights, N. J.; it is engaged, among other activities, in the manufacture and sale of commercial fireworks.

PAR. 2. Respondents Unexcelled Manufacturing Company, Inc., Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., Essex Specialty Company, Inc., and National Fireworks, Inc., with its three subsidiaries, National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., and Victory Fireworks & Specialty Company compose the entire membership of respondent Pyrotechnic Industries, Inc., and produce approximately 85 percent of the total production of commercial fireworks in the United States.

PAR. 3. The aforementioned respondents, Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., hereinafter referred to as "members" of respondent Pyrotechnic Industries, Inc., hereinafter referred to as the "association," in the course and conduct of their businesses, have made, and are making numerous shipments of fireworks to jobbers and other customers in States of the United States other than the States in which their respective manufacturing and distributing plants are located. In the course and conduct of the businesses of said respondent members, they have been, and are now, engaged in commerce between, among, in, and with the several States of the United States.

Before the adoption of the understandings, agreements, combinations, and practices hereinafter alleged, respondent members were in active and substantial competition with each other and with other manufacturers of fireworks in making, and seeking to make, sales of fireworks in commerce between, among, in, and with the several States of the United States, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the date of discontinuance of such practices, as hereinafter found in paragraph 5. Also, prior to the adoption of said understandings, agreements, combinations, and practices on the part of respondent members, acting through and by means of respondent association, its officers, representatives, and agents, jobbers of fireworks in the United States were in active and substantial competition with each other in the sale of same, as likewise were retailers of fireworks, with one another, in trade and commerce between, among, in and with the several States of the United States, and but for the facts hereinafter alleged, such active and substantial competition would have continued to the date of discontinuance of such practices, as hereinafter found in paragraph 5.

Findings

Respondent association was organized on the 29th day of January 1935, and beginning with the second meeting of said respondent association on April 12, 1935, respondent members, acting through and by means of respondent association, entered into and thereafter carried out understandings, agreements, and combinations for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing and retail sales of fireworks in trade and commerce between, among, in, and with the several States of the United States.

PAR. 4. Pursuant to said understandings, agreements, and combinations and in furtherance thereof, said respondent members, acting through and by means of respondent association, its officers and agents, have done and performed, among other acts and things, the following:

1. Agreed to fix and maintain, and have fixed and maintained, uniform prices in the sale of fireworks to jobbers of fireworks in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

2. Agreed to fix and maintain, and have fixed and maintained, uniform discounts in the sale of fireworks by manufacturers to jobbers of fireworks in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

3. Agreed to fix and maintain, and have fixed and maintained, uniform prices and discounts at which jobbers of fireworks should sell same to retailers in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

4. Agreed to designate and have so designated what concerns should and should not be sold by manufacturers of fireworks as jobbers; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

5. Organized and held meetings of groups of fireworks jobbers in various parts of the United States, according to the particular subdivisions of the United States in which they were situated, to devise means of asserting influence, pressure, coercion, and other means of inducing, requiring, and coercing said fireworks jobbers to abide by and adhere to the agreements and combinations of respondent members; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

Findings

26 F. T. C.

6. Effected and procured promises and agreements from various jobbers of fireworks throughout the United States by diverse and various means, including fireworks distributors' associations, to support, adhere to, and enforce said agreements and combinations of respondent members; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

7. Agreed to maintain and have attempted to maintain the understandings, agreements, and combinations of said respondent members to unlawfully restrict, restrain, monopolize, suppress, and eliminate competition in the manufacture, jobbing and retail sale of fireworks in the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

8. Agreed to compile and maintain, and have compiled and maintained, lists of the concerns which should be, and are, recognized as chain stores which are allowed certain special discounts in addition to those granted other purchasers similarly situated; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

9. Agreed to fix and maintain, and have fixed and maintained, minimum retail prices of fireworks throughout the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

10. Agreed to refuse to sell, and have refused to sell, fireworks to certain concerns, thus boycotting said concerns and cutting off or seriously impairing their supply of fireworks; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

11. Agreed to fix and maintain, and have fixed and maintained, special discounts to those concerns which purchase certain specified amounts of fireworks from the combined establishments of respondent members; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

12. Used and engaged in other acts, cooperative and concerted action, coercive methods and policies, in promoting, establishing and carrying out said understandings, agreements, and combinations of said respondent members, acting through and by means of respondent association, its members, officers, and agents, for the purpose of suppressing and preventing competition and restricting and restraining

Conclusion

the sale of fireworks in trade and commerce between, among, in, and with the several States of the United States; but same was discontinued voluntarily after the completion of the investigation by the Commission but prior to the filing of the complaint herein.

PAR. 5. Subsequent to the completion of the investigation by the Commission, the respondent members did, on or about December 6, 1936, through a resolution adopted at a regular meeting of the Association, go on record as discontinuing the acts and claims alleged heretofore in paragraph 4.

PAR. 6. Each of said respondent members acted in concert and in cooperation with one or more of the other respondent members, by means of and through respondent association, its officers, representatives, and agents, in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, and combinations.

PAR. 7. The said understandings, agreements and combinations and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove alleged have had the effect of unduly and unlawfully restricting and restraining the sale of fireworks in trade and commerce between, among, in, and with the several States of the United States; of unduly and unlawfully restricting and restraining trade in said fireworks in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from free and normal competition among and between the member respondents, among and between jobbers and among and between retailers in the sale of fireworks in said commerce; of eliminating competition, with the tendency and capacity of creating monopoly, in the sale of fireworks, in said commerce.

CONCLUSION

The aforesaid acts and practices of the respondents Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

26 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers filed herein on March 8, 1938, by respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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 all the respondents, Pyrotechnic Industries, Inc., Unexcelled Manufacturing Company, Inc., National Fireworks, Inc., National Fireworks Distributing Company, Los Angeles Fireworks Company, Ltd., Victory Fireworks & Specialty Company, Triumph Fusee & Fireworks Company, M. Backes' Sons, Inc., and Essex Specialty Company, Inc., their respective officers, representatives, agents, and employees, directly or indirectly or through and by means of respondent association, its officers, representatives, and agents, in connection with the offering for sale, sale, and distribution of fireworks in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining uniform prices in the sale of fireworks to jobbers of fireworks;

2. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining uniform discounts in the sale of fireworks by manufacturers to jobbers of fireworks;

3. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining uniform prices and discounts at which jobbers of fireworks should sell same to retailers;

4. Agreeing to designate or, pursuant to such an agreement, designating what concerns should and should not be sold by manufacturers of fireworks as jobbers;

5. Organizing or holding meetings of groups of fireworks jobbers to devise means of asserting influence, pressure, coercion, and other means of inducing, requiring, and coercing said firework jobbers to abide by and adhere to any understandings, agreements, or combinations by and among said respondents for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing, and retail sales of fireworks;

Order

6. Effecting or procuring promises or agreements, by diverse and various means, from various jobbers throughout the United States, including fireworks distributors' associations, to support, adhere to and enforce understandings, agreements and combinations entered into by and among the respondents for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing, and retail sales of fireworks;
7. Agreeing to maintain or, pursuant to such an agreement, maintaining or attempting to maintain the understandings, agreements, and combinations of respondents to unlawfully restrict, restrain, monopolize, suppress, and eliminate competition in the manufacture, jobbing, and retail sales of fireworks in the United States;
8. Agreeing to compile and maintain or, pursuant to such an agreement, compiling and maintaining lists of concerns which should be, or are, recognized as chain stores which are allowed certain special discounts not granted to other purchasers who are similarly situated;
9. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining minimum retail prices of fireworks throughout the United States;
10. Agreeing, through any combination of two or more of said respondents, to refuse to sell, or, pursuant to such an agreement, refusing to sell, fireworks to any prospective purchaser;
11. Agreeing to fix and maintain or, pursuant to such an agreement, fixing and maintaining special discounts to those concerns which purchase certain specified amounts of fireworks from the combined establishments of respondent members of said association;
12. Using or engaging in other acts, cooperative and concerted action, coercive methods and policies, in promoting, establishing and carrying out any and all understandings, agreements, and combinations of respondent members for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the manufacture, jobbing, and retail sale of fireworks by said respondent members acting through and by means of respondent association, its members, representatives, officers, and agents.

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

IN THE MATTER OF

LOOSE-WILES BISCUIT COMPANY

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

*Docket 3306. Complaint, Mar. 12, 1938*¹—*Decision, Apr. 18, 1938*

Where a corporation engaged in manufacture and sale of candy and bakery products, including—

- (a) Assortments composed of number of small bars of candy and number of large bars, together with push cards for use in sale of candy to ultimate purchaser under plan by which purchaser of chance secured, for 5 cents paid, one of smaller bars, or one of larger bars, value of which exceeded said sum, depending upon chance selection of certain numbers, in accordance with board's explanatory statement, and by which purchaser making last push was entitled to one of smaller pieces,
- (b) Assortments composed of number of boxes of assorted candy and additional article of merchandise, together with punchboard for use in sale of said candy, etc., under plan by which purchaser of chance received, for 5 cents paid, one of boxes of candy or nothing other than privilege of making selection, depending upon chance punching of one of certain numbers, in accordance with board's explanatory statement, or punching of last number in each of 12 sections into which board was divided, or punching of last number on entire board, through which such purchaser received both candy and merchandise; and
- (c) Assortments composed of number of packages of assorted chocolate and vanilla wafers and other bakery products, together with punchboard for use in sale of aforesaid products, under plan by which, and in accordance with board's explanatory statements, purchasers punching by chance certain numbers paid nothing for punch or amounts ranging from 1 to 5 cents, in accordance with particular number disclosed, and secured, in accordance with chance selection of certain preannounced numbers, as above set forth, or purchase of last punch in each of 12 sections into which board was divided, one of aforesaid packages of wafers, value of which exceeded aforesaid various amounts, or, failing such selection or purchase, secured nothing other than privilege of such chance selection or punch—

Sold said aforesaid and other assortments, involving use of similar plans or schemes, to wholesalers, jobbers, and retailers for display and sale by retail dealers to purchasing public in accordance with aforesaid sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its products, in accordance therewith and in violation of long-standing public policy of the common law and criminal statutes and that of the United States Government; in competition with many who make and sell such products and are unwilling to offer and sell same, thus packed and assembled or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy, and refrain therefrom;

¹ Amended and supplemental.

Complaint

With tendency unduly to hinder competition or create monopoly through tendency and capacity to exclude from candy and bakery products trade competitors who do not adopt and use same or equivalent or similar methods, involving same or equivalent or similar element of chance or lottery scheme, and with result that many dealers in and ultimate purchasers of such products, attracted by said methods and manner of packing same and element of chance involved in sale thereof as above set forth, were thereby induced to buy said products, thus packed and sold by it, in preference to those offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity to induce such preferential purchasing, and, by reason of said game of chance, to divert unfairly to it trade and custom from its aforesaid competitors, to exclude from trade involved all competitors who are unwilling to and do not use same or equivalent methods because unlawful, to lessen competition in said trade and create a monopoly thereof in it and such other distributors of said products as use same or equivalent methods, and deprive purchasing public of benefits of free competition therein, and eliminate therefrom all actual competitors and exclude therefrom all potential competitors who do not adopt and use said or equivalent methods:

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

Mr. P. C. Kolinski for the Commission.

Mr. W. A. Ferguson, of Long Island, N. Y., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on January 19, 1938, issue its complaint herein charging that respondent herein was and had been using 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"; and

Whereas, This Commission having reason to believe that the respondent herein is engaged in business other than as described in said complaint and has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its said complaint, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, Acting in the public interest, pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that Loose-Wiles Biscuit Company, a corporation, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and states its charges in that respect as follows:

Complaint

28 F. T. C.

PARAGRAPH 1. Respondent Loose-Wiles Biscuit Company is a corporation organized and doing business under the laws of the State of Missouri, with its principal place of business at 811 Commerce Building, Kansas City, Mo. Respondent also maintains places of business in various other cities and States one of which said places of business is located at Denver, Colo. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and bakery products and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused its said products when sold to be transported from its principal place of business in Kansas City, Mo., and from its place of business in Denver, Colo., to purchasers thereof in the States of Missouri and Colorado and in various other States of the United States, at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candy and bakery products between and among the various States of the United States. In the course and conduct of said business respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy and bakery products in commerce 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 sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and bakery products so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the distribution of candy and bakery products by lot or chance:

(a) One of said assortments is composed of a number of small bars of candy and a number of large bars of candy, together with a device commonly called a push card, and the assortment is distributed to the purchasing public in the following manner:

Sales are 5 cents each and each purchaser is entitled to one push from said card. When a push is made from said card a number is disclosed. The numbers begin with 1 and continue to the number of pushes there are on the card, but the numbers are not arranged in numerical sequence. The card bears statements informing prospective purchasers that all numbers, with the exception of 5, 10, 15, 20, 25, and the last number pushed, entitle the purchasers thereof to a 5-cent bar of candy, being one of the smaller bars of the assortment,

Complaint

and that the aforementioned numbers entitle the purchasers thereof to a large bar of candy. The large bars of candy are worth more than 5 cents each and the person who obtains one of the numbers calling for a large bar of candy receives the same without additional charge. The numbers on said cards are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The aforesaid purchasers of said candy who procure one of the specified numbers, thus procure the said large bars of candy wholly by lot or chance.

(b) Another assortment consists of a number of boxes of assorted candy and an additional article of merchandise, together with a device commonly called a punchboard. Said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a box of candy. The punches on the board are arranged in 12 sections and the purchaser of the last punch in each section receives a pound box of candy and the purchaser of the last punch on the board receives both a pound box of candy and an additional article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number in one of the sections, or the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each and a purchaser who obtains one of the numbers calling for a box of candy, or a box of candy and an additional article of merchandise, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy are thus distributed to purchasers of punches from the board wholly by lot or chance.

(c) Another assortment consists of a number of packages of assorted chocolate and vanilla wafers and other bakery products, together with a device commonly called a punchboard. Said wafers are distributed to the consuming public by means of said punchboard in the following manner:

Complaint

26 F. T. C.

Purchasers punching numbers ending in "0" receive the same without charge. For certain other numbers the purchasers thereof pay 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents. When a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears statements or legends informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a 7½-ounce package of said wafers. The punches on the board are arranged in 12 sections and the purchaser of the last punch in each section receives a 7½-ounce package of wafers. A purchaser who does not qualify by obtaining one of the numbers calling for a package of wafers or by punching the last number in a section receives nothing for his money other than the privilege of punching a number from the board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of the said packages of wafers is greater than any of the designated prices of said punches. The packages of wafers are thus distributed to the purchasers of said punches from the board wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said candy and bakery products, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, and said sales plans have the tendency and capacity to induce purchasers thereof to purchase respondent's said products in preference to candy and bakery products offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and bakery products to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to secure a larger piece of candy, or box of candy, or a package of bakery products. The use by respondent of said methods in the sale of candy and bakery products and the sale of same by and through the use thereof and by the aid of said methods is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondent of said methods has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy and bakery products trade competitors who do not adopt and use the same

Findings

methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy and bakery products in competition with the respondent as above alleged are unwilling to offer for sale or sell candy and bakery products so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candy and bakery products are attracted by respondent's said methods and manner of packing said candy and bakery products and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said candy and bakery products so packed and sold by respondent in preference to candy and bakery products offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods, to exclude from said candy and bakery products trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful, to lessen competition in said candy and bakery products trade, to tend to create a monopoly of said candy and bakery products trade in respondent and such other distributors of candy and bakery products as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy and bakery products trade. The use of said methods by respondent has a tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. The aforementioned methods, acts, and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors as hereinabove alleged, 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 the Federal Trade Commission Act, the Federal Trade Commission, on January 19, 1938, issued and there-

Findings

26 F. T. C.

after served its complaint in this proceeding upon the respondent, Loose-Wiles Biscuit Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 12, 1938, the Commission issued its amended and supplemental complaint, to which the respondent filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence, and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint and answer, and the Commission, having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Loose-Wiles Biscuit Company, is a corporation organized and doing business under the laws of the State of Missouri, with its principal place of business at 811 Commerce Building, Kansas City, Mo. Respondent also maintains places of business in various other cities and states, one of which said places of business is located at Denver, Colo. Respondent is now, and for more than one year last past has been, engaged in the manufacture of candy and bakery products and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondent causes, and has caused, its said products when sold to be transported from its principal place of business in Kansas City, Mo., and from its place of business in Denver, Colo., to purchasers thereof in the States of Missouri and Colorado and in various other States of the United States, at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candy and bakery products between and among the various States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy and bakery products in commerce 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 sells and has sold to wholesale dealers, jobbers and retail dealers certain assortments of candy and bakery products so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the pur-

Findings

pose of showing the methods used by respondent, but this list is not all-inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the distribution of candy and bakery products by lot or chance:

(a) One of said assortments is composed of a number of small bars of candy and a number of large bars of candy, together with a device commonly called a push card, and the assortment is distributed to the purchasing public in the following manner:

Sales are 5 cents each and each purchaser is entitled to one push from said card. When a push is made from said card a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but the numbers are not arranged in numerical sequence. The card bears statements informing prospective purchasers that all numbers, with the exception of 5, 10, 15, 20, 25 and the last number pushed, entitle the purchasers thereof to a five cent bar of candy, being one of the smaller bars of the assortment, and that the aforementioned numbers entitle the purchasers thereof to a large bar of candy. The large bars of candy are worth more than 5 cents each and the person who obtains one of the numbers calling for a large bar of candy receives the same without additional charge. The numbers on said cards are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The aforesaid purchasers of said candy who procure one of the specified numbers, thus procure the said large bars of candy wholly by lot or chance.

(b) Another assortment consists of a number of boxes of assorted candy and an additional article of merchandise, together with a device commonly called a punchboard. Said boxes of candy are distributed to the consuming public by means of said punch board in the following manner:

The sales are 5 cents each and when a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a box of candy. The punches on the board are arranged in 12 sections and the purchaser of the last punch in each section receives a pound box of candy and the purchaser of the last punch on the board receives both a pound box of candy and an additional article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number

Findings

26 F. T. C.

in one of the sections, or the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each and a purchaser who obtains one of the numbers calling for a box of candy, or a box of candy and an additional article of merchandise, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy are thus distributed to purchasers of punches from the board wholly by lot or chance.

(c) Another assortment consists of a number of packages of assorted chocolate and vanilla wafers and other bakery products, together with a device commonly called a punchboard. Said wafers are distributed to the consuming public by means of said punchboard in the following manner:

Purchasers punching numbers ending in "0" receive the same without charge. For certain other numbers the purchasers thereof pay 1 cent, 2 cents, 3 cents, 4 cents or 5 cents. When a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears statements or legends informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a 7½-ounce package of said wafers. The punches on the board are arranged in twelve sections and the purchaser of the last punch in each section receives a 7½-ounce package of wafers. A purchaser who does not qualify by obtaining one of the numbers calling for a package of wafers or by punching the last number in a section receives nothing for his money other than the privilege of punching a number from the board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of the said packages of wafers is greater than any of the designated prices of said punches. The packages of wafers are thus distributed to the purchasers of said punches from the board wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said candy and bakery products, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove described, and said sales plans have the tendency and capacity to induce purchasers thereof to purchase

Findings

respondent's said products in preference to candy and bakery products offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and bakery products to the purchasing public in the manner above found involves a game of chance or the sale of a chance to secure a larger piece of candy, or box of candy, or a package of bakery products. The use by respondent of said methods in the sale of candy and bakery products and the sale of same by and through the use thereof and by the aid of said methods is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondent of said methods has the tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy and bakery products trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy and bakery products in competition with the respondent, as above found, are unwilling to offer for sale or sell candy and bakery products so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candy and bakery products are attracted by respondent's said methods and manner of packing said candy and bakery products and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and bakery products so packed and sold by respondent in preference to candy and bakery products offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods, to exclude from said candy and bakery products trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful, to lessen competition in said candy and bakery products trade, to create a monopoly of said candy and bakery products trade in respondent and such other distributors of candy and bakery products as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said candy and bakery products trade.

Order

26 F. T. C.

The use of said methods by respondent has a tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

CONCLUSION

The aforesaid methods, acts and practices of respondent, Loose-Wiles Biscuit Company, a corporation, are all to the injury and prejudice of the public and of respondent's competitors, as hereinabove found, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the answer of the respondent, Loose-Wiles Biscuit Company, a corporation, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Loose-Wiles Biscuit Company, a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution of candies and bakery products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing candies or bakery products so packed and assembled that sales of such candies or bakery products 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 dealers, assortments of candies or bakery products which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution to the public of such candies or bakery products contained in said assortments;

3. Supplying to or placing in the hands of dealers, assortments of candies or bakery products, together with a punchboard, push or pull card, or other lottery device, for use, or which may be used, in distributing or selling such candies or bakery products to the public, at retail;

Order

4. Supplying to or placing in the hands of dealers, a punchboard, push or pull card, or other lottery device, either with assortments of candies or bakery products, or separately, which punchboard, push or pull card, or other lottery device, is to be used, or may be used, in distributing or selling such candies or bakery products to the public, or which punchboard, push or pull card, or other lottery device, bears legends or statements informing the purchasing public that the candies or bakery products contained in said assortments are being sold to the public by lot or chance in accordance with a sales plan which constitute a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent, Loose-Wiles Biscuit Company, 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 has complied with this order.

Complaint

26 F. T. C.

IN THE MATTER OF
THE E. R. PAGE 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 3334. Complaint, Feb. 12, 1938—Decision, Apr. 18, 1938

Where a corporation engaged in manufacture, sale, and distribution of an internal and external treatment for piles; in offering same through letters, circulars, leaflets, advertisements in newspapers, and periodicals, and otherwise—

Represented that said treatments or remedies were competent and effective for said ailment and that use thereof, as directed, would end suffering and pains incident thereto and remove or eliminate causes thereof and heal and cure same, facts being that while said preparations would temporarily remove pain and other conditions attendant upon said ailment in some cases thereof, they would not end such suffering or pain nor remove or eliminate cause or causes of said condition, nor act as permanent remedy therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations and implications were true, and that said preparations would do more than temporarily remove pain and other conditions attendant upon said condition, and end tortures and pains incident thereto and remove cause of said ailment and cure same, and of causing substantial portion of purchasing public, because of such erroneous and mistaken beliefs, to buy said products or preparations, and of thereby diverting unfairly to it substantial trade from its competitors, who truthfully represent their products and preparations:

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

Mr. Fletcher G. Cohn 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that The E. R. Page 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 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, The E. R. Page Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of busi-

Complaint

ness located at 233 L. Page Building, in the City of Marshall, State of Michigan.

Respondent is now, and has been for several years past, engaged in the business of manufacturing and selling an internal and external treatment for piles designated as "Page Pile Treatment," "Page Combination Treatment," and "Page Internal Combination Pile Treatment."

PAR. 2. In the course and conduct of its business, as hereinbefore described, respondent has caused said products, when sold, to be transported from its said place of business in the State of Michigan to the purchasers thereof located in various States of the United States other than the State of Michigan, and in the District of Columbia.

In the course and conduct of said business, respondent has been, and is now, in substantial competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution in commerce between and among the several States of the United States and in the District of Columbia of products used and useful for the treatment of piles.

PAR. 3. In the course and conduct of its business, as described in paragraphs 1 and 2 hereof, respondent has offered for sale, and sold, by means of letters, circulars, leaflets, advertisements in newspapers, and magazines and otherwise, and has caused false, deceptive, and misleading statements and representations to appear in said letters, circulars, leaflets, and advertisements for the purpose of inducing those who are suffering from piles to purchase respondent's products.

PAR. 4. In offering for sale and selling its products as aforesaid for use in the treatment of piles, respondent, among others, has made the following statements and representations:

Learn for yourself how soothing it is and what a world of difference it makes if you do not *have to put up with* those excruciating pains and that terrible itching which usually comes on at bedtime.

I am glad to send it (Page Pile Treatment) as I am sure that it will start you on the way to quick and *lasting* relief from the tormenting pains and irritations of this serious ailment.

Of course, this trial cannot be expected to bring you more than temporary results. But it will show you what the Page Treatment is like and how it acts to *banish* pain, itching and bleeding.

Please do not delay taking action *to get rid* of your suffering.

You want to *stop* the terrible pain and itching, the annoyance, the bother, and cruelty of piles without the expense of an operation.

You want to feel that the treatment you use will really afford such relief that you have *no further expense or trouble*.

You could not have made a better start toward *permanent* relief from the suffering you have endured from piles than to use the treatment I sent you recently.

Complaint

26 F. T. C.

I want you to continue this treatment until you have every reason to believe *that there will be no return of the misery.*

Experience shows that while the first treatment usually produces astonishing results, two or three treatments and occasionally more are necessary to justify feeling of *positive recovery.*

I know what joy would be yours if you could say to yourself and write to me that your pile suffering was a *thing of the past.* I want to help you to reach this happy condition just as I have helped so many others who have literally flooded me with their letters of gratitude.

Continue your treatment for pile irritation until you feel *sure the effects will be lasting.* A mistake that many people make is to assume that when the symptoms are gone they are gone forever. Occasionally that may be the case, but, as a rule, it is only the beginning of *lasting relief.*

This tried and proven treatment which has *banished suffering from pile victims* in every nook and corner of the land is a logical, scientific method for *attacking the underlying causes of piles* because it has an internal and three-fold action.

I want you to give it (the treatment) a fair opportunity to complete the good work it has begun for you by *bringing lasting relief from pile miseries.*

Here is the one big fact I want you to see clearly. It is far better to trust a good, dependable, old proven treatment with a clean record of almost half a century back of it than to ruin your best chance by using something you know very little about. *Real and final relief* may come slowly, but it pays best in the long run. It would indeed be a remarkable treatment that could reach and relieve every case in the same time and manner. I cannot believe that any victim is content to suffer the tortures and annoyances of piles in any form. Surely you want to be relieved of the suffering and be *done with it finally and forever* if possible.

Would you like to know and be *SURE* about a *REAL* method of direct treatment that very likely many of your own friends and neighbors have used—and from it found new, quick relief from the burning torture of *PILES*?

PAR. 5. By the means and in the manner aforesaid, respondent represents and implies that said products are competent and effective remedies and treatments for piles; that the use of said products in the manner directed will end pile torture and the pains incident to piles, will remove or eliminate the cause of piles, and will heal and cure piles.

In truth and fact said products are not competent and effective remedies and treatments for piles; the use of said products in the manner directed will not end pile torture or the pain incident to piles, nor will they remove or eliminate the cause of piles, nor will they heal or cure piles.

PAR. 6. Among the competitors of respondent in said commerce are many who sell products used and useful for the purposes for which respondent's products are offered for sale and sold, who do not, in any manner, misrepresent the efficacy of their said products.

Findings

PAR. 7. The acts, practices, and methods of respondent, as hereinabove alleged, have had and do have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and implications made and used by respondent as aforesaid are true, and that said products of respondent are competent and effective remedies and treatments for piles, that said products will end the torture and pain incident thereto, will remove the cause of piles, and will end and cure piles; and they cause a substantial portion of the purchasing public, because of said erroneous and mistaken beliefs, to purchase respondent's products. As a consequence thereof, substantial trade in said commerce has been unfairly diverted to the respondent from its competitors who truthfully represent their products, to the injury of such competition and to the public.

PAR. 8. The acts, practices, and methods of respondent, as hereinabove alleged, 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 12, 1938, issued, and on the 14th day of February 1938, served, its complaint in this proceeding upon respondent, The E. R. Page Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of the said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs having been waived and oral argument not having been requested, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The E. R. Page Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 233 L. Page Building, in the city of Marshall, State of Michigan.

Respondent is now, and has been for several years past, engaged in the business of manufacturing, selling, and distributing an internal and external treatment for piles designated as "Page Pile Treatment," "Page Combination Treatment," and "Page Internal Combination Pile Treatment."

PAR. 2. In the course and conduct of its business, as hereinbefore described, respondent has caused said products, when sold, to be transported from its said place of business in the State of Michigan to the purchasers thereof located in various parts of the United States, other than the State of Michigan, and the District of Columbia.

In the course and conduct of its said business, respondent has been, and is now, in substantial competition with other corporations and with individuals and partnerships likewise engaged in the manufacture, sale, and distribution in commerce between and among the several States of the United States and in the District of Columbia of preparations used and useful for the treatment of piles.

PAR. 3. In the course and conduct of its business, as described in paragraphs 1 and 2 hereof, respondent has offered for sale, and sold, by means of letters, circulars, leaflets, advertisements in newspapers, and magazines and otherwise, and has caused false, deceptive, and misleading statements and representations to appear in said letters, circulars, leaflets, and advertisements for the purpose of inducing those who are suffering from piles to purchase respondent's preparations.

PAR. 4. In offering for sale and selling its preparations, as aforesaid, for use in the treatment of piles, respondent, among others, has made the following statements and representations:

Learn for yourself how soothing it is and what a world of difference it makes if you do not *have to put up with* those excruciating pains and that terrible itching which usually comes on at bedtime.

I am glad to send it (Page Pile Treatment) as I am sure that it will start you on the way to quick and *lasting* relief from the tormenting pains and irritations of this serious ailment.

Of course, this trial cannot be expected to bring you more than temporary results. But it will show you what the Page Treatment is like and how it acts to *banish* pain, itching and bleeding.

Please do not delay taking action to *get rid* of your suffering.

Findings

You want to *stop* the terrible pain and itching, the annoyance, the bother and cruelty of piles without the expense of an operation.

You want to feel that the treatment you use will really *afford* such relief that you have *no further expense or trouble*.

You could not have made a better start toward *permanent* relief from the suffering you have endured from piles than to use the treatment I sent you recently.

I want you to continue this treatment until you have every reason to believe that *there will be no return of the misery*.

Experience shows that while the first treatment usually produces astonishing results, two or three treatments and occasionally more are necessary to justify feeling of *positive recovery*.

I know what joy would be yours if you could say to yourself and write to me that your pile suffering was a *thing of the past*. I want to help you to reach this happy condition just as I have helped so many others who have literally flooded me with their letters of gratitude.

Continue your treatment for pile irritation until you feel *sure the effects will be lasting*. A mistake that many people make is to assume that when the symptoms are gone they are gone forever. Occasionally that may be the case, but, as a rule, it is only the beginning of *lasting relief*.

This tried and proven treatment which has *banished suffering from pile victims* in every nook and corner of the land is a logical, scientific method for *attacking the underlying causes of piles* because it has an internal and three-fold action.

I want you to give it (the treatment) a fair opportunity to complete the good work it has begun for you by *bringing lasting relief from pile miseries*.

Here is the one big fact I want you to see clearly. It is far better to trust a good, dependable, old proven treatment with a clean record of almost half a century back of it than to ruin your best chance by using something you know very little about. *Real and final relief* may come slowly, but it pays best in the long run. It would indeed be a remarkable treatment that could reach and relieve every case in the same time and manner. I cannot believe that any victim is content to suffer the tortures and annoyances of piles in any form. Surely you want to be relieved of the suffering and be done *with it finally and forever* if possible.

Would you like to know and be *SURE* about a *REAL* method of direct treatment that very likely many of your own friends and neighbors have used—and from it found new, quick relief from the burning torture of PILES?

PAR. 5. By the means and in the manner aforesaid, respondent represented and implied that said preparations were competent and effective remedies and treatments for piles; that the use of said preparations in the manner directed would end pile torture and the pains incident to piles, would remove or eliminate the cause or causes of piles, and would heal and cure piles.

While said preparations will temporarily remove pain, itching, and bleeding in some cases of piles, they will not end pile torture or the pain incident to piles, nor will they remove or eliminate the cause or causes of piles, nor will they heal or cure piles, nor will they act as a permanent remedy for such conditions.

PAR. 6. Among the competitors of respondent in said commerce are many who sell products and preparations used and useful for the purposes for which respondent's preparations were and are offered for sale and sold, who do not, in any manner, misrepresent the efficacy of said products or preparations.

PAR. 7. The acts, practices, and methods of respondent, as hereinabove alleged, have had and do have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and implications made and used by respondent, as aforesaid, are true and that said preparations will do more than temporarily remove pain, itching, and bleeding in some cases of piles, and that said preparations will end the tortures and pain incident to piles, will remove the cause of piles and will end and cure piles. Such acts, practices and misrepresentations caused, and cause, a substantial portion of the purchasing public, because of said erroneous and mistaken beliefs, to purchase respondent's products or preparations. As a consequence thereof, substantial trade in said commerce has been diverted unfairly to the respondent from its competitors who truthfully represent their products and preparations.

CONCLUSION

The aforesaid acts and practices of respondent, The E. R. Page Company, Inc., are to the prejudice and injury of the public and of respondent's competitors and do constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on the 30th day of March 1938, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commissions Act;

It is ordered, That the respondent, The E. R. Page Company, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of its preparations now designated as "Page Pile Treatment," "Page Combination Treatment," and "Page Internal Combination Pile Treatment," or any other preparations of like or similar ingredients or possessing like

1130

Order

or similar properties, whether sold under these names or any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. That the use of said preparations will end pile torture or the pain incident to piles;
2. That the use of said preparations will remove or eliminate the cause or causes of piles;
3. That the use of said preparations will heal or cure piles;
4. That the use of said preparations will act as a permanent remedy for piles.

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
AMERICAN TELEVISION INSTITUTE, INC., ET AL.

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

Docket 3060. Complaint, Feb. 16, 1937—Decision, Apr. 20, 1938

Where a corporation and certain individuals, theretofore partners, and officers thereof and in control of its sales policy and business practices; engaged in sale and distribution of correspondence courses of study in radio and television and in sale and distribution of equipment for radio and television to members of the public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such courses of study in same and allied fields or in other subjects, and in sale and distribution of similar equipment as aforesaid—

- (a) Commonly placed the advertising of their said courses under the "Help Wanted" heading in the classified section of newspapers of general interstate circulation, with request that the person replying write newspaper in which advertisement appeared, and thereby contacted, through their agents, persons seeking employment in particular field dealt in, and told those replying that they were selling courses of study and equipment and informed them that they would secure jobs or positions upon completion of course of instruction offered;
- (b) Represented through their aforesaid advertising media, that there existed a shortage of radio television operators and that several young men were to be selected and trained for positions in radio television at expense of those offering the course until actually employed, and that payment of \$100 of total cost of course was deferred until enrollee should have finished same and secured a television job paying a salary of \$125 a month or better, facts being there was no such shortage, they did not select or restrict number of their students, none of the students were trained at their expense, but students paid for course at rate of \$10 a month, and statement as to deferring \$100 of total cost, as above set forth, had capacity and tendency to mislead student into belief that jobs were available in field in question;
- (c) Represented that they operated wide-spread employment agency, through which students were placed in paying positions upon graduation, and that they owned or operated a huge laboratory in which radio and television equipment was made in great quantities, and operated radio television broadcasting stations wherein their pupils were given opportunity for graduate residence study, and that aforesaid individual officers were engineers of certain television broadcasting stations, facts being they did not operate such an agency through which students were placed as aforesaid, nor such a laboratory, very few positions are available in field in question, in which there are currently practically no commercial positions available, and they did not operate broadcasting stations affording their pupils opportunity for graduate residence training; and
- (d) Depicted on letterheads used by them and in other advertising literature, picture of a large building in Chicago, of which at one time they occupied two floors, and represented on said letterheads that they were engineers of certain television broadcasting stations, facts being that, while one of their

Complaint

number was designer and erecting engineer of said stations, they were not engineers thereof, as aforesaid;

With capacity and tendency to mislead a substantial portion of student public into erroneous belief that such representations were true and to cause them to enroll as students on account thereof, and with result that trade was unfairly diverted to them from competitors engaged as hereinbefore set forth, and who do not misrepresent or otherwise publish untrue claims concerning their courses in advertising, selling and distributing same in commerce; to the substantial injury of such competition in commerce:

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

Mr. Karl Stecher for the Commission.

Mr. S. R. Rabinoff, of Chicago, Ill., 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 American Television Institute, Inc., a corporation, U. A. Sanabria, R. B. Fullerton, and A. H. Zamotany, as individuals and officers of the American Television Institute, Inc., a corporation, and as copartners, trading as American Television Institute and as Sanabria Television Laboratories, 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. Respondent, American Television Institute, Inc., is a corporation, organized in 1936, doing business under the laws of the State of Illinois. Respondents U. A. Sanabria, R. B. Fullerton, and A. H. Zamotany, are copartners, trading as American Television Institute, and as Sanabria Television Laboratories. Said individuals are also president, vice president, and treasurer, respectively, of the above-named corporation, and manage and direct its sales policies and business practices. The principal office and place of business of all respondents is at 433 East Erie Street, Chicago, Ill.

Respondents are now, and have been for several months last past, engaged in the sale and distribution of correspondence courses of study in radio and television to members of the public located in various States of the United States and in the District of Columbia. Respondents now cause, and during the time herein mentioned have caused, their correspondence courses, when sold, to be shipped from their place of business in Chicago, Ill., to the purchasers thereof

located in the various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and has been, at all times mentioned herein, a constant current of trade and commerce, by the respondents, in said correspondence courses, between and among the various States of the United States, and in the District of Columbia.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other corporations, firms, copartnerships, and individuals, engaged in the sale and distribution of correspondence courses of study in the same and allied fields, or in other subjects, in commerce among the various States of the United States and in the District of Columbia.

PAR. 2. The respondents, in soliciting the sale of and selling their correspondence courses, now circulate in and among the various States of the United States and during all the time herein mentioned have circulated certain statements and representations purporting to describe the nature and extent of respondents' business and of their courses, and the advantages to be realized by students of their courses of instruction, in newspapers, periodicals, booklets, circulars, and general business correspondence, and through agents to pupils and prospective pupils. Such statements and representations serve as representations on the part of respondent that several young men are to be selected and trained for positions in radio television at respondents' expense until actually employed; that a 70-lesson course is offered, collection of the tuition fee being deferred until a job is secured for the student at \$125 per month, or better; that respondents operate a wide-spread employment agency through which students are placed in paying positions upon graduation; that there is a shortage of radio television operators; that respondents own or operate a huge laboratory in which radio and television equipment is manufactured in great quantities; that respondents operate radio television broadcasting stations wherein respondents' pupils are given the opportunity for graduate residence study, and that the individual respondents are engineers of certain radio stations.

Respondents make many other similar statements and representations with respect to the size and importance of respondents' place of business and the position occupied in the radio television world of the officers of the American Television Institute, Inc.

The aforesaid representations are grossly exaggerated, misleading and untrue. In truth and in fact the respondents do not select, or restrict the number of their pupils, and said pupils are not trained at respondents' expense. A 70-lesson course is not offered and the tuition fee is not deferred until a job is secured for the pupil at \$125

Findings

per month or more. Respondents do not operate an employment agency through which their students are placed in employment upon graduation. There is no shortage of radio television operators. Respondents do not manufacture radio television equipment in great quantities, and they do not own or operate any radio or television broadcasting stations. The individual respondents are not engineers of any radio broadcasting station. The statements made in their advertising with respect to the size of their business and the positions occupied in the radio television world of the present officers of the American Television Institute, Inc., are untrue.

PAR. 3. The use by respondents of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has and does mislead a substantial portion of the student public into the erroneous belief that such representations are true and to cause them to enroll as students of respondents on account of such erroneous beliefs. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, individuals, partnerships, firms, and corporations, engaged in the sale of correspondence courses in radio television, and allied fields, who do not misrepresent the size and nature of their business in any way or otherwise publish claims for their courses which are untrue, who likewise advertise, sell and distribute their correspondence courses among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondents from such competitors, thereby substantial injury is being and has been done by respondents to competition in commerce, as herein set out.

PAR. 4. The above-alleged acts and practices of respondent are all to the injury and 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," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission on February 16, 1937, issued and subsequently served its complaint in this proceeding upon respondents American Television Institute, Inc., a corporation, U. A. Sanabria, R. B. Fullerton, and A. H. Zamotany, as individuals and officers of American Television Institute, Inc., a corporation, and as copartners trading as American Television Institute, and Sanabria Television Laboratories,

Findings

28 F. T. C.

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' answers thereto, W. T. Kelley, chief counsel for the Federal Trade Commission, and S. R. Rabinoff, counsel for respondents, executed a stipulation as to the facts, wherein it was agreed that the statement of facts therein recited might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement 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 enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts was subsequently approved by the Commission and 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 answers thereto and said stipulation as to the facts, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Television Institute, Inc., is a corporation organized in 1936 and doing business under and by virtue of the laws of the State of Illinois. Respondents, U. A. Sanabria, R. B. Fullerton, and A. H. Zamotany, were copartners trading as American Television Institute and as Sanabria Television Laboratories from prior to February 1935, until the year 1936 when the respondent corporation was formed and succeeded to the business of the partnerships. Said individuals are also president, vice-president, and treasurer, respectively, of the above-named corporation, and manage, direct and control its sales policies and business practices. The principal office and place of business of all respondents is at 433 East Erie Street, Chicago, Ill.

Respondents are, and were, engaged in the sale and distribution of correspondence courses of study in radio and television and in the sale and distribution of equipment for radio and television to members of the public located in various States of the United States and in the District of Columbia. Respondents now cause, and during the times herein mentioned have caused, their correspondence courses and equipment, when sold, to be shipped from their place of business in

Findings

Chicago, Ill., to the purchasers thereof located in the various States of the United States, other than the State of Illinois, and in the District of Columbia. There is now, and has been at all times mentioned herein a constant current of trade and commerce by the respondents in said correspondence courses and equipment between and among the various States of the United States and in the District of Columbia.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other corporations, firms, copartnerships and individuals engaged in the sale and distribution of correspondence courses of study in the same and allied fields, or in other subjects, and in the sale and distribution of similar equipment, in commerce among the various States of the United States, and in the District of Columbia.

PAR. 2. The respondents, their agents and representatives, have advertised the said correspondence courses in newspapers having a general interstate circulation. The newspaper advertising was commonly placed in the classified section under the "Help Wanted" heading. Such advertisements contained a request that persons answering them write the newspaper in which the advertisement appeared. Persons who sought employment in the particular fields with which said advertisements dealt, replied to them as directed and said replies were collected by agents or representatives of the respondents who thereafter contacted the said persons and fixed the time and place for an interview. At these interviews the persons who had answered said advertisements were told that the respondents were selling courses of study and equipment. The persons so contacted were, however, informed that they would secure jobs or positions upon completion of the course of instruction offered by respondents.

Respondents further represented, in substance, through their advertising media above described, that several young men were to be selected and trained for positions in radio television at respondents' expense until actually employed; that a 70-lesson course was being offered for the price of \$287, payable \$10 at the time of enrollment, and the balance in monthly instalments of \$10 each except that payment of \$100 of said amount was deferred until the enrollee should have finished respondents' course and secured a television job paying a salary of \$125 per month or better; that respondents operated a widespread employment agency through which students were placed in paying positions upon graduation; that there existed a shortage of radio television operators; that respondents owned or operated a huge laboratory in which radio and television equipment was manufactured in great quantities; that respondents operated radio tele-

Findings

26 F. T. C.

vision broadcasting stations wherein respondents' pupils were given the opportunity for graduate residence study, and that the individual respondents were engineers of certain television stations.

In fact, respondents did not select or restrict the number of their students. None of said students were trained at respondents' expense but paid for the courses at the rate of \$10 per month. The statement that the collection of a portion of the tuition fee was deferred until a television job was secured by the student at \$125 per month had the capacity and tendency to mislead the student into believing that jobs were available in the field of television. Respondents did not operate a widespread employment agency through which students were placed in paying position upon graduation. In fact, very few positions are available in the field of television. Up to now there has been no shortage of radio television operators. There are now practically no commercial positions available in the field of television. The respondents' representation that they operated radio television broadcasting stations wherein their pupils were given the opportunity for graduate residence training was not true, although there are now in respondents' laboratory a large number of television receiving and transmitting sets which are being used by respondents in the graduate residence training of their students.

PAR. 3. On letterheads used by respondents and in other advertising literature appeared a picture of a large building in Chicago, Ill., known as the American Furniture Mart. The respondents at one time occupied two floors of that building, although no mention was made of that fact on the advertising matter and letterheads. Respondents' place of business is no longer located in said building, but at 433 Erie Street in Chicago, Ill. Such letterheads also bore representations that individual respondents were engineers of certain television broadcasting stations when, as a matter of fact, they were not. However, respondent U. A. Sanabria was the designer and erecting engineer of the said stations. Since respondents have moved their place of business from the American Furniture Mart building they have not used such stationery.

PAR. 4. The use by respondents of the representations hereinabove set forth has had the capacity and tendency to mislead a substantial portion of the student public into the erroneous belief that such representations were true and to cause them to enroll as students of respondents on account of such erroneous belief. There are among the competitors of respondents mentioned in paragraph 1 hereof individuals, partnerships, firms, and corporations engaged in the sale of correspondence courses of radio television and allied fields and other fields who do not misrepresent or otherwise publish claims con-

1138

Order

cerning their courses which are untrue, and who advertise, sell and distribute their correspondence courses in commerce among and between the various States of the United States. By the representations aforesaid, trade is unfairly diverted to respondents from such competitors; thereby substantial injury is done to competition in commerce as herein set out.

PAR. 5. Respondents for more than 1 year last past have not made any of the statements or representations above referred to. Since May 1, 1937, they have been selling the same course and equipment for the original sum of \$287 without any deferred charges. While in the early stages of development of respondents' business, respondents did have a small laboratory wherein they manufactured a nominal quantity of television equipment, today, respondents have a large television laboratory wherein they manufacture a large quantity of television equipment for sale throughout the country.

CONCLUSION

The aforesaid acts and practices of respondents, American Television Institute, Inc., a corporation, U. A. Sanabria, R. B. Fullerton, and A. H. Zamotany, as individuals and officers of The American Television Institute, Inc., a corporation, and as copartners trading as American Television Institute and Sanabria Television Laboratories, as herein alleged, are to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and a stipulation as to the facts executed by W. T. Kelley, chief counsel for the Federal Trade Commission, and S. R. Rabinoff, counsel for respondents, the filing of briefs having been waived, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, American Television Institute, Inc., a corporation, and its officers, U. A. Sanabria, R. B. Fullerton, and A. H. Zamotany, individually and as copartners trading as American Television Institute and Sanabria Television Laboratories, their respective representatives, agents and employees, in connection with the offering for sale, sale and distribution of their correspondence courses of study and instruction in radio and television

and in the sale and distribution of equipment for radio and television in interstate commerce or in the District of Columbia do forthwith cease and desist from—

1. Representing in any manner that a limited number of persons are to be selected and trained for positions in radio television;

2. Representing in any manner that students are trained at respondents' expense;

3. Representing in any manner that anyone other than the student himself pays for his course of training;

4. Representing through advertisements in classified advertising pages of newspapers, magazines, advertising literature or in any other manner under such headings as "Help Wanted" or "Men Wanted" or in any other manner that respondents are offering employment or that employment will be offered to persons who answer said advertisements;

5. Representing that all or any part of the tuition fee for the course of instruction is deferred until a television job is secured;

6. Representing that respondents operate a widespread employment agency or that students are placed in paying positions upon graduation;

7. Representing that there is a shortage of radio television operators;

8. Representing that they operate radio television broadcasting stations;

9. Representing in any manner that their place of business is larger or that they have greater business facilities than actually is the case;

10. Representing that any of said respondents or their agents, servants or employees are engineers of television broadcasting stations;

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.

Syllabus

IN THE MATTER OF
JUSTIN HAYNES & 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 2743. Complaint, Mar. 13, 1936—Decision, Apr. 21, 1938

- Where a corporation engaged in sale and distribution of a medicated ointment for relief of pain and discomfort of colds, muscular aches, etc.—
- (a) Sold said preparation under name "Aspirub," and in representations on containers and cartons thereof, and in newspaper advertisements, leaflets and broadsides, and by radio broadcasts, as case might be, stressed aspirin content thereof through such statements as "The First Rub containing aspirin for direct external use," "NEW CONVENIENT WAY TO USE ASPIRIN," "I hated to dose myself with aspirin. Now I get relief more conveniently with ASPIRUB," and "You don't swallow ASPIRUB, there is no internal dosing, no upsetting your stomach," etc., and "contains aspirin because it has been proven that aspirin is one of the few medicines that can be absorbed through the skin; it is a scientific new way to use aspirin by applying it to the spot where the pain is; faster than ever;" facts being aspirin is not absorbable through the skin into the body in sufficient quantities to be of any therapeutic value;
- (b) Represented, as aforesaid, that said "medicated ointment provides symptomatic relief for such common ills where home medication is indicated," and that it was "Soothing to muscular aches, pains, and soreness as caused by colds, sprains, and exposure. * * * Calming to coughs due to colds and minor throat irritations," "New, better cold treatment that combines 7 of the finest cold medicines with aspirin, acts lightning-quick in relieving the pain and discomfort of chest colds, head colds, sore throats," etc., "* * * the new quicker relief from this constant danger (the common cold). ASPIRUB is fortified with penetrating aspirin," etc., "* * * derived from two ingredients, Aspirin and Pine Oil;" facts being that said last-named ingredient is obsolete in treatment of colds and no longer generally prescribed, certain other ingredients were of no benefit whatever, but merely added to give a pleasant odor, preparation in question provided little, if any, symptomatic relief, was of little value in treatment of neuralgic symptoms, etc., does not kill colds quickly, contain seven of the finest cold medicines, had no effect whatever on causative factors of colds and similar ailments, etc., and aforesaid statements were false; and
- (c) Represented that said preparation accomplished beneficial results attributed thereto through being absorbable, through such statements as "you RUB it on. And ASPIRUB is not SUPERFICIAL. ASPIRUB penetrates into that sore spot, as the skin absorbs its medication," etc., and that it contained aspirin, as above set forth, because it had been proven that it was one of the few medicines that could be "absorbed through the skin," and was a "scientific new way to use aspirin by applying it to the spot where the pain is," and "Rub this powerful yet harmless Aspirub on throat and chest and in a few minutes its mighty penetrating powers start to allay the inflammation," etc., and "penetrates the skin and reaches the nerve endings where it re-

Complaint

26 F. T. C.

duces pain;" facts being only an insignificant amount of said Aspirub could be absorbed through the skin into the body and only an infinitesimal amount thereof reach the pain perceiving center of the central nervous system and not in sufficient amount for relief of pain, and that skin would not absorb said preparation to any substantial extent, so as to have any beneficial value by reason thereof, and it did not represent a new way to use aspirin nor a new method or way of taking same, or function as represented, but depended for beneficial effects, in common with many other preparations, on action as an irritant;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations were true, and that said preparation had a substantial therapeutic value in treatment of afflictions and ailments for which recommended, as above indicated, and with result that public purchased substantial volume of said product, acting in such mistaken and erroneous belief, and trade was unfairly diverted to it from competitors engaged in manufacture, sale and distribution of like and similar products or other preparations designed and used for similar purposes, and which they truthfully represented as to efficacy and therapeutic and curative value:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mr. John H. Glaccum of Munn, Anderson & Liddy, 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 Justin Haynes & Co., Inc., 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. The respondent, Justin Haynes & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 347 Fifth Avenue, in the city of New York, within the State of New York. Said respondent is now and for more than 1 year last past has been engaged in the sale of a medical preparation containing, among other ingredients, Aspirin, under the brand name "Aspirub," and the distribution thereof between and among the various States of the United States. It causes said medical preparation, known as "Aspirub," when sold by it to be transported to the purchasers thereof located in the State of New York and

various other States of the United States. There is now and has been for a long time, to wit, more than 1 year last past, a constant current of trade and commerce by respondent in said "Aspirub" between and among the various States of the United States.

In the course and conduct of its said business, said respondent is now and for a long time, to wit, for more than 1 year 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 and distribution of aspirin and of other medical preparations containing aspirin.

PAR. 2. The preparation sold and distributed by said respondent under the name of "Aspirub" is a salve or ointment for external use which contains various medicinal ingredients and is put up in jars containing one and one-half ounces of the ointment each. Each jar of said salve or ointment contains 1½ percent aspirin.

PAR. 3. Said respondent, in the course and conduct of its said business, as hereinbefore set out in paragraph 1, has been and now is engaged in advertising on a national scale as a means of furthering and aiding in the interstate sale and distribution of said "Aspirub."

Said respondent in its said advertisement of the product known as "Aspirub" and sold by it, has made and is now making various false, deceptive, and misleading statements concerning said product. Among the said statements which said respondent has used and is now using in its advertisements in newspapers and on the labels pasted on the jars of "Aspirub" and on the cartons containing said jars of "Aspirub" are statements to the effect that due to its aspirin content "Aspirub" has great therapeutic value, and that "Aspirub" is the new way of taking aspirin, whereas in truth and in fact said "Aspirub" because of its negligible aspirin content has no therapeutic value as aspirin and in truth and in fact aspirin cannot be absorbed into the body through the skin.

Respondent in its said advertising has and is creating upon the public the impression that the use of its product "Aspirub" has and will accomplish all of the beneficial therapeutic effects of aspirin and because it is applied externally will avoid the hazards of aspirin used internally, whereas in truth and in fact said "Aspirub" has no beneficial therapeutic effect because of its negligible aspirin content and because of the fact that aspirin is not absorbed through the skin, and in truth and in fact "Aspirub" does not have the functional value of aspirin.

PAR. 4. The use by the said respondent, Justin Haynes & Company, Inc., of the foregoing false, deceptive and misleading representations alleged to be used by the said respondent in paragraph 3 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that "Aspirub" is in truth and in fact the safest, newest, most beneficial and most effective way to use aspirin, and has thereby induced and does now induce the consuming public and especially the users of aspirin, acting in said erroneous belief, to purchase "Aspirub" in preference to aspirin offered for sale in tablet or powder form for internal consumption, which is the generally accepted way for taking aspirin, by manufacturers, retail dealers, and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade is diverted to respondent from such manufacturers, retail dealers, and distributors of aspirin in tablet or powder form for internal consumption and thereby injury has been done and is being done by the respondent.

PAR. 5 Said false, deceptive, and misleading representations of said respondent contained in its advertising 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 13, 1936, issued, and on March 14, 1936, served, its complaint in this proceeding upon the respondent, Justin Haynes & 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 other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu, II, attorney for the Commission and in opposition to the allegations of the complaint by John H. Glaccum, attorney for respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were 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, the answer thereto, testimony and other evidence, briefs in support of the com-

plaint and in opposition thereto, and the oral 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, 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, Justin Haynes & Co., Inc., is a corporation organized and doing business under the laws of the State of New York. Its principal office and place of business is located at 347 Fifth Avenue, city of New York, State of New York. It is engaged in the sale and distribution of a medication sold and distributed under the trade name of Aspirub.

PAR. 2. Respondent's preparation is distributed from its place of business to retailers located throughout the United States. When orders are received for respondent's said preparation, it causes such preparation to be shipped from its place of business located in the city of New York, State of New York, to the purchasers thereof located at various points in the various States of the United States other than the State of New York, and in the District of Columbia. Since the date of its incorporation, the respondent has maintained a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution or manufacture, sale and distribution, of like and similar preparations or other preparations designed, intended and used for similar purposes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent has advertised, and now advertises, its product by means of statements appearing on the containers and cartons in which respondent's preparation is packaged and sold, and by newspaper advertisements, leaflets, broadsides, by radio broadcasts. The following are representative of the statements and representations made on the containers and cartons of respondent's preparation:

This medicated ointment provides symptomatic relief for such common ills where home medication is indicated.

Tends to relieve pain and discomfort of colds. Rub on chest and throat and insert small quantity in nostrils.

For muscular aches, pains and soreness, rub freely on the affected parts.

The First Rub containing aspirin for direct external use.

Findings

26 F. T. C.

Soothing to muscular aches, pains and soreness as caused by colds, sprains, and exposure. Comforting for neuralgic symptoms. Calming to coughs due to colds and minor throat irritations.

The name ASPIRUB is derived from two ingredients Aspirin and Pine Oil. * * *

The following are representative of the statements and representations made in the newspaper advertisements which the respondent inserts in newspapers:

New Rub containing Aspirin kills colds quicker. Just rub it on! No dosing—No sagging. Checks colds like magic!

Aspirub, the new, better cold treatment that combines 7 of the finest cold medicines with aspirin, acts lightning-quick in relieving the pain and discomfort of chest colds, head colds, sore throats, muscular aches, neuralgia pains. Within a few hours—or overnight—the cold is checked, tightness is gone, breathing more normal, coughing eased up—and you feel your old healthy self again!

ASPIRUB is pleasant to use—colorless and stainless. Eliminates internal dosing! Loosens congestion by forcing blood to the surface and increasing circulation.

Get a jar of ASPIRUB today! Snuff it through your nostrils! Inhale its vapors when dissolved in hot water! Rub it on your chest overnight! * * * And see if ASPIRUB isn't the nicest, quickest-acting cold treatment you've ever used. Get a jar from your druggist today!

I hated to dose myself with aspirin. Now I get relief more conveniently with ASPIRUB.

ASPIRUB your cold away.

NEW CONVENIENT WAY TO USE ASPIRIN.

The following is representative of the statements and representations made by the respondent in its radio broadcasts:

The headlines of today's papers scream with war! Diplomats are redoubling their efforts to localize it or prevent it entirely. Meanwhile, another war, one in which we all are involved, is being fought with success. This is the war against the common cold. Medical science now has produced ASPIRUB—A-S-P-I-R-U-B—the new quicker relief from this constant danger. ASPIRUB is fortified with penetrating aspirin, combined with seven other well-known ingredients for colds. You don't swallow ASPIRUB, there is no internal dosing, no upsetting your stomach—you RUB it on. And ASPIRUB is not SUPERFICIAL. ASPIRUB penetrates into that sore spot, as the skin absorbs its medication. ASPIRUB is antiseptic, inflammation-reducing. At the first sign of a head cold snuff a little ASPIRUB into your nostrils. The vapors last. Your head clears almost instantly, you breathe easier. Rub ASPIRUB on a congested chest or sore throat—it will help to loosen tightness and bring relief. Fine for muscular aches, too.

The respondent has made other claims and representations regarding the merits of its compound, among them being the following: "Rheumatic pains, neuritis, neuralgia, simple colds, sore throat, and nasal congestion are among the ailments whose symptoms have been successfully treated by Aspirub; the rich volatile medicines in

Aspirub carry the aspirin in permanent solution and increase its powers to penetrate quickly to the source of pain or irritation; Aspirub is antiseptic and healing; Aspirub contains aspirin because it has been proven that aspirin is one of the few medicines that can be absorbed through the skin; it is a scientific new way to use aspirin by applying it to the spot where the pain is; faster than ever tough old colds are killed with Aspirub; rub this powerful yet harmless Aspirub on throat and chest and in a few minutes its mighty penetrating powers start to allay the inflammation—start to break up the congestion; just rub it on, no dosing, no gagging, checks colds like magic, and Aspirub penetrates the skin and reaches the nerve endings where it reduces pain and lessens congestion.

PAR. 5. The qualitative and quantitative composition of the respondent's preparation is as follows:

Aspirin.....	1.5%
Pine Oil.....	13.0%
Methyl Salicylate.....	2.0%
Camphor.....	3.0%
Menthol.....	2.0%
Oil of Eucalyptus.....	.5%
Oil of Lavender.....	1.0%
Oil of Spearmint.....	1.0%
White Petrolatum (Petroleum Jelly).....	76.0%
Total.....	100.0%

PAR. 6. Aspirin has been prescribed by the medical profession for several years for the alleviation of pain incident to certain ailments and afflictions of the human body, particularly in reducing the threshold of pain in the treatment of rheumatic fever. The normal dosage of aspirin for a normal person is five grains, however, as high as 120 grains may be given a person within a comparatively short time in the treatment of rheumatic fever.

Aspirin is a common name for acetyl salicylic acid. This particular acid, along with a large group of other organic salicylates, is not absorbable through the skin into the human body in sufficient quantities to be of any therapeutic or curative value. Further, this group of compounds are centrally acting, as contrasted with peripherally acting analgesics. Centrally acting analgesics are medicines that must first be taken into the blood stream and by it transmitted to the brain or central nervous system. When they reach the brain and act, a nervous impulse is transmitted to the area of pain or injury.

The purpose, if any, which the respondent's compound serves in the treatment of the various afflictions and conditions of the human body

for which it is recommended, is that of an irritant. There are many irritants upon the market today. They are not, per se, of therapeutic or curative value. Almost without exception their application is accompanied by rubbing. The counter irritation set up by the rubbing primarily accomplishes the therapeutic effect or curative action.

The respondent's product, Aspirub, contains in a 1½-ounce jar, 10.4 grains of aspirin. Based on the testimony it is found that if a whole jar of respondent's preparation were applied as directed by respondent, there would be absorbed into the human body not over 10 percent of the total aspirin content of the jar, or 1.04 grains of aspirin. If 10.4 grains of aspirin were taken internally there would be an absorption of at least 90 percent of the aspirin content, or 9.36 grains of aspirin.

From the directions contained in leaflets enclosed in the containers in which respondent's preparation is packed and sold, it is found that the dosage of Aspirub varies from a small quantity applied every few hours in the treatment of nasal congestion, to small quantities "about the size of a pea" in the treatment of coughs due to colds. One witness testified that in using the respondent's compound he applied to the painful area just enough to cover the end of a finger tip.

The constituent of respondent's compound that is stressed most in the advertisements of same, is the aspirin. On the basis of the above calculations of the absorption of aspirin by external and internal application, it is found that the insignificant amount of the aspirin in respondent's compound which is absorbed into the human body when applied dermally is not sufficient to warrant a legitimate use by the respondent of the trade name Aspirub.

Upon entering the human body the small amount of aspirin which can be absorbed by dermal application, begins to break down first into the various salicylates and later, organic ions. The aspirin absorbed into the human body thus immediately changes into other organic substances before it reaches the blood stream. The infinitesimal amount of aspirin absorbed by dermal application is further diluted upon being taken into the blood stream.

From the testimony of expert pharmacologists, it is found when aspirin is taken internally it passes through the stomach into the intestines before breaking down into its component parts. Upon reaching the intestines and breaking down into the various constituents, it is then taken into the blood stream and transmitted to the pain perceiving center of the brain or central nervous system. The pain perceiving center then sends an impulse toward the injured or diseased part of the human body, resulting in relief of pain or discomfort.

Pharmacologists further testified that pine oil is obsolete in the treatment of colds and no longer is generally prescribed by the medical profession, and that oil of lavender and oil of spearmint in the respondent's preparation were of no benefit whatsoever and were merely present for the purpose of giving the preparation a pleasant odor.

The evidence clearly establishes the fact that the aforesaid representations made by respondent are false and deceptive. The respondent's compound will provide little, if any, symptomatic relief from ills where home medication is indicated. It does not tend to relieve pain and discomfort of colds. It is of little or no therapeutic value for muscular aches, pains and soreness, and it is of little value in the treatment of neuralgic symptoms common to coughs, colds and minor throat irritations. It does not kill colds quickly, and it will not check colds like magic. It does not contain seven of the finest cold medicines and will not act lightning-quick in relieving the pain and discomfort of head colds, chest colds and sore throat. It will not check tightness in the chest or make breathing more normal, and it is not the quickest acting of cold medicines. Respondent's preparation has no effect whatever on the causative factors of colds and similar ailments.

The respondent's preparation is for external use. Only an insignificant amount of Aspirub can be absorbed through the skin into the body. Upon reaching the blood stream Aspirub is broken down into its various constituent elements and greatly diluted by the blood. As a result, only an infinitesimal amount of the Aspirub originally absorbed reaches the pain perceiving center of the central nervous system. The amount reaching that center is so minute that no impulse sufficient for the relief of pain is sent out from the center.

Pharmacologists further testified that recent scientific tests have not established that the respondent's compound is one of a few medicines which can penetrate the skin; that the aspirin in respondent's preparation is not held in permanent solution; that the oils claimed to be in respondent's preparation do not, under the circumstances in which the preparation is used, volatilize and increase its power to penetrate quickly to the source of pain or irritation; that the skin will not absorb respondent's preparation to any substantial extent so as to have any beneficial value by reason thereof; and that said preparation is not antiseptic or curative. Aspirub when applied by dermal application will not reach the nerve endings and reduce pain. Aspirub is not a new way to use aspirin, nor is it a new method or way of taking aspirin.

PAR. 7. The use by respondent of the representations set forth above and appearing in its advertising literature, newspaper advertisements and radio broadcasts, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchas-

Order

26 F. T. C.

ing public into the erroneous and mistaken beliefs that the said representations are true and that respondent's preparation has a substantial therapeutic and curative value in the treatment of the afflictions and ailments of the human body for which it is recommended. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of the respondent's products with the result that trade has been unfairly diverted to respondent from its competitors likewise engaged in the manufacture, sale and distribution or in the sale and distribution of like and similar products, or other preparations designed, intended and used for similar purposes, who truthfully represent the efficacy, therapeutic and curative value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Justin Haynes Company, Inc., are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Justin Haynes & Company, Inc., a corporation, its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of a preparation now designated as "Aspirub," or any other preparation containing substantially the same ingredients, or possessing the same or similar properties whether sold under the name "Aspirub" or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or through implication:

1. Representing, through the use of the word "Aspirub" or any other word containing the letters "Aspir," or any word or words simulating the word "Aspirin" as a trade name or designation for

1147

Order

its preparation, or through any other means, or in any other manner, that the said preparation is Aspirin.

2. Representing that said preparation has any of the merits of, or accomplishes to any substantial extent the beneficial therapeutic effects of Aspirin.

3. Representing that said preparation has any substantial therapeutic or curative value other than as an irritant.

4. Representing that said preparation is absorbable into the human body through the skin in an amount sufficient to produce any beneficial therapeutic effect by reason thereof.

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
CLINE MUSIC 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 2944. Complaint, Oct. 15, 1936—Decision, Apr. 21, 1938

Where a corporation engaged in sale and distribution of pianos and other musical instruments—

(a) Represented, through "stock ads" sent to it by piano companies and inserted by it in newspapers, and through salesmen in dealing with prospective purchasers contacted by it through means of said advertisements, that it was offering used or repossessed pianos on which a balance was due, and on which payments, for one reason or another, as variously assigned by its salesmen, had been discontinued by prior purchasers, and that it would sacrifice said instruments or store them with reliable parties, rather than incur expense of returning pianos, and offered said instruments, in accordance with such representations, as repossessed, used, or secondhand;

Facts being that real purpose of such advertisements was not to sell any particular piano offered, but to contact prospective customer, said various representations were false, and it did not have any particular used or repossessed instruments, as represented, in aforesaid locality, and pianos sold were cheap, new instruments.

(b) Exhibited and sold pianos on which were stamped or burned retail price at which, purportedly, instrument was to be sold, and represented, in offering and selling product in question, that such purported prices were regular or customary retail prices for the particular products;

Facts being said supposed prices, thus burned or stamped on the particular instruments by the manufacturers from whom said corporation purchased same, were not and never had been the actual retail selling prices thereof, but were highly excessive, false, and misleading, and none of said pianos were ever sold for any such prices, thus stamped on said cheap instruments in accordance with practice of few, but not highest grade manufacturers;

With tendency and capacity, through use of such "come on" or "blind" ads, and fictitious and exaggerated pretended retail prices and representations, to cause members of purchasing public to form erroneous belief that it was offering high-class, used and repossessed pianos at a sacrifice or for balance alleged to be due thereon, rather than incur expense of returning same to factory, and with result that various members of public, acting in such erroneous beliefs, and induced by said various misrepresentations, bought said pianos, and with capacity and tendency thereby unfairly to divert trade to it from competitors engaged in selling in interstate commerce pianos truthfully advertised and represented; to the substantial injury of competition in commerce:

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

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

Mr. Marshall Morgan for the Commission.

Mr. Curry Carter, of Staunton, Va., 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 Cline Music 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 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, Cline Music Company, Inc., is a corporation duly organized, created, and existing under and by virtue of the laws of the State of Virginia, with its principal place of business located at 126 West Beverly Street, in the city of Staunton, Va. It is now and has been for more than one year last past engaged in the business of selling and distributing pianos to members of the purchasing public as herein set out.

PAR. 2. The respondent, being engaged in business as aforesaid, caused and causes said pianos when sold by it to be transported from its principal place of business in the city of Staunton, Va., to purchasers thereof located in the various States of the United States other than the State of Virginia, and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said pianos sold and distributed by said respondent between and among the various States of the United States, and in the District of Columbia.

PAR. 3. 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 corporations and with partnerships, firms, and individuals engaged in the sale and distribution of similar products in commerce among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business as hereinabove described, respondent, in offering for sale and selling its said pianos in interstate commerce, caused and causes advertisements and advertising matters concerning said pianos to be inserted in various periodicals having a wide circulation in various States of the United States. In such advertisements and advertising matter the following statements and representations have been and are made:

FOR SALE—PIANOS, WE learn we must take back from two customers who have moved to this vicinity, their pianos on account of inability to finish payments. To return these pianos, would be very expensive. Will sacrifice them

for balances due, or store them with reliable parties until sold. Both pianos are almost new. Terms if desired. One Baby Grand; One Midget upright; full 88 note keyboards. If interested, write to * * *.

In answer to inquiries from members of the purchasing public concerning the pianos so advertised and offered for sale, respondent in its usual course of business transports its pianos from its place of business to the inquiring person and exhibits said pianos to the inquiring person and offers the same for sale to said person, each piano having a price burned or stamped on its sounding board, said price so stamped or burned purporting to be the regular retail price of the piano.

The statements contained in the above set out advertising matter together with the price marks stamped or burned on the said pianos are intended to and do serve as representations on the part of the respondent that:

(a) The pianos referred to in said advertisements and exhibited to the prospective purchaser are of high quality and superior workmanship.

(b) They were originally sold at and for prices closely approximating the prices stamped or burned thereon.

(c) Said pianos had been repossessed and that prices at which said pianos were actually offered for sale are sacrificed prices made for the purpose of eliminating shipping and other repossession charges.

In truth and in fact said pianos were not instruments which had been sold for prices approximating the prices burned or stamped thereon and which had been repossessed by respondent. Said instruments were not being sacrificed for balances due, but the said pianos were new instruments of inferior quality, and the prices asked therefore were not in fact sacrifice prices. The retail prices so stamped or burned on said pianos are and were many times in excess of the actual selling price of the said pianos by the retailer to the consuming public, and are and were many times in excess of their true and actual value. The retail prices so stamped or branded, as aforesaid, are false and fictitious, and in no sense represent either the true value or the true selling price of the pianos so marked. The prices stamped or marked on said pianos were not and are not the prices at which the same were or are expected or intended to be sold, but were and are greatly in excess of the prices at which the same were sold or intended to be sold in the usual course of trade.

PAR. 5. Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or

articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer, and consequently to represent the approximate retail sale value of the item. The retail price so stamped or marked is intended by the manufacturer to be indicative of the quality and character of the products and the process of manufacture. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. For many years a substantial portion of the purchasing public has expressed, and has had, a marked preference for pianos of high quality and workmanship that are produced by the manufacturer with the intent and design of selling said pianos for prices in excess of the general and usual range of prices for similar products manufactured from inferior materials and by inferior workmanship. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of such pianos and their resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof, over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

PAR. 6. The effect of the false and misleading representations, hereinabove set out, together with the false and fictitious price markings, herein set out, on the part of the respondent, in the sale and offering for sale of pianos, as hereinabove referred to, is to mislead and deceive a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

1. That the pianos were and are superior products and had been sold by the manufacturer thereof to the respondent with the intent and purpose that said pianos would be originally sold at retail at a price closely approximating the price stamped thereon:

2. That the pianos so offered for sale and sold were ones that had been repossessed on account of the failure or inability of the pur-

chasers to meet the payments thereon, and that such pianos were being sacrificed for balances due.

3. That the price burned or stamped on the back of said pianos was the usual or customary price at which the said pianos were sold or intended to be sold in the course of the regular retail trade; and that such pianos were made of superior workmanship and materials.

PAR. 7. The aforesaid acts and practices of the respondent have a tendency and capacity to unfairly divert a substantial volume of trade from competitors of respondent engaged in similar businesses, which competitors rightfully and truthfully represent the material, merit, and value of their products and which said competitors do not in any wise misrepresent the material, merit, and value of such products. Thereby, substantial injury has been and is being done by respondent to competition in interstate commerce.

PAR. 8. 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 the Federal Trade Commission Act, the Federal Trade Commission on October 15, 1936, issued and thereafter served its original complaint in this proceeding on respondent, Cline Music 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 other evidence in support of the allegations of the complaint were introduced by Marshall Morgan, attorney for the Commission, and in opposition to the allegations of the complaint by Curry Carter, attorney for the respondent, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes these its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Cline Music Company, Inc., hereinafter referred to as respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 126 West Beverley Street in the city of Staunton, Va. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing pianos and other musical instruments.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent has offered its said products for sale and has sold and transported and caused the same to be transported in commerce among the several States, of the United States direct from its aforesaid place of business in the city of Staunton, Va., to customers located at points in States of the United States other than the State of Virginia.

In the course and conduct of such selling, respondent has been, and now is, engaged in competition with corporations, firms, partnerships, and individuals offering for sale and selling in like commerce, pianos and musical instruments.

PAR. 3. Respondent, in connection with the sale and distribution of its pianos as aforesaid, has advertised the same in papers having interstate circulation. In said advertisements respondent has represented that it was taking back from two customers in "this vicinity" two pianos "almost new," on which customers were unable to complete payments, and that these pianos would be sacrificed for "the balance due" on them rather than incur the expense of returning them. Typical of these advertisements was the following inserted by respondent in the "Bristol News Bulletin," a daily paper published at Bristol, Va.-Tenn., on January 6, 1936:

"FOR SALE—PIANOS, WE learn we must take back from two customers who have moved to this vicinity, their pianos on account of their inability to finish payments. To return these pianos would be very expensive. Will sacrifice them for balances due, or store them with reliable parties until sold. Both pianos are almost new. Terms if desired. One Baby Grand, One Midget upright; full 88 note keyboards. If interested, write to * * *."

Other advertisements, almost identical in wording, were run by the respondent in the "Bristol Herald Courier" of November 19 and December 11, 1935. In a further advertisement inserted by respondent in the February 1, 1936 issue of the "Bristol News Bulletin," describing two small-size nationally known pianos "we have in your vicinity," it was stated: "* * * Rather than reship to the factory, we would like to sell these to responsible parties for balances due * * *."

Findings

28 F. T. C.

Three out of four advertisements inserted by respondent in Bristol papers announced and explained that it was necessary for respondent to "take back" two pianos from customers "who have moved to this vicinity" because of their "inability to finish payments," and a fourth advertisement referred to two small-sized pianos "we have in your vicinity." All advertisements were so worded as to emphasize in the mind of the prospective customer the idea that the company was anxious to avoid the expense of moving these pianos from that vicinity and would for this reason sacrifice the instruments for balances due.

The "Bristol Herald Courier" is a daily morning paper and the "News Bulletin," a daily afternoon paper, each published by the Bristol Publishing Corporation at Bristol, Va. These two papers circulate in eastern Tennessee, western North Carolina, southwestern Virginia, and southeastern Kentucky. Advertising matter inserted in these Bristol papers will reach all four of these States. When persons living in the vicinity of Bristol answered these advertisements they received a card from an agent of respondent acknowledging the inquiry to the advertisement and advising that he would be "in your vicinity" in the near future with a very unusual proposition.

Various persons living in the State of Tennessee answered these advertisements and eventually bought pianos as a result of the contacts obtained by respondent through these advertisements.

PAR. 4. Respondent's agents in sales talks followed out the representation made in the advertisements that the pianos were repossessed or used instruments. One purchaser was told that the piano in question had been used by a couple that "broke up," and that it was being sold for the sum due on it. This customer understood that the piano was offered in pursuance of these advertisements and corresponded to the pianos mentioned in the advertisements. The outside appearance of the piano was that of a new piano. There were no marks or scratches on it.

Another customer in Tennessee who answered one of respondent's advertisements was told that pianos shown her were "slightly used" and that a particular one the agent was showing her was being sold at a sacrifice "rather than take it back to the company." This customer understood she would get the benefit of the reduction in price because the piano had been used. She thought it was a used piano in splendid condition.

Still another Tennessee customer who answered one of respondent's advertisements was given to understand that the piano the agent was showing her had been bought by a newly married couple who were divorcing and they didn't have any more use for it. The couple had owned it but a short time and the company was taking it back.

PAR. 5. The advertisements run by respondent in newspapers were "stock ads" sent to respondent by piano companies. The advertisements were used by respondent company and its agents to obtain contacts with prospective purchasers. The real purpose of the advertisements was not to sell any two particular pianos but to get the attention of the customer, to get a contact. The important thing was to locate prospective customers and contact them. The ads were primarily inserted for selling pianos. These ads are known to the advertising men as "come-on" advertisements and "blind ads." A "come-on" advertisement is defined in the record as an advertisement "inserted to bring in customers." A "blind" ad is defined in the record as one that would lead a prospective purchaser to believe that he was getting a piano that had been partially paid for and he does not get that kind of a piano.

In the view of one large New York manufacturer, the "come-on" ads are misleading in that "they do not represent repossessed pianos but are merely bait to get prospects." Another large New York manufacturer terms these "blind ads," those which do not state the truth; one that is "misleading and gets a prospective customer by not telling the truth." This type of advertising is "used by certain types of manufacturers, not the higher grade of manufacturers."

PAR. 6. In truth and in fact the representations made by respondent company in its advertisements and by salesmen who contacted customers by the use of such advertisements were false, deceptive, and misleading in that the advertisements run by respondent were employed for the purpose of obtaining initial contacts with prospective customers and not for the purpose of selling any particular used or repossessed piano. The respondent did not have and has not had at Bristol, Tenn., or in the vicinity of Bristol, or at any place or locality reached and served by daily papers published at Bristol, any two particular repossessed and used pianos, and at least three out of four of the pianos sold by respondent to parties living at Bristol, Tenn., sold through the use of respondent's advertisements, were cheap, new pianos.

The inference or impression sought to be conveyed by respondent in its advertisements, and by respondent's salesmen after obtaining contacts through such advertisements, was that because the pianos had been used, had belonged to someone else, and would have to be reclaimed, they would thereby be sold at a reduction and could be bought at a bargain. Neither the respondent nor any of its salesmen could state where or from whom any piano had been repossessed. Respondent was unable to "run these pianos down, to get the actual facts as to just whether they were brand new pianos, and whether

they were repossessed pianos, or whether they were obsolete pianos." Efforts to locate in the vicinity of Bristol any piano that belonged to Cline Music Company, or its agents, were unsuccessful. Respondent company does not own or operate a "factory" to which a piano could have been returned.

The pianos sold to Mr. W. H. Williams, Mrs. W. G. Dutton, and Mr. Robert Speer could not be identified by respondent as having been repossessed at any of several points in Virginia served by the "Bristol Herald Courier," nor did respondent ever identify any such pianos as having been repossessed at Bristol or in the vicinity of Bristol, and no salesmen for respondent could give the name of any person living in that vicinity who formerly owned one of the pianos figuring in this record.

Respondent's salesmen preferred to sell new pianos as they get a commission on those, and endeavored to get in touch with customers to sell them new pianos. The piano sold to Mrs. W. G. Dutton looked new but looked like it might possibly have been demonstrated. The piano sold to Mrs. Rucker looked brand new. The piano showed to and bought by Mr. Williams looked brand new. The outside appearance of the piano sold to Robert Speer was that of a new piano.

PAR. 7. Respondent, in further connection with the sale and the offering for sale of its pianos, exhibited and sold pianos on which were stamped or burned a retail price at which the piano was to be sold. This alleged retail sales price was burned into or stamped on the lid that raises in front of the player of the instrument or on the back part of the piano. About 50 percent of the pianos handled by respondent company have contained this burned-in price mark. These constitute the cheaper grades. The prices are and were burned or stamped on the piano by certain manufacturers from whom respondent company buys and has bought its pianos. All pianos figuring in the present case bear such a stamp. The practice of so burning or stamping prices on pianos originated during the World War. These prices were stamped or burned on the instrument at a time when prices were high and labor was scarce. Some of the manufacturers are still using these World War prices, prices which they used 23 years ago.

The so-called stamped or burned-in price on respondent's pianos is not, and never has been, the actual retail selling price for such pianos and neither respondent nor any of its sales representatives have ever sold any of respondent's pianos for such prices. This stamping or burning of the price on pianos is not a common practice in the industry, being done by few companies, not by the highest-grade manufacturers.

1158

Findings

The customary mark-up price on a piano for the dealer is approximately 100 percent of the invoice. The manufacturer sells to a dealer at a given figure and the dealer expects to double that in his retail price. Out of this retail price will also come the dealer's expenses.

Where a Melville Clark piano shipped from Chicago, Ill., to Bristol, Va., with a price of \$425 burned on the board, was invoiced to the dealer for \$97, such stamped or burned-in price would represent an excessive mark-up.

In the light of the foregoing rule that the dealer's resale price is double that of the invoice to him, it is ascertained that all of the pianos sold by respondent as disclosed in this record bore excessive suggested retail prices stamped or burned on them, as the following table discloses:

Purchaser	Make, style, and number of piano	Burned-in-board price	Invoice price to dealer	Dealer's retail sales price
Robert Speer and Wife.....	Wurlitzer Co., Melville Clark, Upright Mahogany Style 39, No. 140668.	\$425. 00	\$97. 00	\$230. 00
W. G. Dutton and Wife.....	Story & Clark Spinnet Mahogany Style C, No. 135188.	525. 00	145. 00	285. 00
W. H. Williams and Wife.....	Wurlitzer Co., Melville Clark Style Grand Mahogany, No. 136229.	750. 00	167. 50	495. 00
Mrs. Julia C. Rucker.....	Wurlitzer Co., Melville Clark Style 39 Mahogany, No. 140547.	425. 00	97. 00	225. 00

Purchaser	Invoice price percentage of burned-in-board price	Retail price percentage of burned-in-board price	Invoice price percentage of retail sales price	Retail price more than double invoice price
Robert Speer and Wife.....	22%	54%	42%	Yes.
W. G. Dutton and Wife.....	27%	54%	50%	No.
W. H. Williams and Wife.....	22%	66%	33%	Yes.
Mrs. Julia C. Rucker.....	22%	52%	43%	Yes.

It is disclosed from the above table that even had the pianos sold by respondent actually been used or repossessed pianos as claimed, and resold as such, three out of four of such pianos were resold for prices well above the retail sales prices of the pianos new, that is, well above the figure representing double the invoice price to the dealer. In only one instance does the record disclose or intimate any previous sale or use of any piano.

The prices that were burned in or stamped on the pianos sold by the respondent were adopted and employed by sales representatives of respondent in their sales talks to customers.

The agent selling the piano to Mrs. W. H. Williams represented to her that the price on the piano in raised numbers, namely \$750,

was the price of the instrument. If this piano had been, in fact, a second-hand piano, it would follow that it was resold for \$160 more than the customary price of a new piano, that is, for \$160 more than the invoice price to the dealer, doubled.

The factory price appearing on the "slightly used" piano sold to Mrs. Julia Rucker was \$425. Respondent's agent assured her that this was the factory price and that, because it had been sold to respondent as a used piano, it was being resold at a reduction. This piano was invoiced to the respondent for \$97 and was sold (or allegedly resold) by respondent for \$225. Assuming that this one piano out of four appearing in the record was actually a used piano, it follows that it was resold by respondent for \$31 more than the regular price of the piano brand-new, that is, for \$31 more than the amount of the invoice doubled.

The agent selling the piano to Robert Speer and wife showed them a price of \$425 that was burned or stamped on the back of the piano, and these purchasers understood from the agent that this sum represented the real selling price of the piano. Assuming that this piano was a used piano as represented, the piano was resold for \$36 in excess of the invoice price, doubled, and the burned-in retail price on the board of the piano is nearly five times the amount of the invoice.

Respondent's sales agents frankly admitted that they adopted and employed in their sales talks to customers these burned-in or stamped prices on instruments sold by them. This price stamped on or burned into the piano the agent would show to a customer. The customer was told this was the retail price; that this was the stamped price put on by the factory; that this was the general retail price of the piano as sold in various places. Respondent's agents did not and do not know of any instance where respondent or anyone else ever sold a piano, old or new, for the price stamped or burned on the board.

PAR. 8. In truth and in fact, the prices stamped upon or burned on the pianos sold by respondent in commerce do not represent and have not represented the actual or proper retail sales prices for said pianos, but are and were, on the contrary, false and fictitious prices at which respondent's said pianos are not and never were sold or intended to be sold.

PAR. 9. The various statements and representations made by respondent through the medium of newspaper advertising, mail matter, and sales talks of its agents or sales representatives, in selling and offering for sale its pianos in the respective States of the United States, as shown in paragraphs 3 to 7 herein, are false, decep-

tive and misleading. Respondent did not have and has not had at any time at Bristol, Tenn., or in the vicinity thereof, any two particular repossessed pianos. The purpose of respondent's said advertising was not to sell to anyone at Bristol, Tenn., or in that vicinity, used or repossessed pianos, but, on the contrary, the admitted purpose of respondent's newspaper advertising was to make contacts with prospective new customers with a view to selling them new pianos.

The pianos sold by respondent were in at least three instances cheap new pianos and the representations of respondent's sales representatives that such instruments were used or repossessed pianos were false, deceptive and misleading.

The retail selling prices burned in or stamped on all of the pianos sold by respondent were and are fictitious and highly excessive, false and misleading. Respondent does not sell and never has sold pianos for any such prices. Respondent, through its various sales representatives, has, nevertheless, adopted and employed these false and fictitious retail prices in connection with the sale and the offering for sale of its pianos, and has falsely and deceptively represented that such prices were and are the correct and proper retail sales prices of its said pianos.

PAR. 10. There are among the competitors of respondent, as referred to hereinbefore, corporations, partnerships, firms, and persons who are engaged in the sale of pianos in commerce and who truthfully represent their products and honestly vend the same.

PAR. 11. The use of the aforesaid false and misleading representations and practices on the part of respondent in the sale and offering of its pianos for sale has had, and now has, the tendency and capacity to cause members of the purchasing public to form the erroneous belief that respondent was offering high-class used and repossessed pianos at a sacrifice price or for the balance alleged to be due on them, rather than incur the expense of returning the pianos to the factory. Acting under such erroneous beliefs, induced by the various misrepresentations of the respondent as herein detailed, various members of the public have purchased respondent's pianos. The aforesaid representations and practices on the part of respondent have, and have had, the capacity and tendency unfairly to divert trade to respondent from competitors engaged in selling in interstate commerce pianos which are truthfully advertised and represented. Thereby, substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

Order

26 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent, Cline Music Company, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, testimony and other evidence in support of the allegations of the said complaint and in opposition thereto, taken before W. W. Sheppard, an examiner of the Commission theretofore designated by it, 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 the said respondent, Cline Music Company, Inc., a corporation, its officers, servants, employees, or agents, individual, or corporate, in connection with the advertising, describing, offering for sale, and sale in interstate commerce, or in the District of Columbia, of pianos or other musical instruments, do forthwith cease and desist from:

1. Representing that respondent has, and is offering for sale at any particular place, locality, or community, or in the vicinity thereof, as indicated by, or may be fairly inferred from, respondent's advertising or sales talks in connection therewith, any used or repossessed piano or other musical instrument on which a balance is stated to be due, unless and until respondent, or a duly accredited agent or representative of respondent, actually has, and is offering for sale at such place, locality, or community, or in the said vicinity thereof, such used or repossessed piano, or other musical instrument, on which there is a balance due respondent as alleged and represented;

2. Representing that pianos or other musical instruments are used, second-hand, or repossessed unless such pianos or other musical instruments are, in fact, used, second-hand, or repossessed instruments;

3. Representing, through fictitious prices stamped or burned upon or affixed to pianos or other musical instruments, or by sales talks, or through other means or device, or in any manner, that said prices so stamped, burned, or affixed are the regular or customary retail prices for such products;

1158

Order

4. Representing, as the customary or regular retail prices for pianos or other musical instruments, prices which are, in fact, fictitious and greatly in excess of the prices at which said products are regularly and customarily offered for sale and sold at retail.

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 with which it has complied with this order.

IN THE MATTER OF
LAVOPTIK COMPANY, INC.

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

Docket 3188. Complaint, July 24, 1937—Decision, Apr. 21, 1938¹

Where a corporation engaged in sale and distribution of its "Lavoptik" preparation, to consumers in other States, in competition with others engaged in offer and sale in like commerce of similar preparations and preparations used for same and similar purposes; in advertising its said products,—

- (a) Made such representations and statements as that "6,000 eyesight specialists endorse it", and that it is "Advised by 6,000 eyesight specialists"; and
- (b) Made such statements and representations, among others, as that "A daily eye bath" with it "will be a constant protection to your eyes from the incessant strain that modern living places upon them," and that it "will bring eye strength," and that it "heals";

Notwithstanding fact said preparation, composed of a boric base combined in distilled water with camphor, sodium chloride and hydrastine hydrochloride, was not a cure for diseases of the eye or impaired vision;

With capacity to mislead members of the purchasing public into the mistaken and erroneous beliefs that "eyesight specialists" meant graduate medical doctors who specialized in treatment of the diseases and ailments of the eye, and that "a daily eye bath" with said preparation, as above set forth, would prevent eye strain, and that it would make weak eyes strong and would cure or remedy permanently diseases of the eyes and impaired vision, to the prejudice of the public and competitors, and with capacity and tendency unfairly to divert to it trade of latter, engaged in selling in interstate commerce preparations truthfully advertised and represented and used for same purposes for which it recommended its said product: to their substantial injury in 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. Carrel F. Rhodes for the Commission.

Sanborn, Graves, Appel, Andre & Morton, of St. Paul, 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 Lavoptik Company, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in com-

¹ See, for original findings and order, 25 F. T. C. 1380.

merce as "commerce" is defined in said act of Congress, and it appearing to the 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, Lavoptik Company, Inc., is a corporation organized and existing under the laws of the State of Minnesota. Respondent's plant, office, and principal place of business is located at Michigan Avenue and Seventh Street, St. Paul, Minn. Said respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing or compounding, advertising, selling, and distributing a lotion, or eye wash, commonly known and designated as "Lavoptik Eye Wash." It now causes, and for more than 1 year last past has caused, said preparation, when sold, to be shipped from its place of business in St. Paul, Minn., to purchasers thereof, some located in the State of Minnesota, others located in various other States of the United States and in the District of Columbia.

Respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of eye lotions and eye washes, and other preparations similar to that sold by respondent in commerce 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 said business as described in paragraph 1 hereof, in soliciting the sale of and selling its product, designated as "Lavoptik Eye Wash," respondent now represents, and for more than 1 year last past has represented, in newspapers, magazines, pamphlets, circulars, letters, wrappers, radio broadcasts, and other forms of advertising media having an interstate circulation, and in a booklet entitled "How to Safeguard Your Eyes," which it issues, ships and distributes in large number to the public generally throughout the various States of the United States and in the District of Columbia, through its distributors, sales branches, and sales people, as follows:

INFLAMED EYES? Bathe them with Lavoptik. Prompt Relief. Use also for granulated eyelids, tired, sore, strained, itching, sticky, burning, irritated, watery eyes. 6,000 eyesight specialists endorse it.

IRRITATED EYELIDS? Bathe them with Lavoptik, prompt relief.

EYES SORE? TIRED? Here's Relief Instantly! Bathe eyes with Lavoptik. Burning, inflammation, watery, tired, strained feeling, or itching vanishes at once. Wonderful, too, for granulated eyelids. Soothes, cools, heals. No harmful drugs. Advised by 6,000 eyesight specialists.

* * * Lavoptik will bring eye strength and eye comfort.

A daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them. Keep a bottle

Complaint

26 F. T. C.

of soothing, healing Lavoptik in your bathroom medicine cabinet, and go through the restful "Eyecup Drill" (as explained by the picture on this page) every evening and morning. Your eyes will not only feel better, but will be healthier and more efficient.

Four Important Suggestions:

(1) Give the eyes of babies and small children careful attention. In treating them, moisten a little cotton in Lavoptik and bathe the edges of the lids and drop a liberal amount into the eyes after the lower lid is pulled down.

(2) After driving, exposure to dust, heat or wind, or after you leave a smoke-laden room, a Lavoptik eye bath will instantly refresh those dry, tired eyes.

(3) If you use LAVOPTIK before going out, you will enjoy that happy, refreshed feeling of knowing your eyes look their best.

(4) In the morning, if your eyes are stiff and heavy, you will be astonished how much a Lavoptik eye bath will help them.

PAR. 3. In truth and in fact, the preparation "Lavoptik Eye Wash" has not been endorsed and approved by 6,000 graduate medical doctor eyesight specialists, or eye specialists, and said preparation, "Lavoptik," is not a cure for diseases of the eye or impaired vision, and will not strengthen the nerves of the eye, nor relieve eye strain, conjunctivitis, and other diseases of the eye, and will not make eyes healthier and more efficient, but is merely an eye wash composed of a boric acid base in distilled water with camphor, sodium chloride, and hydrastine hydrochloride, which can in no way influence the delicate nerves of the eye, or heal diseases of the eye.

PAR. 4. The representations of respondent as aforesaid are false and grossly exaggerated and have had and do have a capacity to confuse, mislead, and deceive members of the purchasing public into the mistaken and erroneous belief that respondent's product, designated "Lavoptik," is different from other eye lotions or eye washes, and that the preparation has been endorsed by 6,000 graduate medical doctors, especially trained in the treatment of the eyes; that said preparation has the property to heal and rejuvenate strained and impaired eyesight, and is an effective treatment for all forms of defective eyesight, no matter from what cause. The said representations of respondent have had and do have the capacity and tendency to induce members of the public to buy and use said preparation because of erroneous beliefs engendered as above set forth, and to divert trade unfairly from competitors of respondent engaged in the sale of eye lotions and eye washes similar to the preparation sold by respondent in commerce in and among the various States of the United States, and deceives the public and injures competitors, and places in the hands of others the means whereby the public are deceived, and competitors are injured. There are

among competitors of respondent many who sell and distribute in commerce similar lotions and eye washes and preparations for the treatment of the eyes, who do not misrepresent the properties, the qualities, or the therapeutic virtues, functions, or effects of their *said competing products*.

PAR. 5. 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 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, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 24th day of July 1937, issued, and on the 26th day of July 1937, served its complaint in this proceeding upon said respondent, Lavoptik Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. On August 11, 1937, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a *statement of facts, signed and executed by the respondent by its counsel, Monte Appel, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the 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 this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:*

FINDINGS AS TO THE FACTS

PARAGRAPH 1. *Lavoptik Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business*

located at Michigan Avenue and Seventh Street, St. Paul, Minn. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing a preparation designated "Lavoptik."

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent, Lavoptik Company, Inc., in response to orders received, has offered its said preparation for sale, and has sold and transported, and caused the same to be transported, in commerce among the several States of the United States, direct from its aforesaid place of business in St. Paul, Minn., to consumers located at points in the several States of the United States other than the State of Minnesota, and in the District of Columbia.

In the course and conduct of such selling, respondent has been, and now is engaged in competition with corporations, firms, partnerships, and individuals offering for sale and selling, in like commerce, similar preparations and preparations used for the same and similar purposes.

PAR. 3. The preparation "Lavoptik" is composed of a boric base, combined in distilled water with camphor, sodium chloride, and hydrastine hydrochloride, and is not a cure for diseases of the eye or impaired vision.

PAR. 4. In the course and conduct of its business, as hereinbefore described, the respondent made, published, or caused to be published the following statements, claims, and representations to induce the purchase of its product:

INFLAMED EYES? Bathe them with Lavoptik. Prompt Relief. Use also for granulated eyelids, tired, sore, strained, itching, sticky, burning, irritated, watery eyes. 6,000 eyesight specialists endorse it.

IRRITATED EYELIDS? Bathe them with Lavoptik, prompt relief.

EYES SORE? TIRED? Here's Relief Instantly! Bathe eyes with Lavoptik. Burning, inflammation, watery, tired, strained feelings, or itching vanishes at once. Wonderful, too, for granulated eyelids. Soothes, cools, heals. No harmful drugs. Advised by 6,000 eyesight specialists.

* * * Lavoptik will bring eye strength and eye comfort.

A daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them. Keep a bottle of soothing, healing Lavoptik in your bathroom medicine cabinet, and go through the restful "Eyecup Drill" (as explained by the picture on this page) every evening and morning. Your eyes will not only feel better, but will be healthier and more efficient.

Four Important Suggestions:

(1) Give the eyes of babies and small children careful attention. In treating them, moisten a little cotton in Lavoptik and bathe the edges of the lids and drop a liberal amount into the eyes after the lower lid is pulled down.

(2) After driving, exposure to dust, heat or wind, or after you leave a smoke-laden room, a Lavoptik eye bath will instantly refresh those dry, tired eyes.

(3) If you use LAVOPTIK before going out, you will enjoy that happy, refreshed feeling of knowing your eyes look their best.

(4) In the morning, if your eyes are stiff and heavy, you will be astonished how much a Lavoptik eye bath will help them.

The representations of respondent set out above that "6,000 eyesight specialists endorse it" and that it is "advised by 6,000 eyesight specialists," have the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that "eyesight specialists" means graduate medical doctors who specialize in the treatment of diseases and ailments of the eye.

The representation of respondent, set out above, that "a daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them," has the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that a daily eye bath with Lavoptik will prevent eye strain.

The representation of respondent, set out above, that "Lavoptik will bring eye strength," has the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that Lavoptik will make weak eyes strong.

The representation of respondent, set out above, that Lavoptik "heals" has the capacity to mislead members of the purchasing public into the mistaken and erroneous belief that Lavoptik will cure or permanently remedy diseases of the eyes and impaired vision.

PAR. 5. The representations of respondent, set out above, that "6,000 eyesight specialists endorse it," that it is "advised by 6,000 eyesight specialists," and that "a daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them." that "Lavoptik will bring eye strength," that Lavoptik "heals" are to the prejudice and injury of the public and of respondent's competitors. The practice, on the part of the respondent of using these representations has had, and has, the capacity and tendency unfairly to divert to respondent the trade of competitors engaged in selling in interstate commerce preparations which are truthfully advertised and represented and which are used for the same purposes for which the respondent recommends its product. Thereby substantial injury has been done, and is being done by respondent to 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, Lavoptik Company, Inc., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in com-

merce 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."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, Lavoptik Company, Inc., and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Lavoptik Company, Inc., its officers, representatives and employees, in connection with the sale or offering for sale by it in interstate commerce or in the District of Columbia of a preparation now designated as Lavoptik or any other preparation of substantially similar ingredients or effect, whether designated by that name or some other name, forthwith cease and desist from:

1. Representing, through any means whatsoever, that said preparation is endorsed or recommended by any designated number of eyesight specialists for any purpose, unless and until said preparation is in fact endorsed or recommended by said number of graduate doctors of medicine who specialize in the treatment of the eyes.

2. Representing, directly or by inference, that said preparation restores strength to the eyesight; that the use of said preparation will be a constant protection to the eyes; that the said preparation is a cure or permanent remedy for or will heal any diseases of the eye.

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 shall have complied with this order.

Complaint

IN THE MATTER OF

GUS STEPHENS, TRADING AS TESTED SPECIALTIES
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3220. Complaint, Aug. 28, 1937—Decision, Apr. 21, 1938

Where an individual engaged in sale and distribution of product "ON-THE-NOSE" for dogs, cats, and other animals, in competition with others similarly engaged, and who do not misrepresent the efficacy of their products, nor their business status; in widely advertising same in periodicals of general circulation throughout the United States, and in printed folders, literature, circular letters and other advertising matter circulated among customers and prospective customers—

- (a) Represented that said product, name of which it featured, was an effective treatment or competent and adequate remedy or cure for distemper, coughs or colds, in dogs or other animals, and that it was effective in curing or preventing diseases or ailments from which they suffered, and constituted a vermifuge, facts being it was not effective in any respect for said last-named purpose or for other purposes for which offered, as above set forth, and was nothing more than a mild laxative which would not be effective even as such unless given in dose larger than prescribed; and
- (b) Set forth on letterheads used by it "Originators and manufacturers of 'ON-THE-NOSE'," facts being it did not maintain and never had maintained a laboratory or laboratories, either in Canada or the United States, where said preparation was made or compounded;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said representations were true and that said preparation was efficacious as a remedy or cure, as hereinabove represented, and into purchase of a substantial quantity of his said product on account of such belief, thus induced, and with result that trade thereby was unfairly diverted to him from others engaged in sale and distribution of products for same purposes, for which, substantially, that of said individual was advertised and sold, and who truthfully advertise their respective products and efficacy thereof:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Floyd O. Collins 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 Gus

Complaint

26 F. T. C.

Stephens, an individual, trading under the firm name and style of Tested Specialties 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 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, Gus Stephens, is an individual trading under the firm name and style of Tested Specialties Company, with his offices and principal place of business located at 809 West Madison Street, Chicago, Ill. Respondent is now, and has been for several years last past engaged at said location in the selling and distributing of a medicine or alleged remedy for use in the treatment of sick or ailing dogs, cats, foxes, and all fur bearing animals. Said medicine or alleged remedy is sold under the trade name of "On-the-Nose." Said medicine or alleged remedy is put up in containers and is to be applied by rubbing on the noses or lips of said animals. Respondent sells said product to individuals, pet shops, drug stores, and other stores.

In the course and conduct of said business, respondent ships, or causes to be shipped or transported said product when so sold from said city of Chicago in the State of Illinois to said individuals, pet shops, drug stores, and other stores, many of whom are located in various States other than the State of Illinois. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition in said commerce with various corporations, firms, and individuals selling or offering for sale, to the general public compounds, medicines, and remedies used and sold for the same purposes as those of respondent's said product. Among the competitors of the respondent are many who do not make false and misleading representations in connection with the sale of their products.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale of and selling said product, has advertised and now advertises the same in newspapers, magazines, and other periodicals of interstate circulation and in pamphlets, on stationery and in printed testimonials and other printed matter sent through the United States mails, and on the labels attached to the

containers of said product. In and through the advertising media above described, respondent has made and is making expressly or by implication the following representations:

That the use of "On-the-Nose" in the treatment of said animals is effective against distemper, is working miracles every day, saving thousands of dogs doomed by so-called incurable afflictions, cures coughs and colds, builds up resistance against infectious diseases, is a general conditioner and a preventative of diseases, is efficacious as a dewormer and that he maintains laboratories and factories where such medicine or alleged remedy is made in Canada and the United States.

PAR. 4. The representations described and set forth in paragraph 3 above are false and misleading, in that the use of "On-the-Nose" when used as a medicine or remedy for said animals has no therapeutic value or effect in cases of distemper, is not a tonic, powerful or otherwise, does not build resistance to disease, has not saved the lives of thousands or any number of dogs, is not a general conditioner and is not a preventative of disease in any of said animals, is not efficacious in the deworming of dogs or in the deworming of other animals, nor in the treatment of colds in dogs or other animals, and laboratories and factories for the purpose of preparing and manufacturing the product "On-the-Nose" are not maintained in the United States or Canada by respondent.

PAR. 5. Said statements and representations set forth in paragraph 3 so made by respondent have and have had, the tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and because of such erroneous belief, to purchase respondent's said product, thereby unfairly diverting substantial trade in said commerce to the respondent from his said competitors to their injury and to the injury of the public.

PAR. 6. The above alleged acts and practices 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 the Federal Trade Commission Act, the Federal Trade Commission, on August 28, 1937, issued and served its complaint in this proceeding upon respondent, Gus

Stephens, trading under the firm name and style of Tested Specialties 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, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by Gus Stephens, respondent, before William R. Reeves, an examiner of the Commission theretofore duly designated by it; and said testimony and other 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 other evidence, brief in support of the complaint, the respondent having waived filing of a brief and having not requested oral argument; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Gus Stephens is an individual trading under the firm name and style of Tested Specialties Company, with his principal place of business located in the city of Chicago, State of Illinois.

The respondent has been engaged for several years in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of a product designated "On-the-Nose." Said product is sold and recommended by respondent as a treatment for dogs, cats, and other animals suffering from distemper, coughs, colds and various other diseases and ailments. Respondent causes said product when sold to be shipped from his place of business in Chicago, Ill., to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois. Respondent's annual sales of said preparations "On-the-Nose" amount to several thousand dollars. Respondent maintains and has for several years last past maintained a course of trade in commerce among and between the various States of the United States and the District of Columbia in said product "On-the-Nose."

PAR. 2. There are numerous other individuals, corporations, firms and partnerships engaged in selling and distributing in commerce among and between the various States of the United States and the District of Columbia other medicines and preparations which are sold

and recommended for dogs, cats and other animals suffering from distemper, coughs, colds and various other diseases and ailments, which individuals, corporations, firms and partnerships do not misrepresent the efficacy of the medicines and preparations sold by them, and do not misrepresent their business status. Respondent, Gus Stephens, is in active and substantial competition with these individuals, corporations, firms and partnerships in the sale and distribution of his product "On-the-Nose" in such commerce.

PAR. 3. For the purpose of inducing the purchase of the product, "On-the-Nose," respondent has widely advertised said product in advertisements inserted in magazines and other periodicals of general circulation throughout the United States. Respondent has also printed folders, literature, circular letters and other advertising matter and circulated same throughout the several States of the United States, to customers and prospective customers.

In all of the advertisements and advertising material hereinabove mentioned, the respondent has caused the trade name, Tested Specialties Company, and the name of the product, "On-the-Nose," to be prominently and conspicuously displayed with such statements as:

In treating DISTEMPER, "ON-THE-NOSE" has achieved almost miraculous results.

Before you take YOUR DOG to *any* show, administer "ON-THE-NOSE" as a precaution against Distemper or other contagious animal diseases.

A powerful tonic and conditioner. Builds resistance to disease. "ON-THE-NOSE" is working near miracles every day—saving thousands of dogs doomed by so-called "incurable" afflictions.

Don't Take Chances WITH DISTEMPER—On-The-Nose is mildly purgative. It is a good vermifuge. Administer ON-THE-NOSE at the first sign of a cold, sniffles, listlessness, watery eyes, lost appetite and similar disorders.

"On-The-Nose" is recommended by veterinarians, kennelmen and dog fanciers everywhere as a quick-acting, valuable aid in fighting Distemper, as a general tonic, and as a conditioner for building up resistance against the more serious animal afflictions.

On the letterhead used by respondent the following statement appears:

Originators and manufacturers of "ON-THE-NOSE"

PAR. 4. The statements above set out together with many similar statements appearing in respondent's advertising and literature purport to be descriptive of the preparation "On-the-Nose." Through the use of these statements and other similar statements, respondent represents: (1) that said preparation is an effective treatment and competent and adequate remedy and cure for distemper in dogs and other animals; (2) that said preparation is an effective treatment and competent and adequate remedy and cure for dogs, cats and other

animals suffering with coughs and colds; (3) that said product is efficacious as a curative and preventive of diseases or ailments from which dogs and other animals suffer; (4) that said preparation is a vermifuge; (5) that respondent maintains laboratories where said preparation is manufactured or compounded.

PAR. 5. In truth and in fact said preparation is not an effective treatment or competent and adequate remedy or cure for dogs, cats or any other animal suffering from distemper, coughs, colds or any other ailment or disease. Said preparation is not efficacious either as a curative or preventive of diseases or ailments from which dogs and other animals suffer. Said preparation is not a vermifuge and is not effective in any respect when used as a dewormer. Said preparation contains 15 percent metallic mercury, 3 percent Benzoin, and 82 percent lard. Said preparation is nothing more than a mild laxative and would not be effective as a laxative unless given in a dose larger than prescribed by respondent. Respondent does not maintain and never has maintained a laboratory or laboratories either in Canada or the United States where said preparation is manufactured or compounded.

PAR. 6. The various statements and misrepresentations made by respondent in describing the preparation "On-the-Nose" and the effectiveness of said preparation when used had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said preparation is efficacious as a remedy or cure for the ailments and diseases represented and into the purchase of a substantial quantity of respondent's product on account of such belief induced by the respondent's representations as above set out. As a result thereof, trade has been diverted unfairly to respondent from individuals, corporations, firms, and partnerships likewise engaged in the business of selling and distributing their products which are prepared, compounded and sold for substantially the same purpose for which respondent's product is advertised and sold and who truthfully advertise their respective products and the efficacy thereof when used.

CONCLUSION

The aforesaid acts and practices of respondent are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

1179

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 respondent, testimony and other evidence taken before William R. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of the complaint (respondent having waived the filing of a brief and having not requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Gus Stephens, his representatives, agents, and employees in connection with the sale and offering for sale and distribution in interstate commerce or in the District of Columbia of a preparation or compound now designated "On-the-Nose," or any other preparation or compound composed of like or similar ingredients or possessing similar properties, whether sold under that name or under any other name, do forthwith cease and desist from representing directly or otherwise:

1. That said preparation is an effective treatment or competent and adequate remedy or cure for distemper in dogs or other animals;

2. That said preparation is an effective treatment or competent and adequate remedy or cure for coughs or colds in dogs or other animals;

3. That said preparation is efficacious either as a curative or preventative of diseases or ailments from which dogs or other animals suffer;

4. That said preparation is a vermifuge;

5. That respondent maintains a laboratory or laboratories either in Canada or the United States where said product is manufactured or compounded.

It is further ordered, That respondent shall within 60 days after service upon him of this order file with the Commission a report in writing stating forthwith in detail the manner and form in which he has complied with this order.

Complaint

26 F. T. C.

IN THE MATTER OF
COLONIAL 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 3239. Complaint, Oct. 8, 1937—Decision, Apr. 22, 1938

Where a corporation engaged in manufacture of silk, rayon, and other fabrics, and in sale thereof to garment manufacturers and other customers in the various States and in the District of Columbia—

Supplied to garment manufacturers, in connection with sale and delivery of certain of its products, labels and tags containing legend "this garment is made of SATIN AMOROSA PURE DYE With Crown Rayon Yarn", and cloth labels carrying words "Amora Crepe Pure Dye of Celanese Yarn", and advertised its said products in newspapers and other periodicals having interstate circulation as "Satin Amorosa," notwithstanding fact products in question were not, as thus represented to such trade and public, composed of silk, product of the cocoon of the silk worm, but of materials other than silk;

With capacity and tendency to mislead and deceive substantial portion of purchasing public, through use of such words as "Satin," "Pure Dye," and "Crepe," long and still associated in public mind with fabric made, through various weaves, from cocoon of silk worm, commonly known and understood by public generally as silk, and, as such, long esteemed for preeminent qualities of silk products, i. e., those made from cocoon of silk worm as above set forth, and to cause purchase by them of aforesaid products as result of such erroneous belief, engendered as above set forth, and with result that trade was thus diverted unfairly to said corporation and its customers, from competitors and customers thereof who do not use such or similar misrepresentations in connection with sale of their respective products in commerce among the various States:

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

Mr. George W. Williams for the Commission.

Weil, Gotshal & Manges, 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 Colonial Mills, 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, Colonial Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 469 Seventh Avenue in the city of New York, in said State. It is now, and for many years last past has been, engaged in the business of manufacturing silk, rayon, and other fabrics. It sells, and has sold and distributed, such goods to garment manufacturers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said goods, when sold, to be shipped from its place of business in New York City to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondent in said goods, so sold by it, between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of silk, rayon, and other fabrics in commerce 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 as described in paragraph 1 herein, respondent, in soliciting the sale of and selling certain of its products to garment manufacturers, supplied its said customers with labels and tags which said customers did, and do, attach to the garments manufactured by them from said products. The said labels and tags bear the following language:

This garment is made of
SATIN AMOROSA
PURE DYE
With Crown Rayon Yarn

The words "Satin Amorosa Pure Dye" were, and are, printed in large, conspicuous, white letters on a dark, fanciful background, while the words "With Crown Rayon Yarn" were and are, printed below in much smaller and less conspicuous type. The said respondent also furnished its customers with cloth labels to be sewn, and which were sewn, by such customers to garments made by them from fabrics purchased from respondent. These cloth labels carried the following words:

Amora
Crepe
Pure Dye
of Celanese Yarn

In soliciting the sale of, and selling, said products, respondent caused, and now causes, advertising matter to be inserted in newspapers and other periodicals having an interstate circulation, wherein such products of respondents were, and are, described and referred to as "Satin Amorosa."

The foregoing statements and representations made by the respondent, as in this paragraph set out, serve as representations to members of the purchasing public and to garment manufacturers that such products so advertised and offered for sale were, and are, silk products. The representations hereinabove set forth are, and were, grossly false and misleading in that said products so represented, designated and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed of materials other than silk.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the garment manufacturers and consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities. Silk fibre has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of wearing apparel designated, described and referred to as "satin," "pure dye" and "crepe" have been for a long time, and at the present time still are, associated in the public mind with the fabric made from the cocoon of the silkworm, commonly known and understood by the public generally as "silk."

PAR. 4. There are among the competitors of respondent mentioned in paragraph 1 herein corporations, individuals, partnerships and firms engaged in the manufacture and sale of silk, rayon and other fabrics who do not misrepresent the kind of goods manufactured and offered for sale by them.

PAR. 5. The use by respondent of the representations set forth herein have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are, and were, true and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. The use by respondent of the representations aforesaid has unfairly diverted, and does unfairly divert, trade in said commerce to the respondent from its said competitors, and thereby substantial injury is being, and has been done, by respondent to competition in commerce among and between the various States of the United States.

PAR. 6. The above alleged acts and practices of respondent, as hereinabove alleged, are all to the prejudice of the public and respondent's said 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 the Federal Trade Commission Act, the Federal Trade Commission, on October 8, 1937, issued, and subsequently served its complaint in this proceeding upon respondent, Colonial 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, and the filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer, and to substitute in lieu thereof an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission, on the said complaint and the substitute answer, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Colonial Mills, 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 469 Seventh Avenue, in the city of New York and State of New York. It is now, and for many years last past has been, engaged in the business of manufacturing silk, rayon, and other fabrics. It sells, and has sold and distributed, such fabrics to garment manufacturers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said fabrics, when sold, to be shipped from its place of business in New York to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been at all times mentioned herein, a course of trade and

Findings

26 F. T. C.

commerce by said respondent in said fabrics, so sold by it, between and among the various States of the United States. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with other persons, and firms and partnerships, engaged in the sale and distribution of silk, rayon, and other fabrics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in selling and delivering certain of its products to garment manufacturers, in the course and conduct of its business as described in paragraph 1 herein, has supplied its said customers with certain labels and tags which said customers attach to the garments manufactured by them from said products. The said labels and tags bear the following language:

This garment is made of
SATIN AMOROSA
PURE DYE
With Crown Rayon Yarn

The words "Satin Amorosa" and "Pure Dye" were, and are, printed in large, conspicuous, white letters on a dark, fanciful background, while the words "With Crown Rayon Yarn" were, and are, printed in much smaller type. The said respondent also furnished its customers with cloth labels to be sewn, and which were sewn, to garments made by such customers from fabrics purchased from the respondent. These cloth labels carried the following words:

Amora
Crepe
Pure Dye
of Celanese Yarn

In soliciting the sale of, and selling, said products, respondent caused, and now causes, advertising matter to be inserted in newspapers and other periodicals having an interstate circulation, wherein such products of respondent were, and are, described and referred to as "Satin Amorosa."

The foregoing statements and representations made by the respondent, as in this paragraph set out, serve as representations to members of the purchasing public and to garment manufacturers that such products so advertised and offered for sale are and were silk products. The representations hereinabove set forth are false and misleading in that said products so represented, designated and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed of materials other than silk.

1186

Order

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the garment manufacturers and consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities. Silk fibre has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of wearing apparel designated, described and referred to as "satin," "pure dye," and "crepe" have been for a long time, and at the present time still are, associated in the public mind with the fabric made from the cocoon of the silkworm commonly known and understood by the public generally as "silk."

PAR. 4. There are among the competitors of respondent mentioned in paragraph 1 herein, corporations, individuals, partnerships, and firms engaged in the manufacture and sale of rayon and other fabrics who do not misrepresent the kind of goods manufactured and offered for sale by them.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. Through respondent's use of the aforesaid misrepresentations in the manner set forth, trade has been diverted unfairly to respondent and its customers from its competitors and their respective customers who do not use the same or similar misrepresentations in connection with the sale of their respective products in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent company, Colonial Mills, Inc., are 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on March 11, 1938, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of

further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Colonial Mills, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of fabrics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using, assisting, or cooperating in the using of the words "satin," or "crepe" or any other words or combination of words of similar import or meaning to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm unless, when said words "satin" or "crepe," or similar words or terms are used to denote the type of weave or construction of the fabric, there is used in immediate connection and conjunction therewith, in letters of equal size or conspicuousness, a word or words accurately naming or describing the fiber, material, or materials from which said fabric or product is actually made; and provided, that such disclosure of the fiber or material content thereof shall be made by accurately designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent;

2. Using, assisting, or cooperating in the using of the words "Pure Dye," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm.

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

IN THE MATTER OF

UNIVERSAL 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 3270. Complaint, Nov. 22, 1937—Decision, Apr. 22, 1938

Where a corporation engaged in sale and distribution of packaged handkerchiefs to jobbers—

- (a) Displayed on letterheads, cartons, invoices, order blanks, and other printed matter circulated through the various states to customers and prospective customers, corporate or trade name containing letters "Mfg.," and represented thereby that it was the manufacturer of the products sold by it, and in certain of said advertising that it was the "largest manufacturer of packaged handkerchiefs in the United States," and "World's largest makers of one quality handkerchiefs," with factories in certain New Jersey cities;

Facts being it neither owned a factory nor operated nor controlled any factories making handkerchiefs, but purchased cloth from various cotton textile factories and delivered same to certain manufacturers, who made said cloth into handkerchiefs in accordance with its specifications as to spinning, cutting, number of stitches making hem, and dampening, and delivered finished articles to it for packaging in its own place of business and for resale as above set forth; and

- (b) Falsely represented that handkerchiefs sold by it were laundered before packaging for resale, or were "laundered soft" or "laundered soft finish";

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said representations were true and with result that substantial number of such public purchased considerable volume of its said articles as and for purchases made directly from the manufacturer thereof, preferred by substantial portion of wholesale and retail buyers as offering, in their belief, closer prices, better quality, and other advantages not had by dealing through jobber, packager, selling agency, middleman, or otherwise, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of handkerchiefs, and who truthfully advertised and represented nature and character of their business;

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

Mr. Joseph C. Fehr for the Commission.

Foster & Sorin, 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 Uni-

versal Handkerchief Mfg. 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, Universal Handkerchief Mfg. Co., Inc., is a corporation organized and existing by virtue of the laws of the State of New York, having its principal office and place of business located at 309 Fifth Avenue, in the city of New York, in the State of New York. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing packaged handkerchiefs in commerce as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said handkerchiefs, when sold, to be transported from its office and principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York. Respondent has at all times maintained a constant current of trade in said handkerchiefs, sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now, and has been for more than 1 year, in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the business of selling and distributing handkerchiefs 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 said business, and for the purpose of inducing the purchase of handkerchiefs sold by it, respondent now uses, and at all times herein referred to has used, its corporate name containing the letters "Mfg." in soliciting the sale of and selling its said handkerchiefs. It has caused said corporate name containing the letters "Mfg." to be prominently and conspicuously displayed on its letter-heads, display cartons, invoices, order blanks and other printed matter circulated throughout the various States of the United States to customers and prospective customers. Certain of said advertising matter also carried and now carries statements such as:

**Largest Manufacturers of Packaged Handkerchiefs in the United States
World's Largest Makers of One Quality Handkerchiefs**

Factories, Passaic, N. J., Ellenville, N. Y.

**Made and Guaranteed by Universal Handkerchief Mfg. Co., Inc., Makers
of Handkerchiefs**

Complaint

and the containers of certain of respondent's said handkerchiefs bore and now bear the words "laundered soft" or "laundered soft finish."

The statements hereinabove set out serve as representations on the part of respondent to customers, prospective customers, and to the public generally, that respondent is a manufacturer of handkerchiefs and operates factories at Passaic, N. J., and Ellenville, N. Y., and that its said handkerchiefs are laundered by respondent before packaging for resale.

PAR. 5. Respondent did not and does not now make or manufacture its said handkerchiefs. It did not and does not now actually own and operate, or directly and absolutely control a plant or factory at Passaic, N. J., or Ellenville, N. Y., or elsewhere in which said handkerchiefs are made or manufactured. Respondent sells, and fills its orders with, handkerchiefs made or manufactured by others and then purchased by it. Respondent's handkerchiefs are not laundered before packaging so as to be properly represented as such.

PAR. 6. A substantial portion of the wholesale and retail purchasers of handkerchiefs have expressed, and have, a preference for dealing direct with the manufacturer of handkerchiefs being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages, in dealing direct with the manufacturer rather than a jobber, packager, selling agency, or middleman, or anyone else.

PAR. 7. Many of the respondent's competitors who distribute and sell handkerchiefs do not manufacture the handkerchiefs sold by them and do not in any way represent that they are the manufacturers thereof.

PAR. 8. The false and misleading representations made by the respondent as set out in paragraph 4 hereof were and are calculated to, and had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a consequence of such mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased a substantial volume of the handkerchiefs sold by the respondent with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of selling and distributing handkerchiefs, who truthfully advertise and represent the nature and character of their business. 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. 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on November 22, 1937, issued and served its complaint in this proceeding upon respondent, Universal Handkerchief Mfg. 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 said respondent's answer thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the Commission might proceed upon said statement of facts to make and issue 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 enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Thereafter, the proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, 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 Handkerchief Mfg. Co., Inc., a corporation, was organized in January 1936, under the laws of the State of New York. Its principal office and place of business is located at 309 Fifth Avenue, in the Borough of Manhattan, city, county and State of New York. The name of the respondent corporation was changed to "Universal Handkerchief Co., Inc." by the filing of a certificate of change of name by the respondent in the office of the secretary of state of the State of New York, on the 24th day of January 1938.

PAR. 2. Respondent has been for more than 1 year last past engaged in the business of selling and distributing packaged handkerchiefs in

interstate commerce. In the operation of its said business, respondent causes said handkerchiefs, when sold, to be transported from its office and principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York, and in the District of Columbia. Respondent has at all times maintained a course of trade in said handkerchiefs, sold and distributed by it in commerce between and among the various States of the United States, and in the District of Columbia. Respondent does a substantial business in both interstate and intrastate commerce. Said handkerchiefs are sold by the respondent through its salesmen throughout the United States to jobbers and respondent makes no direct sales to retailers or ultimate purchasers.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now, and has been for more than 1 year, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the business of selling and distributing handkerchiefs 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 said business, respondent, until the change of its name, used in its corporate name the letters "Mfg." It has heretofore caused said corporate name containing the letters "Mfg." to be displayed on its letterheads, display cartons, invoices, order blanks, and other printed matter circulated throughout the various States of the United States to customers and prospective customers. Certain of said advertising matter also carried and now carries statements such as:

*Largest Manufacturers of Packaged Handkerchiefs in the United States
World's Largest Makers of One Quality Handkerchiefs*

Factories, Passaic, N. J., Ellenville, N. Y.

Made and Guaranteed by Universal Handkerchief Mfg. Co., Inc., Makers of Handkerchiefs.

Certain of said containers and advertising matter also bore, and now bear, the words "laundered soft" or "laundered soft finish."

The statements hereinabove set out serve as representations on the part of respondent to customers, prospective customers and to the public generally, that respondent is a manufacturer of handkerchiefs; that it operates factories at Passaic, N. J., and Ellenville, N. Y., or elsewhere; that it is the largest manufacturer of packaged handkerchiefs in the United States; that it is the world's largest maker of one quality handkerchiefs, and that the handkerchiefs sold by it are laundered before packaging for resale.

PAR. 5. Respondent did not, and does not, own a factory, nor does it operate or control any factories producing or manufacturing handkerchiefs. Respondent purchases cotton cloth from various cotton textile factories, which cloth it then delivers to certain handkerchief manufacturers who manufacture said cloth into handkerchiefs according to specifications submitted by respondent as to splitting, cutting, the number of stitches making the hem, and dampening. The finished handkerchiefs thus delivered to the respondent by the manufacturers are then packaged by respondent in its own place of business, for resale and shipment to jobbers of dry goods, in various parts of the United States.

PAR. 6. A substantial portion of the wholesale and retail purchasers of handkerchiefs have expressed, and have, a preference for dealing direct with the manufacturer of handkerchiefs being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages, in dealing direct with the manufacturer rather than a jobber, packager, selling agency, or middleman, or anyone else.

PAR. 7. There are, among respondent's competitors, many vendors and distributors of packaged handkerchiefs who do not manufacture the handkerchiefs sold by them, and who do not in any way represent that they are the manufacturers thereof, and who do not represent themselves to be the largest manufacturers of packaged handkerchiefs in the United States, and the world's largest makers of one quality handkerchiefs, and that their handkerchiefs are laundered before packaging.

PAR. 8. The misleading and deceptive representations made by the respondent as set out herein had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a consequence of such mistaken and erroneous beliefs, induced as aforesaid, a substantial number of the public have purchased a considerable volume of the handkerchiefs sold by the respondent with the result that trade has been unfairly diverted to the respondent from its competitors also engaged in the business of selling and distributing handkerchiefs, who truthfully advertise and represent the nature and character of their business.

CONCLUSION

The aforesaid acts and practices of the respondent, Universal Handkerchief Mfg. Co., Inc., are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair

1183

Order

methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Universal Handkerchief Mfg. Co., Inc., a corporation, its agents, representatives, and employees in connection with the sale or offering for sale of handkerchiefs in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the letters "Mfg." in its corporate or trade name, or through the use of any words or terms of similar import or meaning, or through any other means or device, or in any other manner, that said respondent is the manufacturer of the products sold by it, unless or until such time as said respondent actually owns, operates, or directly and absolutely controls a manufacturing plant wherein said products are manufactured by it.

2. Representing that the handkerchiefs sold and distributed by respondent are "laundered soft" or "laundered soft finish" until and unless the handkerchiefs sold and distributed by respondent are in fact laundered.

It is 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
NELLE K. WING, TRADING AS THE DEPEW CHEMICAL
COMPANY

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

Docket 3350. Complaint, Mar. 4, 1938—Decision, Apr. 25, 1938

Where an individual engaged in distribution and sale of certain preparations for the eye, under designation "Sano-See A" and "Sano-See B," or "Doctor DePew's Famous Eye Prescription"; in advertising same in newspapers, periodicals, and trade journals of general circulation throughout the United States, and through printed matter, advertising folders, letters, and literature circulated to customers and prospective customers throughout the several States—

(a) Represented that said preparations would preserve or improve eyesight and keep the eyes in a clean or healthy condition, and that they might be safely used by everyone, through such statements as "* * * promotes the circulation of the blood," "* * * an eye treatment and should not be compared with eye washes," "* * * occasional use * * * will keep the eyes in a clean, healthy condition," etc., "Every member of the family may safely use," etc., "The best known home treatment for almost all eye complaints"; and

(b) Represented that said preparations were remedies or competent and effective treatments for or would cure or promote the cure of ulcer of the cornea, trachoma, dimmed vision, spots before the eyes, and a number of others; Facts being that the two products involved, long known to science in the treatment of mild cases of inflammation of the eye, when not caused by or associated with any systemic or diseased condition, would not improve or preserve eyesight and were not beneficial in treatment of all or any of the diseases, ailments, afflictions, and conditions named, but might actually aggravate same and cause permanent injury, and through their tendency to improve, temporarily, inflamed appearance without actually affecting causes thereof, bring about dangerous delay in the prompt consultation of an oculist for treatment of a serious disease;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous belief that said representations were true, and that said products would in truth accomplish results claimed, and with effect of thereby inducing a number of the purchasing public to buy substantial volume of said products, and of unfairly diverting trade from competitors, many of whom manufacture, distribute, and sell various products designed, intended, and sold to cure, relieve, or treat various diseases, ailments, etc., of the human eye, as hereinabove set forth, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used;

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

Mr. Gerard A. Rault for the Commission.

1200

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 Nelle K. Wing, trading and doing business as The DePew Chemical 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 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, Nelle K. Wing, is an individual doing business under the trade name of The DePew Chemical Company. Respondent's principal place of business is located at 2417 Linwood Boulevard, Kansas City, Mo. Respondent is now, and has been for several years last past, engaged in the business of distributing and selling in commerce, as herein later set out, certain medical products designated as "Sano-See A" and "Sano-See B," or "Dr. DePew's Famous Eye Prescription."

PAR. 2. Said respondent being engaged in business as aforesaid causes said medical products when sold to be transported from her office and principal place of business in the State of Missouri to purchasers thereof located at various points in States of the United States other than the State of Missouri and in the District of Columbia. There is now and has been at all times mentioned herein a course of trade in commerce in said products so prepared, distributed, and sold by the respondent 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, the respondent is now, and has been, in substantial competition with other individuals and with corporations and firms likewise engaged in the business of manufacturing, distributing, and selling eye medicines and eye washes or other similar products 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 said business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal products, respondent has caused advertising to be inserted in newspapers, periodicals, and trade journals of general circulation throughout the United States; has printed and circulated to customers and prospective customers throughout the several States,

Complaint

26 F. T. C.

through the use of the United States mails and otherwise, advertising folders, letters and literature. In all said advertisements and advertising literature the respondent has made such statements as the following:

Sano-See promotes the circulation of the blood. It helps scavengers carry away the destroyed cells and other foreign matter; it helps the builders repair the structure; it brings the warriors into action to ward off or drive out disease.

If you suffer from dim or blurred vision, granulated or inflamed lids, spots, scums, smarting, burning, or watering—just your name and address will bring you, all charges prepaid, a \$1.00 treatment of Dr. DePew's Famous Eye Prescription. No matter how long you have suffered * * * try this treatment without risk.

Your eye sight, it's preservation and improvement through the use of Sano-See.

Sano-See is an eye treatment and should not be compared with eye washes * * *

The occasional use of Sano-See will keep the eyes in a clean, healthy condition and help them to retain their natural strength and sparkle.

Every member of the family may safely use Sano-See. The best known home treatment for almost all eye complaints.

It simply assists nature by stimulation of the blood supply and by its soothing, healing and eliminating properties of overcoming the conditions that are the cause of so large a proportion of eye troubles * * * It helps overcome these conditions and to eliminate from the eye the conditions that cause them.

All of said statements, together with many similar statements, appearing in respondent's advertising literature purport to be descriptive of respondent's products and their effectiveness in treating or curing many of the diseases, ailments, afflictions, and conditions of the human eye. In all of her advertising literature respondent represents, through statements and representations hereinabove set out and other statements of similar import, nature, and effect that her various products, to wit: Sano-See A and Sano-See B, or Dr. DePew's Famous Eye Prescription, will prevent and cure, or are beneficial in the treatment of many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human eye.

Respondent further advertises that her products above referred to will preserve and improve eyesight; that the use of Sano-See will keep the eyes in a clean, healthy condition, and help them retain their natural strength and sparkle.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said advertising literature as diseases, ailments, afflictions, and conditions which the use of said above-named products will prevent and cure, or are beneficial in the treatment of, are the following: Ulcer of the cornea, iritis, ptergium, pterygium, interstitial keratitis, trachoma, dimmed or blurred vision, granulated eye-

1200

Complaint

lids, spots before the eyes, and smarting, burning, or watering of the eyes.

PAR. 5. The representations made by respondent with respect to the nature and effect of her products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's products will not improve or preserve eyesight, nor are they beneficial in the treatment of all or any, of the diseases, ailments, afflictions, and conditions hereinabove named. On the contrary, these products may actually aggravate some of the diseases hereinbefore named, and cause permanent injury to the eyes. In addition, these products may have a tendency to improve temporarily an inflamed appearance of the eye without actually affecting the causes of said inflammation and thus cause dangerous delay in the proper consultation of an oculist for the treatment of a serious disease. Both of respondent's products are simple remedies, long known to science in the treatment of mild cases of inflammation of the eyelids. Sano-See A is a solution of zine sulphate in water, and Sano-See B is a solution in water of boric acid, adrenalin solution, and glycerine.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended, and sold for the use of curing, relieving, or treating the various diseases, ailments, afflictions, and conditions of the human eye hereinbefore named and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her products and the effectiveness of said products for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human eye hereinabove named, in offering for sale and selling her products were and are calculated to, and have, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said products will in truth accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of the respondent's products with the result that trade has been unfairly diverted to the respondent from competitors referred to in paragraph 6 hereof. As a result thereof injury has been done 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. 8. The above and foregoing acts, practices, and representations of the respondent have been and are to the prejudice of the public and respondent's competitors as aforesaid and constitute 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 the Federal Trade Commission Act, the Federal Trade Commission, on the 4th day of March 1938, issued and served its complaint in this proceeding upon respondent, Nelle K. Wing, trading as The DePew Chemical Company, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 1, 1938, the respondent filed her answer, in which answer she admitted all the material allegations of the complaint to be true and stated that she waived hearing on the charges set forth in the said complaint and that without further evidence or other intervening procedure, the Commission might issue and serve upon her findings as to the facts and conclusion and an order to cease and desist from the violations of law charged 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 matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nelle K. Wing, is an individual doing business under the trade name of The DePew Chemical Company. Respondent's principal place of business is located at 2417 Linwood Boulevard, Kansas City, Mo. Respondent has been, for several years last past, engaged in the business of distributing and selling in commerce, as herein later set out, certain medical products designated as "Sano-See A" and "Sano-See B," or "Dr. DePew's Famous Eye Prescription."

PAR. 2. Said respondent being engaged in business as aforesaid causes said medical products when sold to be transported from her office and principal place of business in the State of Missouri to purchasers thereof located at various points in States of the United States

other than the State of Missouri and in the District of Columbia. There has been at all times mentioned herein a course of trade in commerce in said products so prepared, distributed and sold by the respondent 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, the respondent has been in substantial competition with other individuals and with corporations and firms likewise engaged in the business of manufacturing, distributing and selling eye medicines and eye washes or other similar products 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 said business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal products, respondent has caused advertising to be inserted in newspapers, periodicals, and trade journals of general circulation throughout the United States; has printed and circulated to customers and prospective customers throughout the several States, through the use of the United States mails and otherwise, advertising folders, letters, and literature. In all said advertisements and advertising literature the respondent has made such statements as the following:

Sano-See promotes the circulation of the blood. It helps scavengers carry away the destroyed cells and other foreign matter; it helps the builders repair the structure; it brings the warriors into action to ward off or drive out disease.

If you suffer from dim or blurred vision, granulated or inflamed lids, spots, scums, smarting, burning or watering—just your name and address will bring you, all charges prepaid, a \$1.00 treatment of Dr. DePew's Famous Eye Prescription. No matter how long you have suffered * * * try this treatment without risk.

Your eye sight, it's preservation and improvement through the use of Sano-See.

Sano-See is an eye treatment and should not be compared with eye washes * * *

The occasional use of Sano-See will keep the eyes in a clean, healthy condition and help them to retain their natural strength and sparkle.

Every member of the family may safely use Sano-See. The best known home treatment for almost all eye complaints.

It simply assists nature by stimulation of the blood supply and by its soothing, healing and eliminating properties of overcoming the conditions that are the cause of so large a proportion of eye troubles * * * It helps overcome these conditions and to eliminate from the eye the conditions that cause them.

All of said statements, together with many similar statements, appearing in respondent's advertising literature purport to be descriptive of respondent's products and their effectiveness in treating or curing many of the diseases, ailments, afflictions, and conditions of the human eye. In all of her advertising literature respondent represents, through statements and representations here-

Findings

26 F. T. C.

inabove set out and other statements of similar import, nature, and effect that her various products, to wit, Sano-See A and Sano-See B, or Dr. DePew's Famous Eye Prescription, will prevent and cure, or are beneficial in the treatment of many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human eye.

Respondent further advertises that her products above referred to will preserve and improve eyesight; that the use of Sano-See will keep the eyes in a clean, healthy condition, and help them retain their natural strength and sparkle.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said advertising literature as diseases, ailments, afflictions, and conditions which the use of said above named products will prevent and cure, or are beneficial in the treatment of, are the following: Ulcer of the cornea, iritis, ptergium, pterygium, interstitial keratitis, trachoma, dimmed or blurred vision, granulated eyelids, spots before the eyes, and smarting, burning, or watering of the eyes.

PAR. 5. The representations made by respondent with respect to the nature and effect of her products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's products will not improve or preserve eyesight, nor are they beneficial in the treatment of all or any, of the diseases, ailments, afflictions, and conditions hereinabove named. On the contrary, these products may actually aggravate some of the diseases hereinabove named, and cause permanent injury to the eyes. In addition, these products may have a tendency to improve temporarily an inflamed appearance of the eye without actually affecting the causes of said inflammation and thus cause dangerous delay in the proper consultation of an oculist for the treatment of a serious disease. Both of respondent's products are simple remedies, long known to science in the treatment of mild cases of inflammation of the eye, when such inflammation is not caused by or associated with any systemic or diseased condition. Sano-See A is a solution of Zinc Sulphate in water, and Sano-See B is a solution in water of Boric Acid, Adrenalin solution, and Glycerine.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended, and sold for the use of curing, relieving, or treating the various diseases, ailments, afflictions, and conditions of the human eye hereinbefore named and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

1200

Order

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her products and the effectiveness of said products for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human eye hereinabove named, in offering for sale and selling her products were and are calculated to, and have, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said products will in truth accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of the respondent's products with the result that trade has been unfairly diverted to the respondent from competitors referred to in paragraph 6 hereof.

CONCLUSION

The aforesaid acts and practices of the respondent Nelle K. Wing, trading as The DePew Chemical Company, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that she waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon her findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Nelle K. Wing, an individual, trading as The DePew Chemical Company, or trading under any other name, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a preparation for use in the eyes, now designated as "Sano-See A," "Sano-See B," or "Doctor DePew's Famous Eye Prescription," or any other preparation containing substantially similar ingredients or possessing substantially

Order

26 F. T. C.

similar properties, whether sold under these names or any other names in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by inference:

1. That said preparations will preserve or improve eyesight; that said preparations will keep the eyes in a clean or healthy condition; that said preparations may be safely used by everyone.

2. That said preparations are remedies or competent and effective treatments for or will cure or promote the cure of ulcer of the cornea, iritis, ptergium, pterygium, interstitial keratitis, trachoma, dimmed or blurred vision, granulated eyelids, spots before the eyes, and smarting, burning, watering of the eyes, or any other disease of the eye, except that respondent is not hereby prohibited from representing that these preparations may be used to temporarily relieve mild inflammation of the eye when such inflammation is not caused by or associated with any systemic or diseased condition.

It is further ordered, That the respondent shall, within 30 days after service upon her of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

Syllabus

IN THE MATTER OF

RALPH C. CURTISS, ALIAS C. A. DAVIS, TRADING AS
CHEMICAL PRODUCTS, MNFRS., AND MORRIS E. NEW-
MAN, TRADING AS AUTOMOTIVE TEST LABORA-
TORIES OF AMERICA.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3329. Complaint, Feb. 9, 1938—Decision, Apr. 23, 1938*

Where an individual engaged in the manufacture, sale, and distribution of two chemical automotive compounds, under designations "Hytense" and "Hypower," purportedly as gasoline power intensifier and saver, and as motor compression seal; in soliciting sale of said products through pamphlets and advertisements in newspapers and periodicals, and through descriptive circulars—

- (a) Represented that said "Hytense" was a gasoline saver and that it reduced motor knock, increased combustion and mileage, removed and prevented carbon, and lubricated the upper cylinders, and did not contain anything harmful to the motor, and would not form sediment, and included in advertising thereof facsimile of a so-called "Certificate of Merit" covering product in question, and set forth possible earnings of agents in sale thereof as "up to 400 percent profit"; and
- (b) Represented that said "Hypower" saved or rebuilt the motor, lasted 5,000 to 10,000 miles, sealed the rings, increased compression, reduced oil pumping, and saved oil and gasoline and rebuilt worn or scored cylinder walls and pistons, and reduced friction and wear, and likewise referred, in support of said representations, to said so-called "Certificate of Merit";

Facts being claims for aforesaid respective products were false in that they did not accomplish said various results, and possible earnings of agents as above set forth were fictitious and greatly exaggerated; and

Where an individual engaged, under trade-name Automotive Test Laboratories of America, in business of preparing, printing, and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products for their use in advertising same in interstate commerce, and in representing to said manufacturers generally that aforesaid "Laboratories" constituted a nationally recognized institution engaged in testing various products submitted to it by its customers; in pursuance of a conspiracy, entered into with said vendor of such "Hytense" and "Hypower" products—

- (c) Prepared and issued to said vendor so-called "Certificates of Merit" and "Seals of Approval" covering his aforesaid products, and setting forth, in substance and broadly, the gist of the claims made therefor by him and that said products had been tested in such laboratories;

Facts being giver of said certificates or seals of approval did not operate a laboratory for purpose of making tests of manufactured articles, and did not and had not made such tests, and said certificates were false and misleading in all essential respects, in that they were not result of scientific, independent, and impartial tests by competent persons, but were prepared

Complaint

26 F. T. C.

from false and misleading information furnished by aforesaid vendor of products in question to giver of said certificates for purpose of aiding said vendor in falsely and misleadingly advertising and promoting sale of said products, with full knowledge on the part of said vendor, in applying for, receiving, and using the same, that said supplier of such certificates did not make independent, impartial, and scientific tests of products in question; With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that all said statements and representations were true, and with result that a substantial number of purchasing public, as direct consequence of such erroneous and mistaken beliefs, induced by said acts and representations, bought said products, and trade was unfairly diverted to said vendor from competitors engaged in distribution or sale of products designed for similar usage, and who truthfully advertised properties and effects of their respective products and results that might be expected to be obtained from purchase or use thereof; to the substantial injury of competition in commerce among the various States and in the District of Columbia:

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

Mr. Merle P. Lyon 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 Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mnfrs., and Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, hereinafter sometimes referred to as respondents Curtiss and Newman, respectively, 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. The respondent, Ralph C. Curtiss, alias C. A. Davis, is an individual trading under the style and name of Chemical Products, Mnfrs., having his office and principal place of business at 1126 North Clark Street, Chicago, Ill. The respondent, Morris E. Newman, is an individual trading under the style and name of Automotive Test Laboratories of America, having his office and principal place of business at 2024 South Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent Ralph C. Curtiss, alias C. A. Davis, sole trader under the style and name of Chemical Products, Mnfrs., for

1209

Complaint

more than 2 years last past has been engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and the District of Columbia of certain chemical automotive compounds, one designated as "Hytense," and represented as a gasoline power intensifier and saver, and a second called "Hypower" and represented as a motor compression seal.

Said respondent causes said products, when sold, to be shipped and transported in interstate commerce from his 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 of Illinois. Respondent has at all times named herein maintained a course of trade and commerce in said products, "Hytense" and "Hypower," between and among the various States of the United States and the District of Columbia.

PAR. 3. Respondent Curtiss, in the course and conduct of his said business, has been, for more than 2 years last past, and is now, engaged in competition with other individuals, corporations, firms, and partnerships engaged in the manufacture, sale, and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business, as hereinabove described, respondent Curtiss in soliciting the sale of, and in selling his products, "Hytense" and "Hypower," by pamphlets, advertisements inserted in newspapers, periodicals, and magazines, descriptive circulars, and otherwise, has made, and is now making, extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy and effect of his said products and the results that are achieved by using them. Among such statements used by said respondent in the advertising of his product "Hytense" in periodicals and magazines are the following:

MYSTERIOUS NEW CHEMICAL INCREASES MILEAGE

Approved by Automobile Test Labs. Tests show this secret combination of high gasoline intensifying, carbon removing, and lubricating chemicals increases auto mileage tremendously—makes high powered quick starting non-carbon fuel. Guaranteed trial offer. 500% profit. Write today.

CHEMICAL PRODUCTS MFG., 1126 N. Clark, Chicago

In circulars, pamphlets, and other advertising matter sent to prospective agents and purchasers, respondent Curtiss expands and particularizes the said claims made in his periodical advertising, stating in effect that "Hytense" is a gasoline saver, will reduce motor knock and gasoline consumption, increase combustion and mileage, removes and prevents carbon formation, lubricates upper cylinders, and is

guaranteed not to contain anything harmful to motors, and that it will not form sediment. There is included in said circulars, pamphlets and other advertising matter a facsimile of a so-called "Certificate of Merit" issued by said respondent Newman, trading under the name and style of Automotive Test Laboratories of America which is set forth with more particularity in paragraph 8 herein.

PAR. 5. In truth and in fact the representations of said respondent Curtiss, and each of them, and said respondent's advertisements and representations in pamphlets, circulars, newspapers, magazines, and other advertising matter, concerning the product "Hytense," as set forth in paragraph 4 hereof, are extravagant, misleading and false in the following respects:

Said product "Hytense" will not increase power or mileage; does not remove or prevent the formation of carbon; does not produce an antiknock gasoline; does produce and leave a sediment, and by the production of sulphuric acid may injure the engine. Further, the claims of possible earnings of agents, "500 percent profit," are fictitious and greatly exaggerated.

PAR. 6. In the course and conduct of his said business, as hereinabove described, said respondent Curtiss in soliciting the sale of and in selling his said product "Hypower," a vermiculite composition made up in a tablet form intended for placement in the cylinders through the spark plug openings, makes the following representations in the label on said product:

**HYPOWER—SAVE THE SURFACE—SAVE THE MOTOR
LASTS 10,000 MILES**

Increases compression.

Seals the rings, reduces oil pumping, saves oil and gasoline.

Rebuilds worn or scored cylinder walls and pistons.

Stops piston slaps.

Increases power.

Reduces friction and wear.

In advertisements in various specialty salesmen magazines and in circulars distributed to agents and prospective purchasers, representations are made by said respondent Curtiss as follows:

Hypower—It Rebuilds Your Motor While you Drive.

One Treatment Lasts 5,000 to 10,000 miles. Strange new sensational product offers you up to 400% profit.

A list of 10 claimed benefits to be derived from the use of "Hypower" is set out in said advertisements covering the said claims made on the label described herein, and also that the product contains nothing to harm the motor. All said advertisements feature and emphasize a "Certificate of Merit" issued by the said respondent Newman trading

under the style and name of Automotive Test Laboratories, in approval of claims made for the product, as set forth with more particularity in paragraph 8 herein.

PAR. 7. In truth and in fact the representations of said respondent Curtiss in pamphlets, circulars, newspapers, magazines and other advertising matter, and each of them, as set forth in paragraph 6 hereof, concerning the product "Hypower," are extravagant, false, and misleading in the following respects:

Said product "Hypower" will not save the motor or rebuild the motor. It will not last 5,000 to 10,000 miles. It does not increase compression, seal the rings, reduce oil pumping, or save oil and gasoline. It does not rebuild worn or scored cylinder walls and pistons or stop piston slaps. It does not increase power or reduce friction and wear. The claims of possible earnings of agents—"up to 400 percent profit," are greatly exaggerated.

PAR. 8. Said respondent Morris E. Newman, trading under the style and name of Automotive Test Laboratories of America, is now and for more than 2 years last past has been, engaged in the business of preparing, printing and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce.

Respondent causes his said "Certificates of Merit" and "Seals of Approval," when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois.

In the course and conduct of his said business said respondent Newman represents to said manufacturers generally that the said Automotive Test Laboratories of America is a nationally recognized institution engaged in the business of testing various manufactured products submitted to it by its customers when in truth and in fact said respondent does not operate a laboratory for the purpose of making tests of manufactured articles nor does he make such tests.

PAR. 9. Said respondent Curtiss and said respondent Newman have entered into a combination and conspiracy with each other to falsely and misleadingly advertise and misrepresent the said products "Hytense" and "Hypower" manufactured and sold by the said respondent Curtiss in his said business as aforesaid. Pursuant to said conspiracy, said respondents have performed the following acts, to wit:

Respondent Newman, in the name of the said Automotive Test Laboratories of America, issued a so-called "Certificate of Merit" for the said product "Hytense" manufactured by said respondent Curtiss certifying that the said product "Hytense" had been tested in the

Complaint

26 F. T. C.

laboratory of the said Automotive Test Laboratories of America and was thereby awarded the official "Seal of Approval." Said certificate contained the following statement:

Hytense, a gasoline intensifying, carbon preventive and heating resisting cylinder lubricant to increase combustion, lubrication, mileage and power. Provides easier starting in cold weather. Contains no acids, will not harm the motor is soluble in gasoline, kerosene, or distillate. No sediment.

Said respondent Newman, in the name of the Automotive Test Laboratories of America, also issued a so-called "Certificate of Merit" for the said product "Hypower" manufactured by said respondent Curtiss, certifying that said product "Hypower" had been tested in the laboratories of the said Automotive Test Laboratories of America, and had been awarded the official "Seal of Approval." Said certificate contained the following statement:

HYPOWER, for use in motor and placed in same through spark plug openings. Stops oil pumping by the rings, seals the rings and valves, stops piston slap, increases compression and provides a builder for worn pistons and cylinders. Contains nothing to harm the motor or any part of same.

Said "Certificates of Merit" are false and misleading in all essential respects in that they are not the result of scientific, independent, and impartial tests by competent persons, but were prepared from false and misleading information furnished by said respondent Curtiss to said respondent Newman for the purpose of assisting and aiding said respondent Curtiss in falsely and misleadingly advertising and promoting the sale of his said products "Hytense" and "Hypower" manufactured and sold by him as aforesaid.

Said respondent Curtiss applied for, received, and used the said "Certificates of Merit" and "Seals of Approval" for said products "Hytense" and "Hypower" in the sale of said products, as hereinbefore described, with full knowledge of the fact that said respondent Newman did not make an independent, impartial, and scientific test of said products.

PAR. 10. Each and all of the false and misleading statements and misrepresentations made by said respondent Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mfrs., and respondent Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America in the manner described herein in paragraphs 4 to 9 inclusive, in designating and describing the said products "Hytense" and "Hypower," and the results to be obtained from the use of said products in offering for sale and selling said products, have had, and still have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into

the erroneous belief that all of said statements and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by said acts and representations of said respondents, as hereinabove set out, a substantial number of the purchasing public have purchased said products "Hytense" and "Hypower" with the result that trade has been unfairly diverted to said respondent Curtiss from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties and effects of their respective products and the results that may be expected to be obtained from the purchase or use thereof. As a result thereof, injury has been, and is now being, done by the said respondents to commerce between and among the various States of the United States and the District of Columbia.

PAR. 11. The above and foregoing acts, practices, and representations of the respondents have been, and are all to the prejudice and injury of the public and said respondents' competitors as hereinabove alleged. Said acts, practices and representations 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 9, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondents, Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the name and style of Chemical Products, Mnfrs. and Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, 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 separate answers by the respondents, the Commission, by order entered herein, granted the motion of the respondents, Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mnfrs. to withdraw his original answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence, and all other intervening procedure, which substituted answer was duly filed in the office of the Commission, a similar answer having been theretofore filed in the office of the Commission by the respondent, Morris E. Newman, individually, and as sole trader under the

style and name of Automotive Test Laboratories of America; and thereafter this proceeding regularly came on for final hearing before the Commission, on the said complaint and the several answers and substitute answers of the respondents, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Ralph C. Curtiss, alias C. A. Davis, is an individual trading under the style and name of Chemical Products, Mnfrs., having his office and principal place of business at 1126 North Clark Street, Chicago, Ill. The respondent, Morris E. Newman, is an individual trading under the style and name of Automotive Test Laboratories of America, having his office and principal place of business at 2024 South Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent Ralph C. Curtiss, alias C. A. Davis, sole trader under the style and name of Chemical Products, Mnfrs., for more than 2 years last past has been engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and the District of Columbia of certain chemical automotive compounds, one designated as "Hytense," and represented as a gasoline power intensifier and saver, and a second called "Hypower" and represented as a motor compression seal.

Said respondent causes said products, when sold, to be shipped and transported in interstate commerce from his 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 of Illinois. Respondent has at all times named herein maintained a course of trade and commerce in said products, "Hytense" and "Hypower," between and among the various States of the United States and the District of Columbia.

PAR. 3. Respondent Ralph C. Curtiss, in the course and conduct of his said business, has been, for more than 2 years last past, and is now, engaged in competition with other individuals, corporations, firms, and partnerships engaged in the manufacture, sale, and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business, as hereinabove described, respondent Ralph C. Curtiss, in soliciting the sale of, and in selling his products, "Hytense" and "Hypower," by

pamphlets, advertisements inserted in newspapers, periodicals, and magazines, descriptive circulars, and otherwise, has made, and is now making, extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy, and effect of his said products and the results that are achieved by using them. Among such statements used by said respondent in the advertising of his product "Hytense" in periodicals and magazines are the following:

MYSTERIOUS NEW CHEMICAL INCREASES MILEAGE

Approved by Automobile Test Labs. Tests show this secret combination of high gasoline intensifying, carbon removing, and lubricating chemicals increases auto mileage tremendously—makes high powered quick starting non-carbon fuel. Guaranteed trial offer. 500% profit. Write today.

CHEMICAL PRODUCTS MFG., 1126 N. Clark, Chicago

In circulars, pamphlets, and other advertising matter sent to prospective agents and purchasers, respondent Ralph C. Curtiss expands and particularizes the said claims made in his periodical advertising, stating in effect that "Hytense" is a gasoline saver, will reduce motor knock and gasoline consumption, increase combustion and mileage, remove and prevent carbon formation, lubricate upper cylinders, and is guaranteed not to contain anything harmful to motors, and that it will not form sediment. There is included in said circulars, pamphlets, and other advertising matter a facsimile of a so-called "Certificate of Merit" issued by said respondent Morris E. Newman, trading under the name and style of Automotive Test Laboratories of America, which is set forth with more particularity in paragraph 8 herein.

PAR. 5. In truth and in fact the representations of said respondent Ralph C. Curtiss, and each of them, and said respondent's advertisements and representations in pamphlets, circulars, newspapers, magazines, and other advertising matter, concerning the product "Hytense," as set forth in paragraph 4 hereof, are extravagant, misleading, and false in the following respects:

Said product "Hytense" will not increase power or mileage; does not remove or prevent the formation of carbon; does not produce an antiknock gasoline; does produce and leave a sediment, and by the production of sulphuric acid may injure the engine. The claims of possible earnings of agents are fictitious and greatly exaggerated.

PAR. 6. In the course and conduct of his said business, as hereinabove described, said respondent Ralph C. Curtiss, in soliciting the sale of and in selling his said product "Hypower," a vermiculite composition made up in a tablet form intended for placement in the

cylinders through the spark plug openings, makes the following representations in the label on said product:

**HYPOWER—SAVE THE SURFACE—SAVE THE MOTOR
LASTS 10,000 MILES**

- Increases compression.
- Seals the the rings, reduces oil pumping, saves oil and gasoline.
- Rebuilds worn or scored cylinder walls and pistons.
- Stops piston slaps.
- Increases power.
- Reduces friction and wear.

In advertisements in various specialty salesmen magazines and in circulars distributed to agents and prospective purchasers, representations are made by said respondent Ralph C. Curtiss as follows:

- Hypower—It Rebuilds Your Motor While you Drive.
- One Treatment Lasts 5,000 to 10,000 miles.
- Strange new sensational product offers you up to 400% profit.

A list of 10 claimed benefits to be derived from the use of "Hypower" is set out in said advertisements covering the said claims made on the label described herein, and also that the product contains nothing to harm the motor. All said advertisements feature and emphasize a "Certificate of Merit" issued by the said respondent Morris E. Newman, trading under the style and name of Automotive Test Laboratories, in approval of claims made for the product, as set forth with more particularity in paragraph 8 herein.

PAR. 7. In truth and in fact the representations of said respondent Ralph C. Curtiss in pamphlets, circulars, newspapers, magazines, and other advertising matter, and each of them, as set forth in paragraph 6 hereof, concerning the product "Hypower," are extravagant, false, and misleading in the following respects:

Said product "Hypower" will not save the motor or rebuild the motor. It will not last 5,000 to 10,000 miles. It does not increase compression, seal the rings, reduce oil pumping, or save oil and gasoline. It does not rebuild worn or scored cylinder walls and pistons or stop piston slaps. It does not increase power or reduce friction and wear. The claims of possible earnings of agents—"up to 400% profit," are greatly exaggerated.

PAR. 8. Said respondent Morris E. Newman, trading under the style and name of Automotive Test Laboratories of America, is now, and for more than 2 years last past has been, engaged in the business of preparing, printing, and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce.

1209

Findings

Respondent causes his said "Certificates of Merit" and "Seals of Approval," when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois.

In the course and conduct of his said business said respondent Morris E. Newman represents to said manufacturers generally that the said Automotive Test Laboratories of America is a nationally recognized institution engaged in the business of testing various manufactured products submitted to it by its customers, when in truth and in fact said respondent does not operate a laboratory for the purpose of making tests of manufactured articles, nor does he make such tests.

PAR. 9. Said respondent Ralph C. Curtiss and said respondent Morris E. Newman have entered into a combination and conspiracy with each other to falsely and misleadingly advertise and misrepresent the said products "Hytense" and "Hypower" manufactured and sold by the said respondent Ralph C. Curtiss in his said business as aforesaid. Pursuant to said conspiracy, said respondents have performed the following acts, to wit:

Respondent Morris E. Newman, in the name of Automotive Test Laboratories of America, issued a so-called "Certificate of Merit" for the said product "Hytense," manufactured by said respondent Ralph C. Curtiss, certifying that the said product "Hytense" had been tested in the laboratory of said Automotive Test Laboratories of America, and was thereby awarded the official "Seal of Approval." Said certificate contained the following statement:

Hytense, a gasoline intensifying, carbon preventive and heating resisting cylinder lubricant to increase combustion, lubrication, mileage, and power. Provides easier starting in cold weather. Contains no acids, will not harm the motor, is a soluble in gasoline, kerosene, or distillate. No sediment.

Said respondent Morris E. Newman, in the name of the Automotive Test Laboratories of America, also issued a so-called "Certificate of Merit" for the said product "Hypower" manufactured by said respondent Ralph C. Curtiss, certifying that said product "Hypower" had been tested in the laboratories of the said Automotive Test Laboratories of America, and had been awarded the official "Seal of Approval." Said certificate contained the following statement:

HYPOWER, for use in motor and placed in same through spark plug openings. Stops oil pumping by the rings, seals the rings and valves, stops piston slap, increases compression and provides a builder for worn pistons and cylinders. Contains nothing to harm the motor or any part of same.

Said "Certificates of Merit" are false and misleading in all essential respects in that they are not the result of scientific, independent, and

Conclusion

26 F. T. C.

impartial tests by competent persons, but were prepared from false and misleading information furnished by said respondent Ralph C. Curtiss to said respondent Morris E. Newman for the purpose of assisting and aiding said respondent Ralph C. Curtiss in falsely and misleadingly advertising and promoting the sale of his said products "Hytense" and "Hypower," manufactured and sold by him as aforesaid.

Said respondent Ralph C. Curtiss applied for, received, and used the said "Certificates of Merit" and "Seals of Approval" for said products "Hytense" and "Hypower" in the sale of said products, as hereinbefore described, with full knowledge of the fact that said respondent Morris E. Newman did not make an independent, impartial, and scientific test of said products.

PAR. 10. Each and all of the false and misleading statements and misrepresentations made by said respondent Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mnfrs., and respondent Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, in the manner described herein in paragraphs 4 to 9 inclusive, in designating and describing the said products "Hytense" and "Hypower," and the results to be obtained from the use of said products in offering for sale and selling said products, have had, and still have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said statements and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by said acts and representations of said respondents, as hereinabove set out, a substantial number of the purchasing public have purchased said products "Hytense" and "Hypower" with the result that trade has been unfairly diverted to said respondent Ralph C. Curtiss from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties and effects of their respective products and the results that may be expected to be obtained from the purchase or use thereof. As a result thereof, substantial injury has been, and is now being, done by the said respondents to competition in commerce between and among the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents Ralph C. Curtiss and Morris E. Newman have been, and are, all to the prejudice and injury of the public and said respondents' competitors, and

1209

Order

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers and substitute answer of respondents, in which answers and substitute answer respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in the complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the name and style of Chemical Products, Mnfrs., or trading under any other name, in connection with the offering for sale, sale, and distribution of the products now known as and sold under the name of Hytense and Hypower, or the same or similar products under whatever name sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or indirectly:

1. That the product "Hytense":

- (a) Is a gasoline saver,
- (b) Reduces motor knock and gasoline consumption,
- (c) Increases combustion and mileage,
- (d) Removes and prevents carbon formation,
- (e) Lubricates upper cylinders,
- (f) Does not contain anything harmful to motors, and
- (g) Will not form sediment.

2. That the product "Hypower":

- (a) Saves the motor or rebuilds the motor,
- (b) Lasts 5,000 to 10,000 miles,
- (c) Increases compression,
- (d) Seals the rings,
- (e) Reduces oil pumping,
- (f) Saves oil and gasoline,
- (g) Rebuilds worn or scored cylinder walls and pistons, and
- (h) Reduces friction and wear.

Order

26 F. T. C.

It is further ordered, That the respondent Morris E. Newman, individually, or as sole trader under the style and name of Automotive Test Laboratories of America, or under any other trade name, do forthwith cease and desist from:

1. Preparing and issuing to the respondent Ralph C. Curtiss so-called "Certificates of Merit" and "Seals of Approval" covering products sold by the respondent Ralph C. Curtiss for use by him in advertising his said products in interstate commerce, unless and until respondent owns and conducts a laboratory and employs trained scientists and technicians, and is equipped to test and does test said products in the manner and with the methods used by recognized scientific laboratories.

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

Syllabus

IN THE MATTER OF

WALDO W. TOWNSLEY, DOING BUSINESS AS SERVAL-SYSTEM

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3197. Complaint, Aug. 6, 1937—Decision, Apr. 29, 1938

Where an individual engaged in sale and distribution of bookkeeping system known as "Serval-System," designed primarily for farmers and consisting of a card system for items of expense and income, a pocket adding machine, a cardboard file and a cabinet, together with instructions for use, and price-marked to sell for \$7.50, regular price, or \$5.75, special price; in connection with a plan of selling said systems in group lots to so-called distributors or territorial supervisors, usually farmers, for resale to ultimate purchaser, under contracts covering territory assigned to supervisor, maximum number of systems he undertook to purchase, and total amount of cash deposit paid on number of sets contracted for—

- (a) Represented, directly and through agents, that said systems were easy to sell, and that he had sold a large number thereof in the community and displayed signed orders of a number of farmers with whom prospect was acquainted, and bank deposit slips indicating sizeable accounts in local banks as result of sale of systems locally, and falsely represented that local bankers and business men had endorsed said system and, in support of such representation, displayed one of systems containing advertisements from a number of the local bankers and business men; facts being systems were not easy to sell, sales made to farmers in prospect's community, evidenced as aforesaid, were not made at either the regular or special price as prospect was led to believe, but at substantially lower prices, and bank deposits, evidenced as aforesaid, were not made as a result of such sales but from funds obtained by him from other sources, and said systems were not thus endorsed;
- (b) Represented that he was in search of a local distributor to supervise sales of such systems in certain territories and that supervisor was not required to put up any cash or required to do any selling, and that he would organize and train sales forces to do the actual selling, and that all supervisor was required to do was to take in the money, pay the salesmen their commissions, deduct his own share, and send the balance to him; facts being any member of any community could become his local distributor if he had sufficient capital to make required advance payment on required number of systems when contract was signed, at which time supervisor was required to advance a cash deposit of 50 cents on each system contracted for, on basis of estimate as to probable number that could be sold in designated territory, he did not actually grant any exclusive territory if other sales could be made to other distributors therein, and representations that supervisor was not required to do any actual selling, etc., as above set forth, were false, and said individual, once contract was signed and cash deposit or initial payment specified made, left community, without training any sales force, never to return, and so-called supervisor was left to dispose of said systems in any manner possible; and

Complaint

26 F. T. C.

(c) Represented that a new plan had been devised whereby prospect could be paid a greater commission on each sale of system than was formerly the case, but that in order to make same possible, he, the vendor, had been required to make cash advance of 50 cents per set to printing company to have specified number of said systems printed at one time and placed in their warehouse subject to call, and that it would therefore be necessary for supervisor to reimburse him, the said vendor, for such cash advance made, amounting, at very least, to \$402, and at most, usually, to \$1,206, and that after contract had been undertaken and cash deposit paid over, supervisor was entitled to order from printer number of sets contracted for, upon the payment of the additional sum of \$1.70 per set to the printer; facts being that while said individual did have contract with printing company for printing sets, as orders were placed, he made no cash advance or deposit thereon, and printer's bill for printing sets was paid by supervisor when he received same;

With capacity and tendency to mislead and deceive and with effect of misleading and deceiving substantial number of purchasing public into erroneous beliefs that such representations were true and into purchasing a substantial number of said sets, acting in such mistaken and erroneous beliefs, induced by said false and misleading statements and representations, and with effect that trade was unfairly diverted to him from competitors engaged in sale and distribution, or in manufacture, sale and distribution of bookkeeping sets, card indexing systems, and cost accounting systems in commerce among the various States and in the District of Columbia:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Waldo P. Johnson, 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, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Waldo W. Townsley, an individual, doing business as Serval-System, 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, Waldo W. Townsley, is an individual doing business as the Serval-System. His business address is P. O. Box #3005 Kansas City, Mo. His home address is 627 South Dearborn Street, Iowa City, Iowa.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of a bookkeeping system to the purchasing public located in various States of the United States. Respondent

now causes, and at all times since he has been in said business has caused, his said products when sold by him, to be shipped from Kansas City, Mo., to the purchasers thereof located in the various States of the United States. There is now, and has been at all times since respondent has been in business, a constant current of trade and commerce by the respondent in bookkeeping systems between and among the various States of the United States.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships, and corporations engaged in the sale and distribution of bookkeeping systems in commerce 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 aforesaid, the respondent is now, and has been for several years last past, engaged in the sale and distribution of a bookkeeping system known as the "Serval-System." It is designed primarily for farmers' use and consists of a card system for items of expense and income, a pocket adding machine, a cardboard file and a cabinet, together with instructions for using the system. The system is price-marked to sell for \$7.50, regular price, or for \$5.75, special price. Until about the beginning of 1936, the respondent sold said system direct to the user; however, during the past year or more, he has been selling said system to so-called distributors or territorial supervisors for resale to the ultimate purchaser. With these said territorial supervisors, respondent enters into a written contract which specifies, among other things, the territory assigned to the supervisor, the maximum number of Serval Systems allotted to the supervisor which he is privileged to demand upon the payment of the balance of the purchase price, and the total amount of the cash deposit paid by said supervisor on said allotment of Serval sets at the time the contract is signed and the sale is made.

PAR. 3. Respondent's sales method is to contact a prospective distributor or territorial supervisor, usually a farmer, and convince said prospect that the Serval-System is something every farmer should have. He then proceeds to sell the said prospect on the idea that it is a proposition out of which he can make some money in his spare time.

As an inducement to prospects to enter into the said written contract to become respondent's distributors or territorial supervisors and to purchase a specified number of the Serval-Systems, the respondent, in person or through his agents, has represented, and still represents, to prospects, among other things, that the Serval-Systems are easy to sell and that he has sold a large number of said systems in the community, displaying to the prospect the signed orders of

a number of farmers with whom the prospect is acquainted and also displaying to the prospect bank deposit slips indicating sizeable bank accounts in the local banks as a result of the sale of the systems locally. Respondent also represents to the prospect that the local bankers and business men have indorsed the Serval-System and in support of this representation, respondent displays to the prospect one of the systems containing advertisements from a number of the local bankers and business men.

In truth and in fact, the said Serval-Systems are not easy to sell and the sales made to farmers in the prospect's community, evidenced by signed orders displayed to the prospect, are not made at the regular or special marked price, as the prospect is led to believe, but at prices substantially lower than said regular or special marked price, although the prospect is not apprized of that fact. The bank deposits, evidenced by deposit slips exhibited to the said prospect, are not made as a result of sales of the Serval-System, as the prospect is led to believe, but are made from funds obtained by respondent from other sources. Furthermore, the representation that the system has been indorsed by local bankers and business men is untrue.

PAR. 4. As a further inducement to said prospects to become respondent's distributors, respondent has represented and still represents to prospects, that he is in search of a local representative or distributor to supervise sales of the Serval-Systems in certain territories; that said supervisor is not required to put up any cash and is not required to do any actual selling; that the respondent will organize and train sales forces to do the actual selling and all the supervisor is required to do is take in the money, pay the salesmen their commissions, take out his share, and send the balance to the respondent.

The representation that respondent is in search of a local distributor or representative for a designated territory or community is untrue, in that any member of any community can become respondent's representative or supervisor if he has capital sufficient to make the advance payment on the required number of respondent's Serval-Systems at the time the contract is signed. The representations that the supervisor is not required to do any actual selling and that the respondent will organize and train sales forces is untrue. Once the contract between respondent and the supervisor is signed and the amount of cash deposit or initial payment specified in the contract is paid over to the respondent, said respondent leaves the community without training any sales force, never to return, and the so-called supervisor is left to dispose of the Serval-Systems in any manner possible. The representation that the supervisor is not required to put up any cash

is untrue. At the time the aforementioned contract is signed between respondent and his territorial supervisor, said supervisor is required to advance a cash deposit of 50 cents on each Serval-System contracted for, the number of systems being arrived at by estimating the probable number that can be sold in the designated territory.

PAR. 5. As the final step in respondent's sales method and as a further inducement to the prospect to sign the aforementioned contract and purchase a specified number of the Serval-Systems, the respondent calls on the prospect a second time and represents to him that a new plan has been devised whereby the prospect can be paid a greater commission on each sale of the Serval-Systems, but that in order to make this new plan possible respondent has been required to make a cash advance to a printing company to have a specified number of the Serval-Systems made up at one time and placed in their warehouse, subject to call from the supervisor, and it will therefore be necessary for the said supervisor to reimburse the respondent for the said cash advance made. The minimum amount to be advanced is \$402, and the maximum amount is usually \$1,206. After the contract is entered into and the cash deposit is paid over to the respondent, the said supervisor is then entitled to order from the printer the number of sets called for in his said contract upon the payment of the additional sum of \$1.70 per set.

In truth and in fact, respondent's representation that he has contracted with the printer for a large number of Serval sets upon which he has made a cash advance of 50 cents per set is untrue. Respondent has a contract with the printing company to make up the sets as orders are placed for them, but respondent makes no cash advance or deposit upon the sets. The printer is paid for said sets when they are shipped out to the supervisors.

PAR. 6. The use by respondent of the representations set out above has had, and now has, the capacity and tendency to mislead and deceive, and has misled a substantial number of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said bookkeeping sets as a result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of bookkeeping sets, card indexing systems, and cost accounting systems, who do not misrepresent the manner in which sales of their commodities are made to the public or the prices at which their products are sold, and who do not, in any manner, publish claims in promoting the sale of their products, which are untrue, who likewise sell and distribute their products among the various States of the United States and in the District of Columbia. By the

Findings

26 F. T. C.

representations aforesaid, trade is unfairly diverted to respondent from such competitors and as a result thereof, substantial injury is being, and has been done, by respondent to competition in commerce as herein set out.

PAR. 7. The above alleged acts and practices of respondent are all to the injury and 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 the Federal Trade Commission Act, the Federal Trade Commission, on August 6, 1937, issued, and on August 14, 1937, served, its complaint in this proceeding upon respondent, Waldo W. Townsley, an individual, doing business as Serval-System, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, no briefs having been filed and no oral argument having been requested, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Waldo W. Townsley, is an individual doing business under the trade name Serval-System. His business address is P. O. Box No. 3005, Kansas City, Mo. His home address is 627 South Dearborn Street, Iowa City, Iowa.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of a bookkeeping system to the purchasing public located in various States of the United States. Respondent now causes, and at all times since he has been in said business has caused, his said products, when sold by him, to be shipped from Kansas City, Mo., to the purchasers thereof located in the various States of the United States other than the State of Missouri. There

is now, and has been at all times since respondent has been in business, a course of trade and commerce by the respondent in such bookkeeping systems between and among the various States of the United States.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships and corporations likewise engaged in the sale and distribution of bookkeeping systems in commerce 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 aforesaid, the respondent is now, and has been for several years last past, engaged in the sale and distribution of a bookkeeping system known as a "Serval-System." It is designed primarily for farmers' uses and consists of a card system for items of expense and income, a pocket adding machine, a cardboard file and a cabinet, together with instructions for using the system. The system is price-marked to sell for \$7.50, regular price, or for \$5.75, special price. Until about the beginning of 1936, the respondent sold said system direct to the user. During the past year or more, he has been selling, and is now selling, said system in group lots to so-called distributors or territorial supervisors for resale to the ultimate purchaser. With these said territorial supervisors, respondent enters into written contracts which specify, among other things, the territory assigned to the supervisor, the maximum number of Serval-Systems he agrees to purchase, and the total amount of the cash deposit paid by said supervisor on the number of Serval sets contracted for.

PAR. 3. Respondent's sales method is to contact a prospective distributor or territorial supervisor, usually a farmer, and convince said prospect that the Serval-System is something every farmer should have. He then proceeds to sell the prospect on the idea that it is a proposition out of which he can make some money in his spare time.

As an inducement to prospects to enter into the said written contracts to become respondent's distributors or territorial supervisors and to purchase a specified number of the Serval-Systems, the respondent, in person and through his agents, has represented, and still represents, to prospects, among other things, that the Serval-Systems are easy to sell and that he has sold a large number of them in the community, displaying to the prospect the signed orders of a number of farmers with whom the prospect is acquainted and also displaying bank deposit slips indicating sizeable bank accounts in the local banks as a result of the sale of the systems locally.

Respondent also represents to the prospect that the local bankers and business men have indorsed the Serval-System and in support of this representation, respondent displays one of the systems containing advertisements from a number of the local bankers and business men.

As a further inducement to said prospects to become respondent's distributors, respondent has represented, and still represents, that he is in search of a local representative or distributor to supervise sales of the Serval-Systems in certain territories; that said supervisor is not required to put up any cash and is not required to do any actual selling; but that the respondent will organize and train sales forces to do the actual selling and all the supervisor is required to do is take in the money, pay the salesmen their commissions, take out his share, and send the balance to the respondent.

As a final step in respondent's sales method and as a further inducement to the prospect to sign the aforementioned contract and purchase a specified number of the Serval-Systems, the respondent represents to the prospect that a new plan has been devised whereby the prospect can be paid a greater commission on each sale of the Serval-System than was formerly the case but that in order to make this new plan possible respondent has been required to make a cash advance of 50 cents per set to a printing company to have a specified number of the Serval-Systems printed at one time and placed in their warehouse, subject to call from the supervisor, and it will therefore be necessary for the said supervisor to reimburse the respondent for the said cash advance made. The minimum amount to be advanced is \$402, and the maximum amount is usually \$1,206. After the contract is entered into and the cash deposit is paid over to the respondent, the said supervisor is then entitled to order from the printer the number of sets called for in his said contract upon the payment of the additional sum of \$1.70 per set to the printer.

PAR. 4. The said Serval-Systems are not easy to sell and the sales made to farmers in the prospect's community, evidenced by signed orders displayed to the prospect, are not made at either the regular or the special price, as the prospect is led to believe, but at prices substantially lower than either said regular or special price, although the prospect is not apprized of that fact. The bank deposits, evidenced by deposit slips exhibited to the said prospect, are not made as a result of sales of the Serval-System in a nearby community, as the prospect is led to believe, but are made from funds obtained by respondent from other sources. Furthermore, the representation that the system has been indorsed by local bankers and business men is untrue.

The representation that respondent is in search of a local distributor or representative for a designated territory or community is untrue, in that any member of any community can become respondent's representative or supervisor if he has capital sufficient to make the advance payment on the required number of respondent's Serval-Systems at the time the contract is signed. Respondent does not actually grant any exclusive territory to such distributors, if other sales can be made to other distributors in the same territory. The representations that the supervisor is not required to do any actual selling and that the respondent will organize and train sales forces are untrue. Once the contract between respondent and the supervisor is signed and the amount of cash deposit or initial payment specified in the contract is paid over to the respondent, said respondent leaves the community without training any sales force, never to return, and the so-called supervisor is left to dispose of the Serval-Systems in any manner possible. The representation that the supervisor is not required to put up any cash is untrue. At the time the aforementioned contract is signed between respondent and his territorial supervisor, said supervisor is required to advance a cash deposit of 50 cents on each Serval-System contracted for, the number of systems being arrived at by estimating the probable number that can be sold in the designated territory.

The respondent's representation that he has contracted with the printer for a large number of Serval sets upon which he has made a cash advance of 50 cents per set is untrue. Respondent has a contract with the printing company to make up the sets as orders are placed for them, but respondent makes no cash advance or deposit upon the sets. The printer's bill for printing the sets is paid by the supervisors when they receive the sets.

PAR. 5. The use by respondent of the representations described above has had, and now has, the capacity and tendency to mislead and deceive, and has misled a substantial number of the purchasing public into the erroneous beliefs that such representations are true. Acting under such mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the public has purchased a substantial number of said bookkeeping sets with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the sale and distribution, and in the manufacture, sale, and distribution, of bookkeeping sets, card indexing systems, and cost accounting systems, in commerce among and between the various States of the United States and in the District of Columbia.

Order

26 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent Waldo W. Townsley, an individual, doing business under the trade name Serval-System, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on March 21, 1938, whereby respondent admitted 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Waldo W. Townsley, an individual, doing business under the trade name Serval-System, or under any other trade name, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of a book-keeping system now designated a Serval-System, whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, in any manner whatsoever:

1. That said bookkeeping system is easy to sell;
2. That large numbers of sets of said system have been sold in any given community unless such is the fact;
3. That the system is indorsed by local banks and business concerns;
4. That the respondent is in search of a local representative or territorial distributor to supervise the sale of said systems in a given territory;
5. That no cash outlay is required by so-called local representatives or territorial supervisors;
6. That the so-called local representatives or territorial distributors are required to do no selling; and that their only duty is to handle the money, supervise and pay the salesmen;
7. That respondent will organize and train sales forces to sell the sets under the supervision of a so-called local representative or territorial supervisor;

1223

Order

8. That greater commissions are obtainable if a cash advance sufficient to cover cost of printing the systems contracted for is made by the so-called local representative or territorial distributor.

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

IN THE MATTER OF
**MORRIS E. NEWMAN, INDIVIDUALLY, AND TRADING AS
AUTOMOTIVE TEST LABORATORIES OF AMERICA**

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

Docket 3328. Complaint, Feb. 9, 1938—Decision, Apr. 29, 1938

Where an individual engaged in preparation, printing and sale of so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products, for their use in advertising same in interstate commerce, and customarily typing in said certificates the claims made by the various manufacturers, and not the results of scientific, impartial tests, and customarily soliciting and accepting suggestions made by such manufacturers as to contents and wordings of said certificates and changing same to correspond with wishes and requests of such manufacturers, without investigation of or regard to truth or falsity of statements—

- (a) Used word "Laboratories" in his trade-name and displayed same in his letterheads, advertising and correspondence cards, and depicted on his letterheads lithographed pictures of scientists and scientific equipment to imply and suggest that he had a laboratory, notwithstanding fact he neither owned nor operated any laboratory, but only office space in the rear of an automotive trade school, and employed no technicians;
- (b) Represented that he made independent, impartial and scientific tests of products submitted, in a laboratory containing apparatus necessary for testing products involved in each case, notwithstanding fact he neither made nor was equipped to make such tests, and issued fictitious "Certificates of Merit" and "Seals of Approval" and mailed same to individual concerns throughout the United States;
- (c) Referred to himself, in his correspondence with prospective customers and in other advertising matter, as a "safety engineer," and as president of his organization and referred to his laboratory as an engineering department, and represented that he had in his employ "Laboratory Engineers," and had laboratory equipment, and made a practice of having various individuals sign the so-called "Certificates of Merit" as "Laboratory Engineers," notwithstanding fact he was not an engineer of any kind, and his organization was nothing more than a trade-name used by him and was not a corporation and he had neither engineering department, laboratory, nor laboratory engineers;
- (d) Listed in his advertising and letterheads a Consultant Advisory Board of 11 men, with their respective official titles, and held out and represented same as assistants and consultants who assisted him in conducting tests, notwithstanding fact that some of them had never given their consent to the use of their names and none of them had ever received anything to test;
- (e) Represented in correspondence with prospective customers and in his advertising matter that his organization was the only one of its kind in the country and was comparable to the Good Housekeeping Institute, and was recognized currently as the adopted standard in the automotive, chemical and accessories field, and used on personal cards and letterheads picture of

1234

Complaint

the seven-story building belonging to said automotive school, with words "7 floors of modern test automotive equipment," notwithstanding fact his said organization had no standing whatever in the field of testing automotive products and accessories, and occupied only one small room of the building in question, and his apparatus consisted of a filing cabinet and a few pieces of furniture; and

- (f) Represented in correspondence with prospective customers that he received on an average of from 200 to 300 letters of inquiry monthly from manufacturers of some products, and, in connection with products he was seeking to test, that he had received inquiries relative thereto, facts being he never received any such number of inquiries a month and had had no such inquiries as to tests sought by him;

With capacity and tendency to mislead and deceive manufacturers and distributors of automotive products and others respecting the status, character and organization of his said business and the value, truth, impartial and scientific character of said "Certificates of Merit" and "Seals of Approval" issued by him, and with result that manufacturers and distributors of automotive products and others were thereby induced to have their products tested by him, and to purchase said so-called certificates and seals, to their detriment and injury and that of purchasing public, and that of competitors who do not and will not use such false and fictitious certificates, and of legitimate scientific testing laboratories engaged in business of testing such and other products and devices, and in sale of printed matter containing approval of products, after having been scientifically tested, to manufacturers of said products for their use in advertising same in interstate commerce, and with result of furnishing dishonest customers with vehicle for misbranding and falsely and misleadingly advertising articles in commerce, and thereby deceiving and exploiting purchasing public, and of unfairly diverting trade to him from competitors truthfully engaged, as aforesaid, in testing such and other products, and who conduct their tests in an impartial and scientific manner, and from manufacturers and distributors of such and other products who will not and do not use such false and fictitious certificates, to those who will and do use same; to the substantial injury of competition in commerce among the various States and in the District of Columbia:

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

Mr. Merle P. Lyon 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 Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, hereinafter sometimes referred to as respondent Newman, 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. The said respondent, Morris E. Newman, is an individual trading under the style and name of Automotive Test Laboratories of America, having his office and principal place of business in the rear of Greer College, an automotive trade school located at 2024 South Wabash Avenue, Chicago, Ill.

Said respondent, for more than two years last past, has been, and is now, engaged in the business of preparing, printing and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce. Said respondent causes his said "Certificates of Merit" and "Seals of Approval," when sold, to be transported from his said place of business in the State of Illinois to the purchasers thereof located in the several States of the United States other than the State of Illinois.

Said respondent, in the course and conduct of his said business, has been, for more than two years last past, and is now, in competition with other individuals, firms, and partnerships engaged in the business of testing automotive and other products and devices and in preparing, printing and selling printed matter and labels containing approval of products, after they have been scientifically tested, to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce.

PAR. 2. In the course of his said business, and for the purpose of inducing individuals, firms and corporations to purchase his said "Certificates of Merit" and "Seals of Approval" to be used in advertising their respective products, respondent makes the following representations in letters sent to prospective customers:

Would you be interested in learning how our organization could help your men sell your automotive product with reduced sales resistance? And this at very small cost to you. Countless manufacturers and sales organizations are now using our "Certificate of Merit" and "Seal of Approval." How about you?

The enclosed facsimile of our "Certificate of Merit" and "Seal of Approval" should interest you, as it has over three hundred nationally known manufacturers of automotive products. Bolster up your sales by breaking down sales resistance; give your men, agents, salesmen something to talk about, instill confidence in the product through an unbiased testimonial; the result will be additional business.

Can refer you to anyone of over hundreds of satisfied users who will gladly attest to our claims.

You should be interested in learning how more than 400 nationally known automotive manufacturers are using our "Certificate of Merit" and "Seal of Approval" as an aid to better merchandising. Recognized throughout the United States by the vast automotive trade, sales resistance can best be met through the service offered you, and your men will welcome such cooperation.

Furthermore, said respondent in issuing said "Certificates of Merit" habitually and customarily types in said Certificates the claims made by the various manufacturers and not the result of scientific, impartial tests conducted by respondent. Respondent habitually and customarily solicits and accepts suggestions made by the various manufacturers as to the contents and wording of said "Certificates of Merit," and makes changes in the Certificates to correspond with the wishes and requests of said manufacturers; without investigation of, or regard to, the truth or falsity of the statements.

PAR. 3. Said respondent, in the course and conduct of his said business engages in the following false and misleading representations, acts and practices:

1. Uses the word "Laboratories" in his trade name, which appears in his trade name, which appears in his letterheads, advertising cards and correspondence, when in truth and in fact he does not own or operate any laboratories but only occupies office space in the rear of said Greer College; carries on his letterheads, lithographed pictures of scientists and scientific equipment to imply and suggest that he has a laboratory, when in fact he does not have a laboratory and does not employ any technicians.

2. Represents that he makes independent, impartial and scientific tests of products submitted to him for tests in a laboratory containing apparatus necessary for testing products involved in each case, when in truth and in fact he does not make independent, impartial or scientific tests, but issues fictitious "Certificates of Merit" and "Seals of Approval" and mails the same to individuals and firms throughout the United States.

3. Refers to himself in his correspondence with prospective customers, and in other advertising matter, as a "safety engineer," when in truth and in fact he is not an engineer of any kind.

4. Refers to himself in his correspondence with prospective customers, and in other advertising matter, as the president of his organization, when in fact his organization is nothing more than a trade name used by respondent as an individual and is not a corporation or incorporated; and refers to his laboratory and engineering department, and represents that he has in his employ laboratory engineers and equipment; makes a practice of having various individuals sign the so-called "Certificates of Merit" as "Laboratory Engineers," when in truth and in fact respondent does not have an engineering department, laboratory or laboratory engineers.

5. Lists in his advertising and letterheads a Consultant Advisory Board of eleven men, with their respective official titles, whom he

holds out and represents to be assistants and consultants to assist respondent in conducting tests, when in truth and in fact some of them have never given consent to the use of their names, and none of them have ever received anything to test.

6. Represents in correspondence with prospective customers, and in his advertising matter, that his organization is the only one of its kind in the country, and is comparable to the Good Housekeeping Institute, and is recognized today as the adopted standard in the automotive, chemical and accessories field; uses on personal cards and letterheads the picture of the seven story building belonging to the Greer College with the words "7 floors of modern test automotive equipment," when in truth and in fact said respondent's organization has no standing whatever in the field of testing automotive products and accessories, and respondent's organization occupies only one small room of the building belonging to Greer College and his apparatus consists of a filing cabinet and a few pieces of furniture.

7. Represents in correspondence with prospective customers that he receives on an average from 200 to 300 letters of inquiry per month from manufacturers of some products, when as a matter of fact respondent never received any such number of inquiries per month.

8. Represents in correspondence with prospective customers that he has received several inquiries relative to the products he is seeking to test, when as a matter of fact no such inquiries have been received.

PAR. 4. The use by said respondent of each and all of the false and misleading statements, representations and practices in the manner hereinabove described in paragraphs 2 and 3 of this complaint has had, and still has, the capacity and tendency to mislead and deceive manufacturers and distributors of automotive products and others regarding the status, character and organization of said respondent, and the value, truth, impartiality and scientific character of the "Certificates of Merit" and "Seals of Approval" issued by said respondent. As a direct consequence of the said false, misleading statements and representations and the deceptive acts and practices of said respondent, as hereinabove set forth, and the erroneous and mistaken beliefs induced thereby, manufacturers and distributors of automotive products and others have been induced to have their products tested by respondent and to purchase the so-called "Certificates of Merit" and "Seals of Approval" issued by him to their detriment and injury, as well as to the detriment and injury of the purchasing public, and to the detriment and injury of competitors who do not and will not use such false and fictitious certificates, and to the injury of legitimate, scientific testing laboratories engaged in the business of testing automotive and other products and devices,

and in the sale of printed matter containing approval of products after they have been scientifically tested to manufacturers of various products used by said manufacturers in advertising their products sold in interstate commerce.

The issuance by respondent of his false and misleading so-called "Certificates of Merit" and "Seals of Approval" furnishes dishonest customers with vehicles for misbranding and falsely and misleadingly advertising articles moving in commerce between and among the various States of the United States and thus to deceive and exploit the purchasing public, and the use of such deceptive, misleading, and false certificates has tended to result and has resulted, in unfairly diverting trade to the respondent from competitors engaged in the testing of automotive and other products who truthfully advertise their laboratories and equipment and the value of their tests and certificates, and who conduct their tests in an impartial and scientific manner; and also in unfairly diverting trade from manufacturers and distributors of automotive and other products who will not and do not use false and fictitious certificates to competitors who will, and do, use the so-called "Certificates of Merit" and "Seals of Approval" issued by the respondent.

As a result thereof injury has been, and is now being done, by the respondent to commerce between and among the various States of the United States and the District of Columbia.

PAR. 5. The foregoing said acts, practices and representations 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 9, 1938 issued, and on February 10, 1938 served, its complaint in this proceeding upon the respondent, Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, the respondent filed an answer admitting all the material allegations of the complaint to be true, and stated that he waived hearing on the charges set forth in the complaint and the taking of further evidence and all other intervening procedure, which answer was duly filed in the office of the Commission on March 18, 1938. Thereafter this proceeding regu-

larly came on for final hearing before the Commission on the said complaint and answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Morris E. Newman, is an individual trading under the style and name of Automotive Test Laboratories of America, having his office and principal place of business in the rear of Greer College, an automotive trade school located at 2024 South Wabash Avenue, Chicago, Ill. He is and for more than 2 years last past has been, engaged in the business of preparing, printing, and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce. Said respondent causes his said "Certificates of Merit" and "Seals of Approval," when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located in the several States of the United States other than the State of Illinois.

In the course and conduct of his said business, the respondent has been, for more than two years last past, and is now, in competition with other individuals, firms, and partnerships engaged in the business of testing automotive and other products and devices, and in preparing, printing, and selling printed matter and labels containing approval of products, after they have been scientifically tested, to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce.

PAR. 2. In the course of his said business, as described in paragraph 1 hereof, and for the purpose of inducing individuals, firms, and corporations to purchase his said "Certificates of Merit" and "Seals of Approval" to be used in advertising their respective products, respondent makes the following representations in letters sent to prospective customers:

Would you be interested in learning how our organization could help your men sell your automotive product with reduced sales resistance? And this at very small cost to you. Countless manufacturers and sales organizations are now using our "Certificates of Merit" and "Seals of Approval." How about you?

Furthermore, said respondent in issuing said "Certificates of Merit," habitually and customarily types in said Certificates the claims made by the various manufacturers and not the result of scientific, impartial tests conducted by respondent. Respondent

habitually and customarily solicits and accepts suggestions made by the various manufacturers as to the contents and wording of said "Certificates of Merit," and makes changes in the Certificates to correspond with the wishes and requests of said manufacturers, without investigation of, or regard to, the truth or falsity of the statements.

PAR. 3. Said respondent, in the course and conduct of his said business engages in the following false and misleading representations, acts, and practices:

1. Uses the word "Laboratories" in his trade name, which appears in his letterheads, advertising cards and correspondence, when in truth and in fact he does not own or operate any laboratories but only occupies office space in the rear of said Greer College; carries on his letterheads, lithographed pictures of scientists and scientific equipment to imply and suggest that he has a laboratory, when in fact he does not have a laboratory and does not employ any technicians.

2. Represents that he makes independent, impartial and scientific tests of products submitted to him for tests in a laboratory containing apparatus necessary for testing products involved in each case, when in truth and in fact he does not make independent, impartial or scientific tests, but issues fictitious "Certificates of Merit" and "Seals of Approval" and mails the same to individuals and firms throughout the United States.

3. Refers to himself in his correspondence with prospective customers, and in other advertising matter, as a "safety engineer," when in truth and in fact he is not an engineer of any kind.

4. Refers to himself in his correspondence with prospective customers, and in other advertising matter, as the president of his organization, when in fact his organization is nothing more than a trade name used by respondent as an individual and is not a corporation or incorporated; and refers to his laboratory and engineering department, and represents that he has in his employ laboratory engineers and equipment; makes a practice of having various individuals sign the so-called "Certificates of Merit" as "Laboratory Engineers," when in truth and in fact respondent does not have an engineering department, laboratory or laboratory engineers.

5. Lists in his advertising and letterheads a Consultant Advisory Board of 11 men, with their respective official titles, whom he holds out and represents to be assistants and consultants to assist respondent in conducting tests, when in truth and in fact some of them have never given consent to the use of their names, and none of them have ever received anything to test.

Findings

26 F. T. C.

6. Represents in correspondence with prospective customers, and in his advertising matter, that his organization is the only one of its kind in the country and is comparable to the Good Housekeeping Institute, and is recognized today as the adopted standard in the automotive, chemical, and accessories field; uses on personal cards and letterheads the picture of the seven-story building belonging to the Greer College with the words "7 floors of modern test automotive equipment," when in truth and in fact said respondent's organization has no standing whatever in the field of testing automotive products and accessories, and respondent's organization occupies only one small room of the building belonging to Greer College and his apparatus consists of a filing cabinet and a few pieces of furniture.

7. Represents in correspondence with prospective customers that he receives on an average from 200 to 300 letters of inquiry per month from manufacturers of some products, when as a matter of fact respondent never received any such number of inquiries per month.

8. Represents in correspondence with prospective customers that he has received several inquiries relative to the products he is seeking to test, when as a matter of fact no such inquiries have been received.

PAR. 4. The use by said respondent of each and all of the false and misleading statements, representations and practices in the manner hereinabove described in paragraphs 2 and 3 hereof has had, and still has, the capacity and tendency to mislead and deceive manufacturers and distributors of automotive products and others regarding the status, character and organization of said respondent, and the value, truth, impartiality and scientific character of the "Certificates of Merit" and "Seals of Approval" issued by said respondent. As a direct consequence of the said false, misleading statements and representations and the deceptive acts and practices of said respondent, as hereinabove set forth, and the erroneous and mistaken beliefs induced thereby, manufacturers and distributors of automotive products and others have been induced to have their products tested by respondent and to purchase the so-called "Certificates of Merit" and "Seals of Approval" issued by him to their detriment and injury, as well as to the detriment and injury of the purchasing public, and to the detriment and injury of competitors who do not and will not use such false and fictitious certificates, and to the injury of legitimate, scientific testing laboratories engaged in the business of testing automotive and other products and devices, and in the sale of printed matter containing approval of products after they have been scientifically tested, to manufacturers of various products used by said manufacturers in advertising their products sold in interstate commerce.

1234

Order

The issuance by respondent of his false and misleading so-called "Certificates of Merit" and "Seals of Approval" furnishes dishonest customers with vehicles for misbranding and falsely and misleadingly advertising articles moving in commerce between and among the various states of the United States and thus to deceive and exploit the purchasing public, and the use of such deceptive, misleading and false certificates has tended to result, and has resulted, in unfairly diverting trade to the respondent from competitors engaged in the testing of automotive and other products who truthfully advertise their laboratories and equipment and the value of their tests and certificates, and who conduct their tests in an impartial and scientific manner; and also in unfairly diverting trade from manufacturers and distributors of automotive and other products who will not and do not use false and fictitious certificates to competitors who will, and do, use the so-called "Certificates of Merit" and "Seals of Approval" issued by the respondent.

As a result thereof substantial injury has been, and is now being done, by the respondent to competition in commerce between and among the various States of the United States and the District of Columbia.

CONCLUSION

The foregoing acts and practices of the respondent, Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, 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 the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Morris E. Newman, individually and as a sole trader under the style and name of Automotive Test

Laboratories of America, or under any other trade name, in connection with the offering for sale, sale and distribution of so-called "Certificates of Merit" and "Seals of Approval" or in connection with the offering for sale, sale, and distribution of a so-called testing service for automotive or other products or writings purporting to evidence the result of tests, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That the respondent makes independent, impartial, and scientific tests of automotive and other products submitted to him for tests, unless such is the fact;

2. That the respondent is a safety engineer and president of an organization operating or controlling a laboratory or engineering department equipped with the necessary apparatus, and manned by trained scientists and technicians, for testing automotive and other products, unless such are the facts;

3. That respondent has a Consultant Advisory Board of 11 men to assist him in conducting tests; that he receives on an average from 200 to 300 letters of inquiry per month from manufacturers of automotive and other products; and that he has received several inquiries relative to the products he is seeking to test, unless such are the facts;

4. That respondent's organization is the only one of its kind in the country, and is comparable to the Good Housekeeping Institute, and is recognized today as the adopted standard in the automotive, chemical, and accessories field, unless such are the facts;

It is further ordered, That the respondent do forthwith cease and desist from:

(a) Using on his letterheads, personal cards, or otherwise the word "Laboratories," pictures of purported scientists and scientific equipment, or the picture of the seven-story building occupied by Greer College, either alone or in conjunction with the words "7 floors of modern test automotive equipment," unless and until respondent in fact conducts a scientific laboratory and employs trained scientists and technicians, and unless and until respondent has some actual connection with the said Greer College as owner or employee or otherwise through which he actually uses all the facilities and equipment of said Greer College in said business.

(b) Preparing and issuing to sellers of automotive or other products in said commerce so-called "Certificates of Merit" and "Seals of Approval" or other instruments in writing purportedly showing the result of tests conducted by the respondent, unless and until respondent owns, operates or controls a laboratory and employs trained scientists and technicians and is equipped to test and does test such

1234

Order

automotive and other products in the manner and with the methods used by recognized scientific laboratories.

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

IN THE MATTER OF
WEST PENN DISTILLING 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 2620. Complaint, Nov. 9, 1935—Decision, May 9, 1938

Where a corporation engaged as wholesaler and rectifier in purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages, and in the sale thereof in a course of trade and commerce between and among the various states and in the District of Columbia, in substantial competition with (a) others engaged in manufacture, by true distillation, of whiskies, gins, and other such beverages from mash, wort, or wash, and in sale thereof as aforesaid, and who truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names, and on their stationery and catalogs, and on labels of bottles in which they sell and ship their products and (b) with those engaged in business of purchasing, rectifying, blending, and bottling whiskies, etc., and in sale thereof as hereinbefore set forth, and who do not thus use said words; and engaged, in course of its said business, in redistillation of alcohol, purchased but not produced by it, over juniper berries and other aromatics, through use of still for production of gins by process of rectification as aforesaid, but neither operating nor controlling any place or places where spirituous beverages are made by process of original and continuous distillation from mash, wort, or wash and neither a distillery nor a distiller, as defined in section 3247 of the revised statutes regulating internal revenue, nor as commonly understood by trade and public—

Represented, through use of corporate name including word "Distilling," printed on stationery, catalogs, and labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of similarly representing thereby to their retailer-vendees and to ultimate vendees of consuming public, that it was a distiller and that such whiskies, gins, and other alcoholic beverages were by it made through process of distillation from mash, wort, or wash; notwithstanding fact it was not a distiller and was not engaged, as long definitely understood from word "Distilling" by wholesale and retail trade and ultimate purchasing public, as meaning manufacture of spirituous liquors by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, in distilling the said whiskies, etc., thus bottled, labeled, sold, and transported by it;

With capacity and tendency to mislead and deceive dealers and purchasing public into the belief that it was a distiller and that said whiskies, gins, and other spirituous beverages sold by it were by it made or distilled from mash, etc., by one continuous process, as above set forth, and to induce dealers and purchasing public, in such belief, and in response to preference of a substantial portion of latter for purchase from distillers, to buy its said whiskies, gins, and other alcoholic beverages, rectified and bottled by it, and thereby unfairly divert trade to it from its competitors who do

Complaint

not, by their corporate or trade name or in any other manner, misrepresent that they are distillers:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Hall Johnston, 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 West Penn Distilling Co., 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 Pennsylvania, with its office and principal place of business in the city of New Kensington, in said State. It is now, and for more than 1 year last past has been, engaged in the business of a 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 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 1 year last past has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, 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 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, 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. Upon the premises of respondent's place of business aforesaid there is a still for use in the production of gins 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 distillery or a distiller, as defined in Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distilling" when used in connection with the liquor industry and with 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 spirituous liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared 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, catalogs, 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 said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the production of gin does not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. 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.

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, 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, catalogs, 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do 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 respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and 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 rectified and bottled 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 distillers, 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 the Federal Trade Commission Act, the Federal Trade Commission, on November 9, 1935, issued, and on November 12, 1935, served, its complaint in this proceeding upon respondent, West Penn Distilling Co., Inc., charging it with the use

Findings

26 F. T. C.

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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Pennsylvania, with its office and principal place of business in the city of New Kensington, in said State. For more than 1 year prior to May 22, 1936, and subsequent to the issuance of the complaint herein, the respondent was engaged in business as a wholesaler and rectifier, purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages and in the sale thereof in a 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 caused its said products, when sold, to be transported from its place of business 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 was in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, 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 was 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. Upon the premises of respondent's place of business aforesaid, there was a still for use in the production of gins by a process of rectification whereby alcohol, purchased but not produced by respondent, was redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits did not make or constitute respondent a distillery or a distiller, as defined in Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distilling," when used in connection with the liquor industry and with 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 spirituous liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared 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, catalogs and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, respondent represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it was a distiller and that such whiskies, gins, and other alcoholic beverages were manufactured by it through the process of distillation from mash, wort, or wash. As a matter of fact, respondent was not a distiller, did not distill the said whiskies, gins, and other alcoholic beverages by it so bottled, labeled, sold, and transported, and merely by the use of a still operated by it as aforesaid in the production of gin did not distill the whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and understood by those engaged in the liquor trade and the public. 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.

PAR. 4. There were and are now among the competitors of respondent, engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and indi-

Conclusion

26 F. T. C.

viduals who manufacture and distill from mash, wort, or wash, 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, catalogs, 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent as set forth in paragraph 3 hereof, were then and are now calculated to have and do have a capacity and tendency to mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies, gins, and other spirituous beverages sold by respondent were manufactured or distilled by it from mash, wort, or wash by one continuous process and were then and are now calculated to have and do have the capacity and tendency to induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other alcoholic beverages rectified and bottled by the respondent, thereby unfairly 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.

PAR. 6. Because of existing regulations promulgated under the Federal Alcohol Administration Act, approved August 29, 1935 (49 Stat. 977), providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may label such resulting product "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondent by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The aforesaid acts and practices of the respondent, West Penn Distilling Co., Inc., are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

1246

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, West Penn Distilling Co., Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia, of whiskies, gins, or other spirituous beverages (except gins produced by it through 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 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, gins, or 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 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 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.

IN THE MATTER OF
CENTRAL PATTERN & FOUNDRY COMPANY

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

Docket 2954. Complaint, Oct. 21, 1936—Decision, May 14, 1938

Where a corporation engaged in the manufacture, sale, and distribution of aluminum, brass, and bronze castings and patterns, manufactured from ingot metals made to specifications, and from virgin ingots, gates, sprues, and mismachined or scrapped castings—

Described as "clean, smooth aluminum castings at a price as low as 23 cents per pound, using *only new ingot metals*," products, in fabrication of which it used virgin ingots and misrun or mismachined and scrapped castings;

With effect of misleading members of trade and substantial portion of purchasing public into erroneous belief that it used the ordinarily more costly and superior primary or virgin aluminum in fabrication of its products, represented as new ingot metals, and into purchase, by reason thereof, of substantial quantities of said products, and of unfairly diverting trade to it from competitor manufacturers and distributors of aluminum and other castings, who do not misrepresent type or classification of metal used in fabrication of their products, and who advertise, sell, and distribute aluminum and other castings in commerce among the various States and in the District of Columbia:

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

Before *Mr. John L. Hornor*, trial examiner.

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 Central Pattern & Foundry 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 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, Central Pattern & Foundry Company, is now and for several years last past, has been a corporation, organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago and State aforesaid.

1254

Complaint

It has been for several years last past and now is engaged in the production of aluminum and other castings and in the sale and distribution of such products in commerce between the State of Illinois and the various other States of the United States, and in the District of Columbia.

It causes its products when sold to be transported from said place of business to the purchasers thereof located in the various States of the United States other than the State of Illinois, and in the District of Columbia.

Such purchasers consist of manufacturers of various kinds who use aluminum in the fabrication of their particular products, foundries of various kinds, and others selling castings of various metals.

In the course and conduct of its business, the said respondent, Central Pattern & Foundry Company has been, and now is, in substantial competition with other individuals, partnerships, and corporations engaged in the sale in interstate commerce of aluminum and other castings.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, Central Pattern & Foundry Company, in soliciting orders for its aforesaid products has distributed circular letters among customers and prospective customers, including customers of its competitors hereinafter described in paragraph 3 hereof, wherein it has offered and offers for sale clean, smooth aluminum castings at a price as low as 23 cents per pound using only "new ingot metals."

In truth and in fact, the words "new ingot metals" have signified and meant for many years to the trade, and now signify and mean to it, that castings so described have been, were and are, made from virgin ingots. The products offered for sale and sold by respondent, described and designated as "new ingot metals," have not been and are not made from virgin ingots, have not been and are not "new ingot metals" as understood by the trade or the consuming public, but have been and are made from secondary or so-called No. 2 of grade No. 12 remelted metals and alloys.

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, new ingot metals or castings made from virgin ingots, or virgin ingot metals and also from secondary or so-called No. 2 of grade No. 12 remelted metals and alloys who truthfully advertise, describe, and represent such products.

PAR. 4. The practice of respondent described in paragraph 2 hereof has had and has the capacity and tendency to mislead and

deceive, has misled and deceived and does mislead and deceive the trade and purchasing public into the belief that the aforesaid representation and statement of respondent in paragraph 2 hereof regarding the use exclusively in its aluminum castings of "new ingot metals" has been and is true and into the purchase of respondent's said products in reliance on such erroneous belief.

The aforesaid practice of the respondent also has had and has the capacity and tendency to and does, unfairly divert trade to respondent from its competitors mentioned in paragraph 3 hereof who truthfully represent, advertise, and describe their products, and as a result thereof, respondent has been and is doing substantial injury to such competitors in the course of such competition.

PAR. 5. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 21, 1936, issued, and on October 23, 1936, served its complaint in this proceeding upon the respondent, Central Pattern & Foundry 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 other evidence in support of the allegations of the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before John L. Hornor, an examiner of the Commission, theretofore duly designated by it. No testimony or other evidence was introduced by the respondent in opposition to the allegations of the complaint. The said testimony and other evidence in support of the allegations of the 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 other evidence, and brief in support of the complaint (no brief having been filed by respondent and no oral argument having been requested); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Central Pattern & Foundry Company, is an Illinois corporation organized in March 1929. Its principal office and place of business are at 3737 South Sacramento Avenue, Chicago, Ill. It is engaged in the manufacture, sale, and distribution of aluminum, brass and bronze castings, and wood and metal patterns, which are sold to manufacturers generally throughout the United States. Respondent's products are manufactured from ingot metals made to specifications, virgin ingots, gates, sprues, and mismachined or scrapped castings. Respondent's dollar volume of business for 1936 was approximately three-quarters of a million dollars.

When orders are received for respondent's said products, it causes them to be shipped from its said place of business in Chicago, Ill., to the purchasers thereof located at various points in States of the United States other than the State of Illinois. The respondent now maintains, and for several years last past has maintained, a course of trade in said products in commerce between and among the various States of the United States.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the manufacture, sale, and distribution or in the sale and distribution, of aluminum and other metal castings in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. The ore from which aluminum is taken is called bauxite. It is dug out of the ground, usually by open mining. After bauxite is mined, it is reduced to alumina, which is generally done by a chemical process. The alumina is then reduced to aluminum by an electrolytic process. The aluminum is then remelted and made into convenient shapes and forms which are called ingots.

Aluminum is a metal, and is divided generally in two classifications, viz., primary or virgin aluminum and secondary aluminum. Primary or virgin aluminum is the metal obtained by an electrolytic treatment of alumina and is the best quality aluminum. It is generally higher in price than secondary aluminum and comes nearer to meeting specifications than does secondary aluminum. Secondary aluminum is that which has lost its original identity as to source, and is obtained by remelting used parts and waste, such as gates, sprues or mismachined, and scrapped castings. Secondary aluminum usually contains impurities, such as copper and zinc, and lacks the elasticity of the primary metal.

Both classifications of aluminum are used in the manufacture of aluminum castings. Castings are generally manufactured according

Conclusion

23 F. T. C.

to specifications, such as the S. A. E. or A. S. T. M. specifications. In some instances, the purchaser specifies that only primary or virgin metal be used. In other instances, however, the purchaser does not specify which classification of the metal is to be used, but leaves the matter to the discretion of the manufacturer.

PAR. 3. In the course and conduct of its business, as described herein, the respondent distributed a circular letter among customers and prospective customers, in which it offered for sale "clean, smooth aluminum castings at a price as low as 23 cents per pound, using *only new ingot metals.*" Respondent used virgin ingots, misrun or mismachined, and scrapped castings, in the fabrication of its said products.

There is no specific classification in the castings industry such as "new ingot metals." However, based upon the testimony of foundrymen, sales managers, salesmen, purchasing agents, and executive officers of manufacturers of castings of various kinds, the Commission finds that the expression "new ingot metals," when used to describe aluminum and other castings means virgin or unused metals, and that castings so described are manufactured from only primary or virgin metal.

PAR. 4. The use by respondent of the representations set forth herein, in describing its aluminum castings, has had, and now has, the capacity and tendency to mislead, and does mislead, members of the trade and a substantial portion of the purchasing public into the erroneous belief that respondent uses only primary or virgin metal in the fabrication of its products, which are represented as "new ingot metals," and as a result of such erroneous belief, into the purchase of substantial quantities of respondent's said products.

There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of aluminum and other castings who do not misrepresent the type or classification of metal used in the fabrication of their products, who likewise advertise, sell and distribute aluminum and other castings in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being diverted unfairly to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent, Central Pattern & Foundry Company, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

1254

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 respondent, testimony, and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and brief filed herein in support of the complaint (no brief having been filed by respondent and no oral argument having been requested) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Central Pattern & Foundry Company, its agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of aluminum castings in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using the expression "only new ingot metals," or any other expression or device of similar import and meaning, to describe its aluminum castings, or the metal from which such castings are made, unless such castings are manufactured wholly from primary or virgin aluminum.

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
**COLONIAL DAMES, INC., AND COLONIAL DAMES
 COMPANY, LTD.**

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

Docket 3104. Complaint, June 7, 1937¹—Decision, May 16, 1938

Where two corporations engaged in manufacture and sale and sale and distribution, from Hollywood, of a certain line of preparations for use in the care, treatment, and beautification of the skin—

- (a) Included words "Colonial Dames" in their respective corporate names and made use thereof in listing, identifying and describing their said businesses, and in trade names of said various preparations and made use thereof in identifying and describing their various preparations in advertisements in newspapers, pamphlets, radio broadcasts, etc., and as a trade name on the packages and containers in which sold, and referred to the "Head," "Chief Chemist," or "Famous Beauty Consultant" of their "Colonial Dames Laboratories," in connection with sale of their said products, and more particularly in connection with radio advertising thereof, and in conveying to prospective purchasers among the consuming public various messages, creeds, and representations;

Notwithstanding fact their said preparations were not produced, approved, sponsored or recommended by, or in any manner connected with or related to, any of several patriotic, historical and social organizations with national or more or less wide-spread ramifications and chapters, and history and membership running back for many years, and so named or identified, and none of which had ever engaged in manufacture or sale of cosmetics or any other preparation or product of commerce;

With effect of misleading and deceiving a substantial portion of purchasing public into erroneous belief that said preparations were produced, approved, sponsored, endorsed, or recommended by one or more of such societies; and

- (b) Represented in advertising their said products in newspapers, circulated in various parts of the United States and through pamphlets, etc., and radio broadcasts, that the "Beauty Wash," included in their aforesaid line and sold under said trade name, would have an instant beautifying effect on the skin, and that it worked like magic in banishing stubborn blackheads, etc., and, while not a chemical bleach, would gently bleach the skin with whitening action derived from the natural elements from which made;

Facts being it did not have said effects or tone sallow skins and effect was merely to cleanse and not to bleach, and it was not the answer to stubborn blackheads, etc.;

- (c) Represented, as aforesaid, that the "Massage Cream," included in its said line and sold under aforesaid designation, was a superlative tissue cream and quickly banished, by reason of almond oil content, all traces of dryness and sluggishness, increased circulation of fresh, pure blood, etc.,

¹ Amended.

1260

Complaint

and thereby rebuilt and youthified from within and thus worked with nature instead of against it, etc.;

Facts being chief benefits derived from use of said preparation were due to massage rather than to action of its ingredients, and it did not banish all traces of dryness, increase circulation, rebuild, or youthify from within, etc.; and

(d) Represented that its "Beautifier" remained always on the surface and prevented pore clogging and actually builded beauty into the skin, and that its said "Beauty Aids" acted on a different principle from most cosmetics, through working according to accepted laws of nature instead of attempting the impossible feat of rubbing in youth and beauty;

Facts being preparation in question was beneficial chiefly as a powder base and did not prevent pore clogging nor "actually build beauty into the skin," nor act on a different principle as above claimed;

With effect of misleading a substantial portion of purchasing public and causing prospective purchasers to believe that said false and misleading representations were true and that said preparation had the efficacy and usefulness in the care, treatment, and beautification of the skin represented and implied by them, and of causing a substantial portion of purchasing public to buy their said preparations in aforesaid erroneous beliefs, and of thereby unlawfully and unfairly diverting trade to them from competitors engaged in sale of preparations recommended for use in connection with care, treatment and beautification of the skin, and truthfully and accurately represented:

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

Mr. Marshall Morgan for the Commission.

Alvord & Alvord, of Washington, D. C., for respondents.

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 Colonial Dames, Inc., and Colonial Dames Company, Ltd., corporations, 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. Colonial Dames, Inc., is a corporation organized under the laws of the State of Delaware, but having its principal office and place of business located at 4652 Hollywood Boulevard, Hollywood, Calif. Colonial Dames Company, Ltd., is a corporation organized and doing business under the laws of the State of California, with its principal office and place of business also located at

4652 Hollywood Boulevard, Hollywood, Calif. Said companies, located at the same Hollywood address, as above stated, are owned and controlled by the same parties in interest, who direct the activities and control the policies of each. Said Colonial Dames, Inc., and Colonial Dames Company, Ltd., hereinafter referred to as respondents, are now, and for several years last past have been engaged in the manufacture, in their laboratory, and in the sale and distribution of certain preparations for use in the care, treatment and beautification of the skin, and cause said preparations, when sold, to be transported from their said place of business in the city of Hollywood, State of California, into and across the several States of the United States and the District of Columbia, to the purchasers thereof located at various points in said several States other than the State of California, and in the District of Columbia.

In the course and conduct of their business as aforesaid, the respondents are and have been in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with other corporations, and with associations, partnerships and individuals engaged in said commerce in the sale and distribution of preparations for the care, treatment and beautification of the skin. Among the competitors of the respondents in said commerce are many who truthfully represent the efficacy and usefulness of their products when used in the care, treatment and beautification of the skin and who do not engage in the acts, practices and methods used and employed by the respondents as herein-after alleged.

PAR. 2. In the course and conduct of the business of respondents, the words "Colonial Dames" appear as a part of the corporate name of each company and are uniformly employed and used by respondents in advertising in newspapers, pamphlets, booklets, circulars, and in radio broadcasts as a trade name to indicate and identify the business conducted by respondents, and in describing the qualities and characteristics of their said preparations, and as a trade-mark on packages and containers to brand and identify the goods sold by them.

The business place of respondents located at 4652 Hollywood Boulevard, Hollywood, Calif., as aforesaid, is listed in the telephone directory as "Colonial Dames Corporation," and in connection therewith a local establishment for the sale of respondents' cosmetic products, designated as "Colonial Dames Charm Shop," is operated at the same address. The "corporation" and the "Charm Shop," located at the same address, as aforesaid, are listed under the same telephone number. Cosmetic products of the respondents are labeled as sold by "Colonial Dames Co." and the words "Colonial Dames" coupled

with a design depicting two dancing figures in colonial costume appear as a trade mark on products sold by respondents in commerce.

PAR. 3. Respondents in the course and conduct of their business in said commerce, as aforesaid, refer to their preparations generally as Colonial Dames Beauty Aids, and sell, among others, preparations designated as Colonial Dames Beauty Wash, Colonial Dames Massage Cream, and Colonial Dames Beautifier, and advertise said products in newspapers circulated in various parts of the United States, through pamphlets, booklets and circulars distributed among prospective purchasers in various parts of the United States and through radio broadcasts, in all of which they make and cause to be made many statements concerning the efficacy and usefulness of their said preparations in the care, treatment and beautification of the skin.

Among the statements so made, distributed and circulated and typical of those used by the respondents in offering for sale and selling their said preparations in said commerce are the following:

Colonial Dames "Beauty Wash." Frankly, it is a luxury—but luxury or not, you will delight in its instant beautifying effect on your skin. It works magic in banishing stubborn blackheads, toning sallow skins, whitening and refining texture. Leaves the skin immaculately clean and just like velvet!

While Colonial Dames Beauty Wash does gently bleach the skin, please remember that it is NOT a chemical bleach. Its gentle whitening action is derived solely from the natural elements from which it is made.

Beauty Wash provides the answer to stubborn blackheads, sallow and discolored skin problems! * * * just try it, and see how quickly pores yield all clogging impurities * * * Almond meal and buttermilk were beauty standbys in our grandmother's day. They are combined with science's latest innovations to form this dainty, effective beauty aid.

They find that a five-minute nightly facial with Colonial Dames Massage Cream quickly banishes all traces of dryness or sluggishness, leaving the skin freshly stimulated and vibrant. Made with almond oil, it is * * * a superlative tissue cream.

Colonial Dames Massage Cream and other exquisite Colonial Dames preparations occupy the spotlight of favor in film circles.

Colonial Dames Massage Cream lubricates, softens and increases the circulation of fresh pure blood to every tiniest cell and tissue of the skin, thereby rebuilding and youthifying from WITHIN * * * Thus, you may be sure of a fresh, youthful skin by working WITH nature, instead of AGAINST.

Colonial Dames Massage Cream, for instance, is used nightly as cleanser and tissue cream. A definite improvement in skin texture is apparent even after a few applications.

Colonial Dames Massage Cream cleanses far more thoroughly than most of the so-called cleansing creams, because it is made with almond oil, and as a tissue cream, it works perfectly with Nature to rejuvenate the inner tissues. Applied according to the ritual of beauty, it is more than a skin food—more than a cleanser—it is TRUE SKIN REJUVENATOR.

It is the purpose of Colonial Dames Massage Cream and the nightly facial treatment to reestablish normal circulation so that EVERY tiny cell is adequately nourished.

Complaint

26 F. T. C.

Colonial Dames Massage Cream is *more* than a cleanser—it is a TISSUE CREAM as well.

Colonial Dames Massage Cream drives directly to the cause of all beauty imperfections and rids the skin of those enemies. The results are direct and immediate.

COLONIAL DAMES MASSAGE CREAM reactivates the tissues from WITHIN, stimulates cell structure, restores lubricating oils, exercises the muscles and brings a surge of rich red blood to supply needed nourishment and purge out toxic impurities the natural way.

COLONIAL DAMES MASSAGE CREAM CORRECTS AND PREVENTS faulty skin texture by REMOVING THE CAUSE! Physicians prescribe this fine cream as a super-cleanser for the correction of stubborn blemishes! * * * COLONIAL DAMES MASSAGE CREAM is a cosmetic NECESSITY.

It (Colonial Dames Massage Cream) is a *complete, normalizing* treatment—and complexion blemishes, which are abnormal, quickly disappear.

Also, because Colonial Dames Beautifier remains always on the *surface*, it *prevents* pore clogging.

Colonial Dames Beautifier actually builds beauty *into* the skin.

Colonial Dames Beauty Aids *today* combine these same fine ingredients, unspoiled by modern byproducts or commercialism.

Effective because they act on a different principle from most cosmetics. Instead of attempting the impossible feat of “rubbing in youth and beauty” entirely from the outside, Colonial Dames Beauty Aids work according to the accepted laws of nature.

In further connection with the sale of their said products, respondents, particularly in connection with radio advertising, convey to prospective purchasers among the consuming public various messages, creeds and representations from the “head,” “chief chemist” or “famous beauty consultant” of the “Colonial Dames Laboratories.”

PAR. 4. Respondents, in the course and conduct of their business in said commerce, and by the means and in the manner aforesaid, represent and imply that their said preparation “Colonial Dames Beauty Wash” when used as directed has an instant beautifying effect on the skin; that “it works like magic” in banishing stubborn blackheads, toning sallow skins, and in whitening the skin and refining its texture; that it is a competent and effective corrective or treatment in eliminating stubborn blackheads and restoring the natural color to sallow and discolored skins, and in removing quickly all clogging impurities from the pores of the skin.

In truth and in fact, the preparation “Colonial Dames Beauty Wash,” when used as directed by the respondents or otherwise, does not have an instant beautifying effect on the skin; it does not work like magic or otherwise in banishing stubborn blackheads, toning sallow skins and in whitening the skin and refining its texture; it is not a competent and effective corrective or treatment in eliminating stubborn blackheads, restoring natural color to sallow and discolored

skins and in removing quickly all clogged impurities from the pores of the skin.

PAR. 5. Respondents, in the course and conduct of their business in said commerce, and by means and in the manner aforesaid, represent and imply that their said preparation "Colonial Dames Massage Cream," when used as directed, will quickly banish all traces of dryness and sluggishness and leave the skin freshly stimulated and vibrant; that it increases the circulation of fresh pure blood to every tiniest cell and tissue of the skin, rebuilding and youthifying from within; that it will reestablish normal circulation so that every tiny cell is adequately nourished; that it drives directly to the cause of all beauty imperfections and rids the skin of those "enemies," producing direct and immediate results; that it corrects and prevents faulty skin texture by removing the cause; that it is a complete, normalizing treatment and causes complexion blemishes quickly to disappear; that it is a tissue cream and rejuvenates the inner tissues and is a true skin rejuvenator; that it stimulates cell structure, reactivates tissues from within, and brings a surge of rich red blood to supply needed nourishment; that it is a super cleanser for the correction of stubborn blemishes of the skin; purges out toxic impurities in a natural way, and is a cosmetic necessity; that it is composed in part of almond oil and that almond oil is superior to other vegetable oils for use in a massage cream, and that because of its almond oil content said preparation is superior to most massage creams.

In truth and in fact, the preparation "Colonial Dames Massage Cream," when used as directed by the respondents or otherwise, will not quickly banish all traces of dryness and sluggishness and leave the skin freshly stimulated and vibrant; it will not increase the circulation of fresh pure blood to every tiniest cell and tissue of the skin and rebuild and youthify from within; it will not reestablish normal circulation so that every tiny cell is adequately nourished; it does not drive directly to the cause of all beauty imperfections and rid the skin of those "enemies" and does not produce direct and immediate results; it does not correct and prevent faulty skin texture by removing the cause thereof; it does not cause complexion blemishes quickly to disappear; it is not a tissue cream and does not rejuvenate the inner tissues and it is not a true skin rejuvenator; it does not stimulate cell structure, reactivate tissues from within or bring a surge of rich red blood to supply needed nourishment; it is not a super cleanser for the correction of stubborn blemishes of the skin; it does not purge out toxic impurities in a natural way nor is it a cosmetic necessity; almond oil constitutes only a small portion of the total oils used in said preparation and it is not a superior oil for use

in such creams nor does it render said preparation superior to most massage creams.

PAR. 6. Respondents in the course and conduct of their business in said commerce, and by the means and in the manner aforesaid, represent and imply that their said preparation "Colonial Dames Beautifier," when used as directed, remains always on the surface of the skin and thereby prevents the pores of the skin from becoming clogged, and that it actually builds beauty into the skin. Respondents represent and imply that their other preparations, referred to as "Colonial Dames Beauty Aids," contain the same fine ingredients found in said beauty wash, massage cream, and beautifier, and that they act on a principle different from most cosmetics, and work according to the accepted laws of nature.

In truth and in fact, said preparation "Colonial Dames Beautifier," when used as directed by the respondents or otherwise, does not remain always on the surface of the skin, does not prevent the pores of the skin from becoming clogged and does not actually build beauty into the skin; nor do said "Colonial Dames Beauty Aids" act on a principle different from most cosmetics, nor do they work according to the accepted laws of nature,

PAR. 7. On or about April 8, 1891, there was organized in the city of Philadelphia, Pa., a patriotic, educational and historical society under the name "The Pennsylvania Society of the Colonial Dames of America". This society was formed for the purposes, among others, of collecting and preserving manuscripts, relics, etc., of colonial days, the restoration and preservation of historical buildings, the collection and diffusion of information concerning the colonies and colonial days, the stimulation of patriotism, and to secure the organization of similar societies with like purposes and aims in the several States of the United States.

Since the organization of the Pennsylvania Society of the Colonial Dames of America, as aforesaid, similar societies with the same purposes and aims have been organized in, and incorporated under the laws of several of the States of the United States and the District of Columbia. There now exist forty-one such State societies, each of which is incorporated under the laws of the respective State where organized, and one such society incorporated under the laws of the District of Columbia. These forty-two societies have formed a federation under the name "The National Society of the Colonial Dames of America," which has and maintains offices and headquarters in the City of Washington in the District of Columbia from which are directed the general activities of the various member State societies.

During the year 1891 there was organized in the State of New York a patriotic and historical society under the name "The Colonial Dames of America." This society is incorporated under the laws of the State of New York and has chapters located in many of the cities of the several States of the United States.

For many years there has been organized and in existence in the United States a patriotic and historical society under the name "The Colonial Dames of the Seventeenth Century."

The purposes and aims of the society "The Colonial Dames of America" and of the society "The Colonial Dames of the Seventeenth Century" are generally of the same nature as those of the member State societies of the federation "The National Society of the Colonial Dames of America."

The membership of the aforementioned societies is limited and is confined to women, the majority of whom are active and prominent in national, State, and municipal social and civic affairs.

For more than 20 years last past, because of the activities of these several societies, more particularly the member societies of the federation "The National Societies of the Colonial Dames of America," and of the activities and prominence of their members, in carrying out the purposes and aims of the said societies, the words "Colonial Dames" have been associated by the public generally with these societies to such an extent that their use in connection with articles of trade and commerce, to identify, designate and describe such articles, causes the public generally to believe that such articles, so identified, designated, and described, are produced, approved, sponsored, endorsed, or recommended by one or more such societies.

Respondent's said preparations are not produced, approved, sponsored, endorsed or recommended by, or in any manner connected with or related to, any of said societies.

PAR. 8. The representations and implications of the respondents as aforesaid concerning the efficacy and usefulness of their said preparations in the care, treatment and beautification of the skin are false and misleading and have had, and do have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public and cause prospective purchasers to believe that said false and misleading representations and implications are true, and that said preparations have the efficacy and usefulness in the care, treatment and beautification of the skin as represented and implied by the respondents. The use by the respondents of the words "Colonial Dames" in their respective corporate names, and in identifying and designating the business conducted by them and in describing their said preparations in advertisements, in newspapers, pamphlets, books, circulars and in radio broadcasts, and as a trade-mark on the packages

and containers in which said preparations are sold, as hereinabove alleged, has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public and cause prospective purchasers erroneously to believe that said preparations are produced, approved, sponsored, endorsed, or recommended by one or more of the societies hereinabove described. Said erroneous beliefs cause a substantial portion of the purchasing public to purchase respondents' said preparations, thereby unlawfully and unfairly diverting trade to the respondents from their said competitors who truthfully represent their products, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 9. The acts, practices, and methods of the respondents, as hereinabove alleged, are all to the prejudice of the public and respondents' said 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 the Federal Trade Commission Act, the Federal Trade Commission on April 12, 1937, issued and served its original complaint in this proceeding upon respondent, Colonial Dames Company, Ltd., a corporation stated to be trading as Colonial Dames, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and thereafter on June 7, 1937, issued and served its amended complaint upon the respondents, Colonial Dames, Inc., and Colonial Dames Company, Ltd., corporations, 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 complaints and the filing of respondents' respective answers thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts filed and executed by the respondents through their counsel, Alvord & Alvord, and by W. T. Kelley, Chief Counsel of the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in connection with any further testimony in support of the charges stated in the complaints, or in opposition thereto, and that the Commission might proceed upon said stipulation of facts and other evidence to be or which might be taken hereafter to make its report stating its findings as to the facts (including inferences which it might reasonably draw from the said stipulated 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 this proceeding regularly came on for final hearing before the Commission on said complaints, answers and stipulation, said stipulation having been approved and accepted, and the Commission, having considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes these its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Colonial Dames, Inc., is a corporation organized under the laws of the State of Delaware, but having its principal office and place of business located at 4652 Hollywood Boulevard, Hollywood, Calif. Respondent, Colonial Dames Company, Ltd., is a corporation organized and doing business under the laws of the State of California, with its principal office and place of business also located at 4652 Hollywood Boulevard, Hollywood, Calif.

Respondent, Colonial Dames, Inc., is now, and for several years last past has been, engaged in the sale and distribution of certain preparations designated as "Colonial Dames Beautifier" and "Colonial Dames Beauty Wash" for use in the care, treatment and beautification of the skin, and causes and has caused said preparations when sold to be transported from its said place of business in the city of Hollywood, State of California, into and across the several States of the United States and the District of Columbia to the purchasers thereof located at the various points in the said several States other than the State of California and in the District of Columbia. For some time respondent Colonial Dames, Inc., was engaged in the sale and distribution, in similar manner, of a certain preparation designated as "Colonial Dames Massage Cream." Respondent has discontinued the manufacture and sale of this product and states that it does not intend resuming the same.

Respondent, Colonial Dames Company, Ltd., makes some sales abroad and some interstate sales by mail. Such transactions are of small magnitude and importance, however. The business of said respondent, Colonial Dames Company, Ltd., consists principally of manufacturing cosmetics in its laboratories and selling the same in intrastate commerce to respondent, Colonial Dames, Inc.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, Colonial Dames, Inc., is and has been in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with other corporations, partnerships and individuals engaged in said commerce in the

sale and distribution of preparations for the care, treatment and beautification of the skin. Respondent, Colonial Dames Company, Ltd., is and has been engaged in such competition to the extent of the interstate business done by it, as above stated.

PAR. 3. In the course and conduct of the business of respondents and of respondents' predecessors in the manufacture and sale of cosmetics, the words "Colonial Dames" appear and have appeared for many years as a part of the name for each company or firm and are or have been employed and used for many years by respondents and respondents' predecessors as aforesaid in advertising in newspapers, pamphlets, booklets, circulars, and more recently in radio broadcasts, as a trade name to indicate and identify the business conducted by respondents and respondents' predecessors and in describing the qualities and characteristics of their said preparations and as a trade mark on packages and containers to brand and identify the goods sold by them.

Respondents' principal place of business, located at 4652 Hollywood Boulevard, Hollywood, California, as aforesaid, is listed in the telephone directory as "Colonial Dames Corporation" and in connection therewith a local establishment for the sale of respondents' cosmetic products designated as "Colonial Dames Charm Shop" is operated at the same address. The "Corporation" and the "Charm Shop," located at the same address as aforesaid, are listed under the same telephone number. Cosmetic products of the respondents are labeled as sold by "Colonial Dames Company" and the words "Colonial Dames" coupled with a design depicting two dancing figures in colonial costume appear as a trade mark on products sold by respondents in commerce.

In further connection with the sale of their said products, respondents, particularly in connection with radio advertising, have conveyed to prospective purchasers among the consuming public various messages, creeds and representations from the "Head," "Chief Chemist" or "Famous Beauty Consultant" of the "Colonial Dames Laboratories," maintained and operated by Colonial Dames Company, Ltd.

PAR. 4. Respondent, Colonial Dames, Inc., advertises and has advertised its said products in newspapers circulated in various parts of the United States, through pamphlets, booklets and circulars distributed among the prospective purchasers in various parts of the United States and through radio broadcasts, in all of which it makes and causes to be made many statements concerning the efficacy and usefulness of said preparations in the care, treatment, and beautification of the skin.

In the course and conduct of its business as hereinabove described, respondent, Colonial Dames, Inc., to induce the purchase of its products, has made, published, or caused to be published, various statements, claims and representations with respect to the efficacy and usefulness of its said preparations in the care, treatment and beautification of the skin. Typical of said statements, claims and representations, among others, are the following:

(1) That Colonial Dames Beauty Wash will have an instant beautifying effect on the skin—works like magic in banishing stubborn blackheads, toning sallow skins, whitening and refining texture, and leaving the skin immaculately clean and just like velvet; (2) That Colonial Dames Beauty Wash, while not a chemical bleach, will gently bleach the skin, its whitening action being derived from the natural elements from which it is made.

Typical of representations made with respect to respondents' Colonial Dames Massage Cream are the following:

(1) That Colonial Dames Massage Cream is a superlative tissue cream and, being made with almond oil, quickly banishes all traces of dryness or sluggishness, leaving the skin freshly stimulated and vibrant; (2) That it softens and increases the circulation of fresh pure blood to every tiniest cell and tissue of the skin, thereby rebuilding and youthifying from *within*, thus working with nature instead of *against* it; (3) That it works perfectly with nature to rejuvenate the inner tissues—is more than a skin food and cleanser—is a *true skin rejuvenator*; that the purpose of said cream and nightly facial treatment therewith is to reestablish normal circulation so that every tiny cell is adequately nourished; that it is more than a cleanser—is a tissue cream as well; that it drives directly at the cause of all beauty imperfections and rids the skin of those enemies; that it reactivates the tissues from within stimulates cell structure, restores lubricating oils, exercises the muscles and brings a surge of rich red blood to supply needed nourishment and purge out toxic impurities the natural way; that it cures and prevents faulty skin texture by removing the cause; that it is a complete normalizing treatment; that it will cause complexion blemishes to quickly disappear.

Further representations are:

That respondents' Colonial Dames Beautifier remains always on the surface preventing pore clogging and actually building beauty into the skin; that respondents' beauty aids act on a different principle from most cosmetics and are effective because instead of attempting the impossible feat of "rubbing in youth and beauty" entirely from the outside, Colonial Dames Beauty Aids work according to the accepted laws of nature.

PAR. 5. In truth and in fact the said statements and representations made by respondents as aforesaid with respect to the efficacy and usefulness of their said preparations in the care, treatment and beautification of the skin were and are false, deceptive, and misleading in the following, among other, particulars:

The chief benefits derived from the use of Colonial Dames Massage Cream are due to massage rather than to the action of its ingredients;

According to the weight of scientific authority, Colonial Dames Beauty Wash does not banish stubborn blackheads, or tone sallow skins. Colonial Dames Massage Cream does not banish all traces of dryness or sluggishness, increase the circulation of fresh pure blood to every tiniest cell or tissue, or rebuild or youthify from within, or rejuvenate the inner tissues, or reestablish normal circulation, or drive directly at the cause of all beauty imperfections, or reactivate the tissues from within, or stimulate cell structure, or correct and prevent faulty skin texture;

The effect of Colonial Dames Beauty Wash upon the skin is merely to cleanse and not to bleach, and is not the "answer" to stubborn blackheads and sallow and discolored skin problems;

Colonial Dames Beautifier is beneficial chiefly as a powder base and does not prevent pore clogging nor "Actually build beauty into the skin"; does not act on a different principle from most cosmetics.

PAR. 6. There are among the competitors of respondents referred to in paragraph 1 hereof those who manufacture and sell in commerce products like or similar to those sold by respondents and who do not make false, misleading or extravagant claims or representations concerning such products but advertise and represent the same fairly and accurately.

PAR. 7. The National Society of the Colonial Dames of America, with headquarters at Dumbarton House, Washington, D. C., is a federation or organization of incorporated societies of 40 States of the United States and the District of Columbia. The society is principally historical and patriotic. Among its definite aims are to commemorate the history of the Original Thirteen Colonies and to teach their lessons of patriotism to the citizens of the future.

The total membership of the National Society of the Colonial Dames of America was 434 in 1894, 2,050 in 1896, 5,579 in 1906, 8,128 in 1916, 9,595 in 1925 and 11,603 in 1935. The California organization affiliated with The National Society of the Colonial Dames of America was initiated in 1896. It had a membership of 115 in 1904, 169 in 1914, 172 in 1925 and 235 in 1935. The population of the State of California in 1930 was 5,677,251.

PAR. 8. During the year 1891, there was organized in the State of New York a patriotic and historical society under the name "The Colonial Dames of America." This organization now has chapters located in Baltimore, Philadelphia, Washington, Paris (France), San Francisco, Shreveport (Louisiana), Nashville, Dallas, Danville (Kentucky), Rome (Italy) and London (England). The total membership of this society amounted to 350 in 1889 and to 4,000 in 1935, many of whom were resident abroad. The work done by the society is confined principally to the territory of the thirteen original American colonies.

PAR. 9. In May 1896, there was incorporated in the State of New York a social and patriotic organization known as "Colonial Daughters of the Seventeenth Century." This organization has auxiliary chapters in New York and various other States of the United States, and the present organization includes in its membership ladies living in the various States of the United States. The total membership of this society is unknown.

Respondents' said preparations are not produced, approved, sponsored or recommended by, or in any manner connected with or related to, any of said societies, and none of said societies is now, or ever has been, engaged in the manufacture or sale of cosmetics or of any other preparation or product of commerce.

PAR. 10. The words "Colonial Dames" have been and are frequently used and understood by the public generally to describe and designate American ladies of the Colonial period and were so used and understood prior to the organization of any of the societies above mentioned.

The term "Colonial Dame" is also occasionally used to describe a descendant of an American personage of the Colonial period whether or not such descendant is a member of one of the above mentioned societies.

PAR. 11. The trade mark "Colonial Dames" was registered by respondents' predecessors in the State of California in 1906 and with the United States Patent Office in 1922.

PAR. 12. For many years subsequent to 1886 the marketing and distribution of the products of respondents' predecessors were confined to the Pacific Coast. At the present time, approximately 45 percent of the sales of respondents' products are made in California and an additional 30 percent in the States of Washington and Oregon. The words "Colonial Dames" are, and for many years have been, associated in the minds of people on the Pacific Coast and elsewhere with the products of respondents and their predecessors.

Order

26 F. T. C.

PAR. 13. The use by respondents of the hereinbefore enumerated false and misleading representations in connection with the offering for sale and the sale of respondents' said products has had and does have the tendency and capacity to and does mislead a substantial portion of the purchasing public and causes prospective purchasers to believe that said false and misleading representations are true and that said preparations have the efficacy and usefulness in the care, treatment and beautification of the skin as represented and implied by the respondents. The use by respondents of the words "Colonial Dames" in their respective corporate names, and in identifying and describing their said preparations in advertisements, in newspapers, pamphlets, books, circulars and radio broadcasts, and as a trade name on the packages and containers in which said preparations are sold as hereinabove described, has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public and causes prospective purchasers erroneously to believe that said preparations are produced, approved, sponsored, endorsed, or recommended by one or more of the societies hereinabove described. Said erroneous beliefs induced by the various misrepresentations of the respondents as herein detailed, cause and have caused a substantial portion of the purchasing public to purchase respondents' said preparations, thereby unlawfully and unfairly diverting trade to respondents from competitors engaged in selling in interstate commerce preparations which are recommended for use in connection with the care, treatment and beautification of the skin and which are truthfully and accurately represented.

CONCLUSION

The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondents thereto, and the agreed stipulation as to the facts entered into between the respondents herein, Colonial Dames, Inc., and Colonial Dames Company, Ltd., and W. T. Kelley, chief counsel of the Commission, which stipulation provides that the statement of facts contained therein may be taken as the facts in this proceeding in connection with any further testimony in support of the

1260

Order

charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said stipulation of facts and other evidence to be or which may be taken hereafter to make its report, stating its findings as to the facts (including inferences which it may reasonably draw from the said stipulated facts) and its conclusion based thereon, and to enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the said respondents, Colonial Dames, Inc., and Colonial Dames Company, Ltd., corporations, their officers, servants, employees, or agents, individual or corporate, in connection with the advertising, describing, offering for sale and sale in interstate commerce or in the District of Columbia of preparations used or to be used in the care, treatment, and beautification of the skin, do forthwith cease and desist from:

1. Representing that Colonial Dames Massage Cream is a skin rejuvenator, a skin food;

2. Representing that the chief benefits derived from the use of Colonial Dames Massage Cream are due to the action of its ingredients rather than to massage;

3. Representing that Colonial Dames Massage Cream banishes all traces of dryness or sluggishness, increases the circulation of fresh pure blood to every tiniest cell or tissue of the skin, thereby rebuilding and youthifying from within; reestablishes a normal circulation and drives directly at the cause of all beauty imperfections, and rids the skin of those enemies; reactivates or rejuvenates the tissues from within; stimulates cell structure and brings a surge of rich red blood to supply needed nourishment and purge out toxic impurities; or cures and prevents faulty skin texture and actually builds beauty into the skin;

4. Representing that the effect of Colonial Dames Beauty Wash upon the skin is that of a bleach and not merely a cleansing agency;

5. Representing that according to the weight of scientific authority Colonial Dames Beauty Wash banishes stubborn blackheads and tones sallow skins;

6. Representing that Colonial Dames Beautifier prevents pore clogging and actually builds beauty into the skin; that it acts on a different principle from most cosmetics; and from making other representations of similar tenor or import or any other or further representations concerning the efficacy and usefulness of respondents' said preparations in the care, treatment, and beautification of the skin unless and until said representations are true in fact;

Order

26 F. T. C.

7. Using the words "Colonial Dames" in their respective corporate names, in identifying and describing the business conducted by them and in describing their said preparations in advertisements, newspapers, pamphlets, books, circulars, and radio broadcasts, or through any other means or device or in any other manner, without clearly and conspicuously adding in immediate connection or conjunction therewith the words "Not connected with any society."

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

Order

IN THE MATTER OF
LASALLE EXTENSION UNIVERSITY

MODIFYING CEASE AND DESIST ORDER

Docket 2654. Order, May 18, 1938

Order granting petition of respondent to modify Commission's prior cease and desist order entered against it in Docket 2654, on May 19, 1937, 24 F. T. C. 1286, prohibiting misrepresentations in connection with use of words "Extension University," as therein specified, and order in question modified as below set forth.

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

Mr. J. T. Welch for the Commission.

LaRochelle, Brooks and Beardsley, of Chicago, Ill., and *Mr. George L. Schein* and *Mr. H. B. Cox*, of Washington, D. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the petition of respondent to modify the order to cease and desist issued herein on May 19, 1937, and upon oral argument by counsel for respondent in support of said petition to modify heard by the Commission on March 18, 1938, and the Commission having duly considered said petition and oral argument and the record herein, and being now fully advised in the premises;

It is ordered, That the petition to modify the order to cease and desist issued herein be, and the same is, hereby granted, and the said order is hereby modified so as to read:

It is ordered, That the respondent LaSalle Extension University, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of correspondence courses of instruction in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through the use of the term "Extension University" or the word "University" in its corporate name, or in any other manner, that it is, or that it conducts, a university or an extension university; unless and until respondent shall insert and use also the words "a correspondence institution," or the words "an institution for correspondence students," in immediate conjunction with its title, corporate name, or other designation, and in letters equally legible and conspicuous with said title, corporate name, or

Order

26 F. T. C.

other designation, used on textbooks, pamphlets, stationery, letter heads, advertising matter, or otherwise.

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.

Syllabus

IN THE MATTER OF

TARPON SPRINGS SPONGE EXCHANGE, INC., ET AL.

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

Docket 3024. Complaint, Dec. 29, 1936—Decision, May 18, 1938¹

Where a stockholder membership corporation engaged in maintaining and conducting a sponge exchange for the use and benefit of its stockholder members and such others as might be granted permits in buying, storing, and selling sponges in the community involved, in which (1) over 80 percent of all domestic wool sponges were produced, (2) substantially all such products bought and sold passed through exchange in question, (3) over 90 percent of population was directly dependent upon sponge industry, and (4) the financial situation was precarious because of condition of said industry and community's almost complete dependence thereon; and the active members of said exchange, packers and distributors of sponges, engaged in buying same on said exchange and selling such sponges to wholesale and retail dealers located in the various States and the District of Columbia and in foreign countries, in competition with one another and with others in such sale and distribution, and constituting the source from which the majority of the regularly established wholesale and retail dealers throughout the United States were required to procure wool sponges in order to offer and be able to sell a line thereof produced in the United States, and confronted by a condition in which such packers found themselves greatly overstocked, with their stock heavily mortgaged, collections of outstanding accounts slow, and their financial credit about exhausted—

- (a) Entered into, adopted and carried out a resolution, following a general meeting in said community of all interested parties in the industry to consider, as stated, ways and means in connection with aforesaid problems, under which resolution it was provided that catch of sponges then stored in exchange should be sold promptly by a certain date, and that new catch of wool sponges to be brought in should not be offered for sale for a specified period exceeding 3 months, and that buyers should not be permitted to purchase any such sponges, directly or indirectly, outside of exchange, except for fill-in orders from one buyer to another, and that any buyer violating such agreement should be fined from \$750 to \$2,500, depending on amount bought; and

Where the "boat operators," i. e., individuals, concerns, and corporations engaged in advancing funds and supplies to those actually occupied in sponge fishing expeditions and compensated therefor through receipt of a percentage of the proceeds arising from the sale of the sponges gathered, and the "independent

¹ Findings and order herewith take the place of findings and order made as of January 5, 1938, not published, and vacated by order of even date herewith.

The new findings show the adverse economic conditions existing in the sponge industry at Tarpon Springs at the time respondents engaged in the prohibited practices, and new order, while prohibiting same practices as did old order, has added provision that nothing therein contained shall be construed to conflict in any manner with the provisions of the United States Code concerning commerce and trade in the fishing industry (U. S. Code title 15, ch. 13A, secs. 521 and 522).

Complaint

26 F. T. C.

boat owners" engaged in the business of procuring or fishing sponges from the Gulf of Mexico and storing and selling same at and through the aforesaid exchange, and fully aware of the fact, in the case of both, that sponges brought to and sold through such exchange were, within a reasonable time and in the vast majority of instances, sold, and distributed in commerce between the buyers thereof and customers in the various States, and that the regular channel of commerce in sponges brought to said community was from producer to exchange to packer to buyers and users throughout the United States and the world—

(b) Entered into and adopted a concurrent resolution, under provisions of which they promised not to allow their boats to sell, during aforesaid period, any of their wool sponges, excepting those then stored in exchange and being prepared for sale, and also boats then out and supplied by them; and Where said various individuals and concerns, packers and distributors, and "operators" and "independent boat owners," as above set forth, following adoption of such resolutions and closing of exchange for sale of wool sponges—

(c) Concertedly refused, during period of time thus provided for, to buy or sell such sponges in or through such exchange, though making sales from one packer to another for purpose of filling orders on hand for wool sponges from persons outside the State;

With intent and effect of preventing further decline in and increasing prices of such sponges (assertedly theretofore below cost of production), both on exchange and elsewhere, and with intent of permitting said packers to unload their surplus stocks, collect outstanding accounts, and make adjustments accordingly, and with result that they were able to and did dispose of between 40 and 50 percent of their then stocks, and normal flow of sponges from producer through exchange to consumers in other States, District of Columbia, and in foreign countries was stopped completely during aforesaid period, and price thereof to dealers and public generally was increased, and competition in interstate sale thereof was suppressed and hindered through closing exchange as aforesaid:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Astor Hogg and *Mr. Karl Stecher* for the Commission.

Mr. William L. Hill, of Washington, D. C., for respondents, along with *Mr. Henry H. Morgan*, of Tarpon Springs, Fla., for Meres Sponge & Trading Co.

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 Tarpon Springs Sponge Exchange, Inc., a corporation (hereinafter referred to as respondent Exchange), and certain of its members, as hereinafter set forth (hereinafter designated as respondent packer mem-

bers); and James S. Smitzes, Inc., A. L. Tarapina, John Fassol, George Cladakis, W. F. Ferguson, Nic Macrenaris, Anastacios Kotis, Diamandis Leonis, Michael Gonatos, and Vasilio Christon (hereinafter referred to as respondent boat operators and independent boat owners), 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. Respondent Exchange is a stockholder-membership corporation, organized, existing, and doing business under the laws of the State of Florida, with its principal office and place of business located at Tarpon Springs, Fla. It is engaged in the business of conducting a Sponge Exchange for the service of its stockholder-members and others in buying, storing, and selling sponges. It has a membership of approximately 25 individuals, firms, partnerships, and corporations. The members of said respondent Exchange are packers and distributors of sponges, and are engaged in the sale of said sponges to wholesale and retail dealers located in the various States of the United States other than the State of Florida. They cause said sponges, when sold, to be transported from the State of Florida to the purchasers thereof, at their respective points of location. There has been, and now is, a constant current of trade and commerce in said sponges between the members of said respondent Exchange, located in the State of Florida, and dealers in said sponges located at points throughout other States of the United States. In the course and conduct of their respective businesses, in selling and offering for sale sponges in commerce, as herein set out, the members of respondent Exchange are in competition with each other, except for the matters and things herein alleged, and are in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

The respondent Exchange operates what is generally known as a Sponge Exchange, where the producers of such sponges unload their catch into a storage room, and where the packers and distributors purchase said sponges from the producers through the Exchange, and from where said sponges are thereafter sold and shipped in commerce by such packers and distributors, as hereinbefore set out. Tarpon Springs, Fla., is noted throughout the country and in many sections of the world as the sponge-producing center of America. The sponges bought and sold through respondent Exchange are regarded by the trade and purchasing public of the United States as the

Complaint

26 F. T. C.

best commercial domestic sponges that can be procured. Practically all of the sponges marketed at Tarpon Springs, Fla., are sold through the respondent Exchange. The sheepswool sponge, often designated as a wool sponge, is in great demand by industries throughout the United States, and is the most valuable sponge on the American market for commercial purposes. Virtually all of the sheepswool sponges produced in the United States are produced near Tarpon Springs, Fla., and are sold through the respondent Exchange. A majority of the regularly established wholesale and retail dealers of wool sponges throughout the United States are required to procure their sponges from the members of respondent Exchange in order to offer a line of domestic wool sponges.

While the membership of the respondent Exchange consists of approximately 25 persons, firms, and corporations, the following-named respondents are the active members, all of whom are either packers or distributors:

Mary J. Bouchlas, trading as Rock Island Sponge Company, with her principal place of business located at Tarpon Springs, Fla.

John Diamandis and Peter J. Cardulis, partners, trading as Diamandis & Cardulis, with their principal place of business located at Tarpon Springs, Fla.

N. G. Arfaras, an individual, with his principal place of business located at Tarpon Springs, Fla.

Sponge Producers' Corporation, a corporation existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla.

Charles Simeon and Charles Halipillas, partners, trading as Simeon & Halipillas, with their principal place of business located at Tarpon Springs, Fla.

Sponge Fishing Company, a corporation existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla.

Diamandis Diamandis and Cristos Psilakas, partners, trading as Industrial Florida Sponge Company, with their principal place of business located at Tarpon Springs, Fla.

Albert Bloch & Sons, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 36 Walker Street, New York City.

D. A. Alissandratos and Nick Bessis, partners, trading as Commercial Sponge Company, with their principal place of business located at Tarpon Springs, Fla.

Meres Sponge & Trading Company, a corporation existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla.

Alec Stefanides, an individual, with his principal place of business located at Tarpon Springs, Fla.

C. G. Andriotes, trading as C. G. Andriotes & Company, with his principal place of business located at Tarpon Springs, Fla.

George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, partners, trading as Smitzers & Drivas, with their principal place of business located at Tarpon Springs, Fla.

E. M. Macrenaris, an individual, with his principal place of business located at Tarpon Springs, Fla.

1279

Complaint

Nick Philippou and John Kourematis, partners, trading as Tropical Sponge Company, with their principal place of business located at Tarpon Springs, Fla.

Schroeder & Tremayne, Inc., a corporation existing under the laws of the State of Missouri, with its principal place of business located at 500 North Commercial Street, St. Louis, Mo.

John Fassol and P. Saclarides, partners, trading as Fassol and Saclarides, with their principal place of business located at Tarpon Springs, Fla.

Certain respondents hereinafter designated as "respondent boat operators" are: James S. Smitzes, Inc., a corporation existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla.; A. L. Tarapina, of Tarpon Springs, Fla.; John Fassol, of Tarpon Springs, Fla.; George Cladakis, of Tarpon Springs, Fla.; W. F. Ferguson, of Tarpon Springs, Fla.; and Nic Macrenaris, of Tarpon Springs, Fla. All respondent boat operators are engaged in the business known to the trade as "boat operators," and finance sponge-fishing expeditions for a percentage of the proceeds.

The respondents Anastacios Kotis, of Tarpon Springs, Fla.; Diamandis Leonis, of Tarpon Springs, Fla.; Michale Gonatos, of Tarpon Springs, Fla., and Vasilio Christon, of Tarpon Springs, Fla., are independent boat owners, and are hereinafter so designated, and are engaged in the business of procuring sponges, storing and selling them through the respondent Exchange. The respondents listed herein as "boat operators" are likewise interested in, and engaged in, the sale of the sponges procured by them through the said Sponge Exchange.

Only packers who own stock in the respondent Exchange, and others who, by payment of certain fees, enjoy the same rights in this regard as stockholders, are permitted to make purchases in the Sponge Exchange. Practically all of the sponge fishermen or producers of wool sponges in the United States make their sales through the said Sponge Exchange.

PAR. 2. On or about January 25, 1935, all of the respondents named herein united in a common course of action, and combined, conspired, and confederated together, cooperatively, for the purpose of restraining and preventing interstate trade in wool sponges, and of increasing the price of wool sponges in commerce between and among the several States of the United States and in the District of Columbia. Pursuant to said concert of action, conspiracy, and confederation, and in furtherance thereof, the said respondents did the following acts and things:

1. The respondent packer members of the respondent Exchange (excepting the respondent Schroeder & Tremayne, Inc.), at a meeting of the said Exchange, by a certain resolution, which was signed

Complaint

26 F. T. C.

by said respondent members, agreed, among other things, that all purchases of wool sponges, in or outside the Exchange, would be discontinued from February 15, 1935, to May 1, 1935. Said resolution, so passed and agreed to by the said respondent members, is in words and figures as follows:

RESOLUTION

The stockholders of the Tarpon Springs Sponge Exchange in meeting assembled, this day January 25th, 1935, and having the best interest of the Sponge Industry in mind.

RESOLVED that it is to the best interest of the Sponge Industry that the catch of sponges now stored in the Exchange be sold on the Exchange between this date and February 15th, thereby allowing ample time for such hookboats as are now out to bring their catches in, and that the new catch of Sponges to be brought in shall not be offered for sale on the Exchange until after May First the Exchange however remaining open for all sales of Yellow Gross and Wire between the dates mentioned.

Resolved further that said buyers shall not be permitted to buy any Wool Sponges, directly or indirectly, OUTSIDE of the Exchange, except for 'Fill-in-orders' from ONE BUYER to ANOTHER

Resolved further that any buyer violating this agreement shall be subject to the following fines

1. Buyers, who according to the last statistics, bought over \$50,000.00 worth shall be fined \$2,000.00
2. Buyers, who according to the last statistics, bought between \$15,000.00 and \$50,000.00 worth shall be fined \$1,000.00
3. Buyers, who bought less than \$15,000.00 shall be fined \$750.00

The adoption of the said resolution moved by Geo. M. Smitzes and seconded by N. G. Arfaras and subject to a wired adherence by the northern firms of James H. Rhodes & Co., American Sponge & Chamois Co., Schroeder & Tremayne, and Greek American Sponge Co. Local buyers adopting the above resolution hereby attest by affixing their signatures as follows:

(Signatures.)

Rock Island Sponge Co.	Charles M. Brown
Diamandis & Cardulis	John Diamandis
N. G. Arfaras	N. G. Arfaras
Sponge Producers Corp.	Geo. M. Emmanuel
Simeon & Halipiliis	Chas. Simeon
Sponge Fishing Co.	Antonis Giallourakis
Albert Bloch & Sons (proxy)	Ernest Mears
Commercial Sponge Co.	D. A. Allissandratos
John Fassol & P. Saclarides	John Fassol
Meres Sponge & Trading Co.	_____
Alex. Stefanides	A. Stefanides
C. G. Andriotes & Co.	C. G. Andriotes
Smitzes & Drivas	Geo. S. Smitzes
Em. Macrenaris	Em. Macrenaris
Industrial Flda. Sponge Co.	D. Diamandis
Tropical Sponge Co.	Tropical Sponge Co.

1279

Complaint

Following the passage and adoption of the above and foregoing resolution the respondent member Schroeder & Tremayne approved and ratified the said resolution, by agreeing to the postponement of sales as set out in the resolution, and by agreeing to the other provisions of said resolution.

2. On January 25, 1935, the respondent boat operators James S. Smitzes, Inc., A. L. Tarapina, John Fassol, George Cladakis, W. F. Ferguson, and Nic Macrenaris, and the respondent independent boat owners Anastacios Kotis, Diamandis Leonis, Michael Gonatos, and Vasilio Christon, at a meeting in Tarpon Springs, Fla., adopted and signed a resolution, which is in words and figures as follows:

BE IT RESOLVED by the operators of the sponge boats of the City of Tarpon Springs, Florida, that we promise not to allow any of our boats to sell any of their wool sponges, excepting those sponges now stored in the Sponge Exchange and being prepared for sale, before May First, 1935, it being understood at the same time that such hookboats as are now out, and who may be supplied (sic) by us, shall have the right to dispose of their catch by February 15th.

Be it further resolved that the independent boat owners shall join with us in this resolution.

Tarpon Springs, Florida,
January 25, 1935.

OPERATORS:

J. S. Smitzes, Inc., By J. L. Smitzes, Pres.
Alex L. Tarapina
John Fassol
George Cladakis
W. F. Ferguson
Nic Macrenaris

INDEPENDENT BOAT OWNERS:

Anastacios Kotis
D. Leonis
Michael Gonatos
Vasilio Christon.

3. Used other cooperative practices and means in furtherance of said plan.

PAR. 3. Pursuant to the adoption of the foregoing resolutions and agreements, the Exchange was closed, for the purchase or sale of wool sponges, from February 15, 1935, until May 3, 1935, and the respondents, during said period of time, by said combination, agreement, and concert of action, refused to buy or sell wool sponges during said period of time.

PAR. 4. The purpose, result, and effect of the combination, conspiracy, and agreements hereinabove set forth, and the acts and practices performed thereunder by said respondents, have been, and were, during the period from February 15, 1935, to May 3, 1935,

unduly and unreasonably to restrain commerce, among and between the various States of the United States, in sponges; and to increase substantially the price of wool sponges to the wholesale dealers, retail dealers, and to the consuming public, by prohibiting the respondent boat operators and respondent independent boat owners from selling sponges during said period of time; by interrupting and prohibiting commerce, as herein set out, in wool sponges during said period of time; and by preventing wholesale dealers and retail dealers in wool sponges throughout the United States from purchasing their requirements of domestic wool sponges in commerce, as herein set out, from the sources of supply.

PAR. 5. The foregoing alleged acts and practices of respondents were in undue restraint of competition and trade in commerce, as herein set out, and are, and were, to the prejudice of the public interest, 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 the Federal Trade Commission Act the Federal Trade Commission, on the 29th day of December 1936, issued and subsequently served its complaint in this proceeding upon respondents, Tarpon Springs Sponge Exchange, Inc., a corporation, Mary J. Bouchlas, trading as Rock Island Sponge Company, John Diamandis and Peter J. Cardulis, partners trading as Diamandis and Cardulis, N. G. Arfaras, an individual, Sponge Producers' Corporation, a corporation, Charles Simeon and Charles Halipilias, partners trading as Simeon and Halipilias, Sponge Fishing Company, a corporation, Diamandis Diamandis and Cristos Psilakas, partners trading as Industrial Florida Sponge Company, Albert Block and Sons, Inc., a corporation, D. A. Alissandratos and Nick Bessis, partners trading as Commercial Sponge Company, Meres Sponge & Trading Company, a corporation, Alec Stefanidi, an individual, C. G. Andriotes, trading as C. G. Andriotes & Company, George S. Smitzes, James Smitzes, Louis Smitzes and Nick Drivas, partners trading as Smitzes and Drivas, Em. Macrenaris, an individual, Nick Philippou and John Kourematis, partners trading as Tropical Sponge Company, Schroeder and Tremayne, Inc., a corporation, John Fassol and P. Saclarides, partners trading as Fassol and Saclarides, James S. Smitzes, Inc., a corporation, A. L. Tarapina, an individual, John Fassol, an individual, George Cladakis,

an individual, W. F. Ferguson, an individual, Nic Macrenaris, an individual, Anastacios Kotis, an individual, Diamandis Leonis, an individual, Michael Gonatos, an individual, and Vasilio Christon, 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 and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by William L. Hill and Henry H. Morgan, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the said complaint, the answers thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto, and the oral arguments of Karl Stecher, counsel for the Commission, and William L. Hill, counsel for respondents, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Tarpon Springs Sponge Exchange, Inc., hereinafter referred to as respondent Exchange, is a stockholder membership corporation organized in 1909, existing and doing business under the laws of the State of Florida, with its principal office and place of business located at Tarpon Springs, Fla. It is engaged in the business of maintaining and conducting a sponge exchange for the use and benefit of its stockholder members and such others as may be granted permits, in buying, storing, and selling sponges. There are in all approximately 25 members of the respondent exchange. All of the active members are packers and distributors of sponges and are engaged in buying sponges on the Exchange and selling said sponges to wholesale and retail dealers located in the various States of the United States, the District of Columbia, and foreign countries. They cause said sponges, when sold, to be transported from the State of Florida to purchasers thereof located outside of the State of Florida. There has been, and is now, a course of trade and commerce in said sponges between the members of the respondent Exchange located at Tarpon Springs, Fla., and dealers in said sponges located at points throughout other States of the United States, the District

of Columbia, and foreign countries. In the purchase and sale and offering for sale of said sponges in commerce as herein set out, the members of the respondent Exchange are in competition with each other, except as such competition was restricted and suppressed by the acts and practices hereinafter set out, and are in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of sponges in commerce among and between the various States of the United States.

Respondent Tarpon Springs Sponge Exchange, Inc., built a structure, rectangular in shape, more or less open on one side and with stalls around the other three sides, all opening on the court in the middle. These stalls are rented out to boat captains to store their catches of sponges until such time as they are ready for sale. Practically all sponges brought into Tarpon Springs are stored in this Exchange and are there offered for sale. On sale days the various boat captains bring their sponges out of the stalls and place them in the court in piles, where they are sold at auction. All bids are secretly made by the bidder handing in a slip of paper on which his bid is listed. The captain of the ship is free to accept or reject any bid made.

After they are purchased at the Exchange the sponges are taken by the packer to his warehouse and are there prepared for shipment to purchasers in various parts of the United States outside of Florida and in foreign countries.

The sponges produced in the United States come under four general classifications, to wit: wool sponges, also known as sheep's wool sponges; yellow sponges; wire sponges; and grass sponges. By far the most important, both from the standpoint of quality and from the standpoint of quantity, is the wool sponge, this species far exceeding in value and in quantity all other varieties combined. Wool sponges are considered the best domestic sponges for the automobile-washing trade and for what is known as the paint industry. Practically all of the wool sponges produced in the United States come from the waters of the Gulf of Mexico adjacent to Tarpon Springs, Fla., or Key West, Fla. Tarpon Springs, Fla., is the largest and most important sponge-producing center in the United States. Upwards of 80 percent of all sponges produced in the United States come from Tarpon Springs. The wool sponges produced at Tarpon Springs have the reputation of being the finest wool sponges produced anywhere. Over 90 percent of the population of Tarpon Springs is directly dependent upon the sponge industry.

The majority of the regularly established wholesale and retail dealers throughout the United States are required to procure wool

sponges from the members of the respondent Exchange in order to offer and be able to sell a line of wool sponges produced in the United States. There is no other way for these wholesalers and retailers throughout the United States to obtain an adequate supply of domestic wool sponges, except directly or indirectly through the members of the respondent Exchange, for over 80 percent of all domestic wool sponges are produced at Tarpon Springs and practically all sponges bought and sold in Tarpon Springs pass through the Tarpon Springs Sponge Exchange.

While the membership of the respondent Exchange consists of approximately 25 persons, firms, and corporations, the following-named respondents herein referred to as respondent packer members are the active members, all of whom are either packers or distributors of sponges and have their places of business in Tarpon Springs, Fla.:

Mary J. Bouchlas, trading as Rock Island Sponge Company, with her principal place of business located at Tarpon Springs, Fla.

John Diamandis and Peter J. Cardulis, partners, trading as Diamandis & Cardulis, with their principal place of business located at Tarpon Springs, Fla.

N. G. Arfaras, an individual, with his principal place of business located at Tarpon Springs, Fla.

Sponge Producers' Corporation, a corporation existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla.

Charles Simeon and Charles Halipilias, partners, trading as Simeon & Halipilias, with their principal place of business located at Tarpon Springs, Fla.

Sponge Fishing Company, a corporation existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla.,

Diamandis Diamandis and Cristos Psilakas, partners, trading as Industrial Florida Sponge Company, with their principal place of business located at Tarpon Springs, Fla.

Albert Bloch & Sons, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 36 Walker Street, New York City.

D. A. Alissandratos and Nick Bessis, partners, trading as Commercial Sponge Company, with their principal place of business located at Tarpon Springs, Fla.

Meres Sponge & Trading Company, a corporation existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla.

Alec Stefanidi, an individual, with his principal place of business located at Tarpon Springs, Fla.

C. G. Andriotes, trading as C. G. Andriotes & Company, with his principal place of business located at Tarpon Springs, Fla.

George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, partners, trading as Smitzes & Drivas, with their principal place of business located at Tarpon Springs, Fla.

Em. Macrenaris, an individual, with his principal place of business located at Tarpon Springs, Fla.

Nick Philippou and John Kourematis, partners, trading as Tropical Sponge Company, with their principal place of business located at Tarpon Springs, Fla.

Schroeder & Tremayne, Inc., a corporation existing under the laws of the State of Missouri, with its principal place of business located at 300 North Commercial Street, St. Louis, Mo.

John Fassol and P. Saclarides, partners, trading as Fassol & Saclarides, with their principal place of business located at Tarpon Springs, Fla.

Respondents, James S. Smitzes, Inc., a corporation existing under the laws of the State of Florida with its principal place of business located at Tarpon Springs, Fla.; A. L. Tarapina of Tarpon Springs, Fla., John Fassol of Tarpon Springs, Fla., George Cladakis of Tarpon Springs, Fla., W. F. Ferguson of Tarpon Springs, Fla., and Nic Macrenaris of Tarpon Springs, Fla., are known to the sponge trade at Tarpon Springs, Fla., as "Boat Operators." Such so-called "Boat Operators" are engaged in the financing and advancing funds and supplies to those actually engaged in sponge fishing expeditions, and for such financing and advancing of such funds and supplies the respondent "Boat Operators" receive a percentage of the proceeds arising from the sale of the sponges gathered in such sponge fishing expeditions. Respondent "Boat Operators" have a direct interest in the sale of such sponges in the Exchange after they have been procured by the actual fishers, and when the sponges (which the respondent "Boat Operators" have aided in procuring by financing the expeditions) are sold on the Exchange the receipts for the sale of such sponges are in usual practice and as a general thing paid over to the respondent "Boat Operators," after which said respondent "Boat Operators" distribute such funds, upon a share basis, to those who took part in the gathering of such sponges, less the percentage of the proceeds to which the respondent "Boat Operators" are entitled under their agreement with the sponge fishers made before the sponge expeditions embarked.

The respondents, Anastacios Kotis of Tarpon Springs, Fla., Diamandis Leonis of Tarpon Springs, Fla., Michael Gonatos of Tarpon Springs, Fla., and Vasilio Christon of Tarpon Springs, Fla., are known to the sponge trade at Tarpon Springs, Fla., as "Independent Boat Owners," and are hereinafter so designated, and they are engaged in the business of procuring or fishing sponges from the Gulf of Mexico and storing and selling them at and through the respondent Exchange.

The respondent "Boat Operators" and respondent "Independent Boat Owners" are, and were at all times mentioned herein, fully aware of the fact that when the sponges are brought to the Exchange and sold through the Exchange, such sponges are within a reasonable time thereafter, in the vast majority of instances, sold and transported in commerce by the buyers of such sponges to customers located in the various States of the United States, and that the

regular channel of commerce in sponges brought to Tarpon Springs is from the producers through the Exchange to the packers and from the packers on to the buyers and users throughout the various parts of the United States and of the world.

Only packers who own stock in the respondent Exchange and have been elected to membership therein, and such others as may be able to secure a permit, upon payment of a stipulated fee, are permitted to make purchases on or at the Exchange. Practically all of the wool sponges passing through Tarpon Springs are sold through the Exchange.

PAR. 2. The sponge industry at Tarpon Springs had been in a relatively chaotic and unsatisfactory condition for some time prior to 1934, due to a greatly lessened demand for sponges. During the year 1934, the production of wool sponges at Tarpon Springs was considerably greater than for each of the preceding 3 years, without a corresponding increase in the demand for such sponges.

At the end of the year 1934, respondent packers found themselves greatly overstocked, with between \$500,000 and \$600,000 worth of sponges on hand in their warehouses. A considerable portion of this stock was heavily mortgaged. Collections of outstanding accounts were slow, and the packers had about exhausted their financial credit. The entire community of Tarpon Springs was in a precarious financial situation because of the condition of the sponge fishing industry, on which it is almost wholly dependent.

With the sponge industry in this situation, with an additional large stock of sponges on hand in the Exchange unsold, and with more sponges being fished for, a general meeting of all interested parties in the sponge industry was called for January 10, 1935, and was held in the Greek schoolhouse in Tarpon Springs, because there was insufficient room in the Exchange. Mr. George Emmanuel, president of the Exchange, presided. He stated that some way had to be found to dispose of the more than \$100,000 worth of sponges in storage at the Exchange, and some arrangement made about payment for the same, as the buyers were unable to provide cash, due to slow returns of outstanding accounts. Mr. Emmanuel asked the operators if they could carry 40 percent, provided 60 percent was paid in cash by the packers. A final agreement was reached under the terms of which 60 percent cash would be paid and accepted, with a 60-day extension of credit for the remaining 40 percent. Mr. Emmanuel then asked the fishing boat captains (producers) if they would promise the Tarpon Springs Sponge Exchange not to sell any further wool catches, excepting what was then in the Exchange, until after Easter, or about May 1, 1935. A vote was taken which showed that all present were in favor of carrying out such agreement. It was further

agreed that sales should be made until the entire stock of wool sponges in the Exchange was disposed of, making the last sale February 5, 1935.

In furtherance of the same aims and purposes, a meeting was held at the Tarpon Springs Sponge Exchange on January 25, 1935, at which the following resolution was adopted:

The Stockholders of the Tarpon Springs Sponge Exchange, this day January 25th, 1935, in meeting assembled and having the best interests of the Sponge Industry in mind,

RESOLVED that it is to the best interest of the industry that the catch of Sponges now stored in the Exchange be sold on the Exchange between this date and Febry 15th allowing thereby ample time for such Hookboats, as are now out, to bring the catch in and that the new catch of sponges to be brought in shall not be offered for sale until after May First, the Exchange however, remaining open for all sales of Yellow, Grass, and Wire between the dates mentioned.

RESOLVED further that said buyers shall not be permitted to buy any Wool Sponges, directly or indirectly, OUTSIDE of the Exchange, except for "FILL-IN-ORDERS" from ONE BUYER to ANOTHER.

RESOLVED further that any buyer violating this agreement shall be subjected to the following fines:

1. Buyers, who according to the last statistics, bought over \$50,000 worth shall be fined \$2,500.00
2. Buyers who bought between \$15,000.00 and \$50,000.00 according to the last statistics shall be fined \$1,000.00.
3. Buyers who bought less than \$15,000—shall be fined \$750.00.

The adoption of the said resolution was moved by Geo. M. Smitzes and seconded by N. G. Arfaras and is subject to a wired adherence by the Northern firms of James H. Rhodes & Co., American Sponge & Chamois Co., Schroeder & Tremayne and Greek-American Sponge Co.

Local Buyers adopting the above resolution hereby attest by affixing their signatures as follows:

(Names typewritten.)

Rock Island Sponge Co.
 Diamandis & Cardulis
 N. G. Arfaras
 Sponge Producers' Corp.
 Simeon & Halipillas
 Sponge Fishing Co.
 Albert Bloch & Sons (proxy)
 Commercial Sponge Co.
 John Fassol & Peter Saclarides
 Meres Sponge & Trading Co.
 Alex. Stefanidi
 C. G. Andriotes Co.
 Smitzes & Drivas
 Em. Macrenaris
 Industrial Fld. Sponge Co.
 Tropical Sponge Co.

(Signatures.)

Charles M. Brown
 John Diamandis
 N. G. Arfaras
 Geo. M. Emmanuel
 Chas. Simeon
 Antonis Giallourakis
 Ernest Mears
 D. A. Alissandratos
 John Fassol

 A. Stefanidi
 C. G. Andriotes
 Geo. S. Smitzes
 Em. Macrenaris
 D. Diamandis
 Tropical Sponge Co.

The said resolution was agreed to by the respondents whose signatures appear thereon.

Following the passage and adoption of the above and foregoing resolution the respondent member Schroeder & Tremayne, Inc., approved and ratified the said resolution by agreeing to the terms of said resolution.

On January 25, 1935, the respondent "Boat Operators," James S. Smitzes, Inc., A. L. Tarapina, John Fassol, George Cladakis and W. F. Ferguson, and the respondent "Independent Boat Owners," Nic Macrenaris, Anastacios Kotis, Diamandis Leonis, Michael Gonatos and Vasilio Christon at a meeting in Tarpon Springs, Fla., adopted and signed a resolution which is in words and figures as follows:

BE IT RESOLVED by the operators of the sponge boats of the city of Tarpon Springs, Florida, that we promise not to allow any of our boats to sell any of their wool sponges, excepting those sponges now stored in the Sponge Exchange and being prepared for sale, before May First, 1935, it being understood at the same time that such hookboats as are now out, and who may be supplied by us, shall have the right to dispose of their catch by February 15th.

Be it further resolved that the independent boat owners shall join with us in this resolution.

Tarpon Springs, Florida,
January 25, 1935

Operators:

J. S. Smitzes, Inc., By J. L. Smitzes, Pres.
Alex L. Tarapina
John Fassol
George Cladakis
W. F. Ferguson
Nic Macrenaris

INDEPENDENT BOAT OWNERS:

Anastacios Kotis
D. Leonis
Michael Gonatos
Vasilio Christon.

PAR. 3. Following the adoption of the foregoing resolutions and agreements, with the respondent Tarpon Springs Sponge Exchange, Inc., assenting and cooperating, the said Exchange was closed for the purchase or sale of wool or sheep's wool sponges from February 16, 1935, to May 2, 1935, both dates inclusive, and the respondents during said period of time by combination, agreement, and concerted action refused to buy or sell wool sponges in or through said Exchange during said period of time. Respondent packers did, however, make various sales from one packer to another for the purpose of filling orders which they had for wool sponges from persons outside of the State of Florida.

PAR. 4. Due to the large stocks of sponges on hand in Tarpon Springs and to the slowness of the demand, the prices of wool sponges were going downward. Respondents testified these prices were lower than the cost of production, but presented no documentary evidence in substantiation of such contention.

The purpose of closing the Exchange for the sale of wool sponges was to prevent a further decline in the prices of wool sponges, both on the Exchange and elsewhere, and to increase such prices if possible. The effect of closing the Exchange for the sale of wool sponges is shown in the following table:

Prices of wool sponges per bunch

	1935		
	Jan. 1- Jan. 31	Feb. 1- Feb. 15	May 3- May 31
Large.....	\$8.83	\$6.66	\$10.08
Small and medium.....	1.83	1.63	1.98
Large rags.....	5.60	3.80	6.28
Small rags.....	1.22	1.18	1.62

A further purpose of the closing of the Exchange was to permit the respondent packers to unload their surplus stocks on hand, make collections of outstanding accounts, and adjust themselves accordingly. During the period the Exchange was closed, respondent packers were able to and did dispose of between 40 percent and 50 percent of the stocks of sponges they had on hand.

PAR. 5. The effect of the combination, conspiracy, and agreements hereinabove set forth, and the acts and practices performed thereunder by respondents during the period from February 16, 1935, to May 2, 1935, both dates inclusive, was to stop completely the normal flow of sponges from the producers through the Tarpon Springs Sponge Exchange to the consumers in other States of the United States, the District of Columbia, and in foreign countries, and to increase the price of wool sponges to dealers and to the public generally. The closing of the Exchange under the said resolution had the effect of, and did, suppress and hinder competition in the interstate sale of wool sponges.

CONCLUSION

The aforesaid acts and practices of respondents, as hereinabove named, are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, and oral arguments by Karl Stecher, counsel for the Commission, and by William L. Hill, 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 ordered, That the respondents, Tarpon Springs Sponge Exchange, Inc., a corporation, Mary J. Bouchlas, trading as Rock Island Sponge Co., John Diamandis and Peter J. Cardulis, partners trading as Diamandis and Cardulis, N. G. Arfaras, an individual, Sponge Producers Corporation, a corporation, Charles Simeon and Charles Halipilias, partners trading as Simeon and Halipilias, Sponge Fishing Company, a corporation, Diamandis Diamandis and Cristos Psilakas, partners trading as Industrial Florida Sponge Company, Albert Bloch and Sons, Inc., a corporation, D. A. Alissandratos and Nick Bessis, partners trading as Commercial Sponge Company, Alec Stefanidi, an individual, C. G. Andriotes, trading as C. G. Andriotes & Company, George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, partners trading as Smitzes and Drivas, Em. Macrenaris, an individual, Nick Philippou and John Kourematis, partners trading as Tropical Sponge Company, Schroeder & Tremayne, Inc., a corporation, John Fassol and P. Saclarides, partners trading as Fassol and Saclarides, James S. Smitzes, Inc., a corporation, A. L. Tarapina, an individual, John Fassol, an individual, George Cladakis, an individual, W. F. Ferguson, an individual, Nic Macrenaris, an individual, Anastacios Kotis, an individual, Diamandis Leonis, an individual, Michael Gonatos, an individual, and Vasilio Christon, an individual, their representatives, officers, agents, and employees, or any group of such respondents or their agents, either with or without the cooperation of persons not parties in this proceeding, cease and desist from uniting in a common course of action or entering into any understanding, agreement, combination, or conspiracy for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the purchase or sale of sponges sold or intended to be sold in interstate commerce, and in furtherance of such under-

standing, agreement, combination, or conspiracy from doing any of the following acts and things:

1. Entering into and carrying out any understanding or agreement not to sell sponges on or through the sponge exchange operated by the respondent Tarpon Springs Sponge Exchange, Inc.

2. Entering into and carrying out any understanding or agreement not to buy sponges on or through the sponge exchange operated by the respondent Tarpon Springs Sponge Exchange, Inc.

3. Entering into and carrying out any understanding or agreement refusing to sell or buy sponges.

Provided, That nothing herein contained shall be construed to conflict in any manner with U. S. Code, Title 15, Chapter 13A, Sections 521 and 522.

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

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

BRISTOL-MYERS Co. Complaint, November 27, 1934. Order, December 4, 1937. (Docket 2252.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of various proprietary remedies and drug sundries.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the testimony, evidence, and briefs, and the Commission having duly considered the same, and the Miller-Tydings Act approved August 17, 1937, providing that nothing therein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container which bears the trade-mark, brand, or name of the producer or distributor of such commodity, and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, in which such resale is to be made, or to which the commodity is to be transported for such resale, and that the making of such contracts or agreements shall not be an unfair method of competition under Section 5, as amended and supplemented, of the act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and it appearing to the Commission that the testimony and evidence in this proceeding are insufficient to support the allegations of the complaint with respect to sales by respondent of its products into the District of Columbia for resale therein or in connection with sales of its products into any of the States of the United States not having statutes by which contracts or agreements prescribing minimum resale prices in such States are made legal, or into any of the States of the United States wherein by law or public policy, contracts or agreements prescribing minimum resale prices therein are not legal, and the Commission being fully advised in the premises;

It is ordered, That the complaint herein, for the reason hereinabove mentioned, be and the same is hereby dismissed.

Before *Mr. Edward M. Averill* and *Mr. John W. Norwood*, trial examiners.

Mr. Robt. N. McMillen for the Commission.

Rogers, Ramsay & Hoge, of New York City, for respondent.

GILLETTE SAFETY RAZOR Co. Complaint, August 20, 1935. Order, December 4, 1937. (Docket 2523.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of safety razors including holders and blades therefor.

Dismissed, after answer and trial, by reason of the enactment of the Miller-Tydings Act, approved August 17, 1937, it appearing to the Commission that the testimony and evidence were insufficient to support the allegations of the complaint with respect to sales by respondent of its products into the District of Columbia for resale therein or in connection with sales of its products into any of the States of the United States not having statutes by which contracts or agreements prescribing minimum resale prices in such States are made legal, or into any of the States of the United States wherein by law or public policy, contracts or agreements prescribing minimum resale prices therein are not legal, as set forth more fully in dismissal order in Bristol-Myers case. (*Supra.*)

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

Mr. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C. and *Herrick, Smith, Donald & Farley*, of Boston, Mass., for respondent.

YARDLEY & Co., LTD. Complaint, April 15, 1935. Order, December 6, 1937. (Docket 2366.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of soaps, cosmetics and toilet preparations.

Dismissed, after answer and trial, by reason of the enactment of the Miller-Tydings Act, approved August 17, 1937, it appearing to the Commission that the testimony and evidence were insufficient to support the allegations of the complaint with respect to sales by respondent of its products into the District of Columbia for resale therein or in connection with sales of its products into any of the States of the United States not having statutes by which contracts or agreements prescribing minimum resale prices in such States are made legal, or into any of the States of the United States wherein by law or public policy, contracts or agreements prescribing minimum resale prices therein are not legal, as set forth more fully in dismissal order in Bristol-Myers case. (*Supra.*)

Before *Mr. John W. Norwood*, trial examiner.

Mr. P. C. Kolinski for the Commission.

Townsend & Lewis, of New York City, for respondent.

ALLEN H. RABIN, doing business as THE RABIN Co. Complaint, November 29, 1937. Order, December 27, 1937. (Docket 3275.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to composition of product; in connection with sale of a line of cosmetics.

Order approving stipulation as to the facts and closing case by the following order:

This matter coming on for consideration by the Commission upon the record and upon a stipulation to cease and desist from the practices charged in the complaint issued herein on November 29, 1937, executed by respondent, and the Commission having duly considered the same and being now fully advised in the premises, and it appearing to the Commission that the respondent has abandoned the practices and violations of law charged in the complaint and that it has agreed not to resume said practices;

It is ordered, That the said stipulation be, and the same hereby is, approved and accepted, and the Secretary is hereby directed to enter the same of record.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should future facts so warrant.

SEMINOLE PAPER CORPORATION. Complaint, November 27, 1936. Order, January 8, 1938. (Docket 2994.)

Charge: Maintaining resale prices; in connection with the sale of toilet paper.

Record closed, after answer, by reason of the enactment of the Miller-Tydings Act, approved August 17, 1937, it appearing to the Commission that the testimony and evidence were insufficient to support the allegations of the complaint with respect to sales by the respondent of its products in the District of Columbia for resale therein or in connection with sales of its products in any of the States of the United States not having statutes by which contracts or agreements prescribing minimum resale prices in such States are made legal, or in any of the States of the United States wherein by law or public policy, contracts or agreements prescribing minimum resale prices therein are not legal, as set forth more fully in dismissal order in *Bristol-Myers* case. (*Supra* p. 1297.)

Mr. James M. Hammond for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for respondent.

E. FREDERICS, INC. Complaint, June 19, 1936. Order, January 13, 1938. (Docket 2845.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of hair and scalp treating apparatus and supplies including permanent waving machines, hair driers, pads, and tonics.

Record closed, after answer, by reason of the enactment of the Miller-Tydings Act, approved August 17, 1937, it appearing to the Commission that the files of investigation are insufficient to support the allegations of the complaint with respect to sales by respondent of its products into the District of Columbia or into any of the States of the United States other than those having statutes by which contracts or agreements prescribing minimum resale prices in such States are made legal, or into any of the States of the United States wherein by law or public policy contracts or agreements prescribing minimum resale prices therein are not legal, as set forth more fully in dismissal order in Bristol-Myers case. (*Supra* p. 1297.)

Mr. Reuben J. Martin for the Commission.

Mr. James A. Manion and Fish, Richardson & Neave, of New York City, for respondent.

UNITED STATES PENCIL Co., INC. Complaint, January 14, 1937. Order, February 12, 1938. (Docket 3034.)

Charge: Advertising falsely or misleadingly as to price and quality and "free" product; in connection with the sale of lead pencils.

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 for the reason that the testimony and other evidence adduced do not sustain the allegations of the complaint herein.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

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

WASHINGTON TRAINING INSTITUTE, INC. Complaint, September 22, 1936. Order, March 10, 1938. (Docket 2929.)

Charge: Using misleading trade name, and misrepresenting government connection and opportunities in product or offering, and pretended refunds; in connection with the sale of Civil Service correspondence courses.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent corporation, Washington Training Institute, Inc., has been dissolved by decree of the Circuit Court of Wayne County, Mich., that the business formerly conducted by said corporation has ceased, and that its affairs are being administered and wound up under the order and direction of said court, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on September 22, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. John C. Spear, of Cleveland, Ohio, for respondent.

CONSOLIDATED PINNACLE COAL CO. and ELLIS MORRELL. Complaint, September 30, 1937. Order, March 10, 1938. (Docket 3234.)

Charge: Using misleading corporate name and misrepresenting source or origin and qualities of product; in connection with the sale of coal.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record herein and it appearing that attempts to serve the complaint on the respondents herein, both by registered mail and personal service, have failed, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case bearing out of the complaint issued herein be, and the same is hereby closed without prejudice to the right of the Commission to reopen the same in the event future developments should so warrant.¹

Mr. Alden S. Bradley for the Commission.

BELMORE JEWELRY Co., INC. and NATHAN BERNSTEIN, trading as EXCELL LUGGAGE Co. Complaint, November 13, 1936. Order, March 25, 1938. (Docket 2980.)

Charge: Misrepresenting premiums and using lottery scheme in merchandising; in connection with the sale of leather luggage.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the corporate respondent, Bel-

¹The case was reopened July 19, 1938.

more Jewelry Co., Inc., was dissolved as of December 31, 1936, and it further appearing that due to the dissolution of said respondent, Belmore Jewelry Co., Inc., the individual respondent, Nathan Bernstein, trading as Excell Luggage Co., has discontinued the practices charged in the complaint, and it further appearing that there is no reason to believe that he will resume same, and the Commission having duly considered the matter and the record, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on November 13, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. S. Brogdyne Teu, II for the Commission.

Mr. Warren W. Grimes, of Washington, D. C. and *Mr. Sol. A. Herzog*, of New York City, for respondents.

NATIONAL MODES, INC., NATIONAL MODES HOLDING CORP., and JOHN BLOCK. Complaint, October 31, 1936. Order, March 29, 1938. (Docket 2962.)

Charge: Entering into restrictive cooperative schemes and contracts in restraint of competition; in connection with the sale of women's wearing apparel.

Record closed by the following order:

This matter, coming on to be heard by the Commission upon the complaint and the answer thereto, and the Commission having duly considered the same, and being fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on October 31, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Before *Mr. John W. Addison*, trial examiner.

Mr. Astor Hogg and *Mr. Fletcher G. Cohn* for the Commission.

Spiro, Felstiner & Prager, of New York City, for respondents.

LEDNEW CORP. Complaint, October 31, 1935. Order, April 5, 1938. (Docket 2604.)

Charge: Misrepresenting and misbranding as to qualities and performance of product; in connection with the sale of incandescent lamps.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent is no longer engaged

in business and that its property and other assets have been disposed of and sold under order of the Chancery Court of the State of New Jersey, and that there is no reason to believe that the practices complained of will be resumed, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint issued herein be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

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

Mr. Edward E. Reardon and *Mr. Clark Nichols* for the Commission.

AMERICAN LUBRICANTS Co., INC. Complaint, November 23, 1936. Order, April 5, 1938. (Docket 2993.)

Charge: Misrepresenting as to source or origin and qualities of product; in connection with the sale of motor oils and greases.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon motion by counsel for respondent to dismiss the complaint herein, and the Commission having duly considered same and the record and being now fully advised in the premises;

It is ordered, That the complaint be, and the same hereby is, dismissed for the reason that the testimony and other evidence adduced do not sustain the charges of the complaint herein.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Jay L. Jackson for the Commission.

Mr. Gus W. Byttner, of Dayton, Ohio, for respondent.

KEYSTONE DISTILLING Co. Complaint, February 5, 1936. Order, April 9, 1938. (Docket 2714.)

Charge: Using misleading trade or corporate name, misbranding, or mislabeling and advertising falsely or misleadingly as to business status; in connection with the purchasing, rectifying, bottling and sale of whiskeys, gins, and other spirituous beverages.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, Keystone Distilling Co., ceased actual operations on December 31, 1936; that all of its physical assets have been liquidated; that its rectifier's permit was canceled by the Permit Division of the Federal Alcohol Administration in July 1937; and that the corporation was dissolved December 31, 1937, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint heretofore issued on February 5, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Before *Mr. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

W. A. TAYLOR & Co. Complaint, November 17, 1936. Order, April 12, 1938. (Docket 2985.)

Charge: Maintaining resale prices; in connection with the sale of alcoholic beverages including vermouth and whiskey.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that there is insufficient evidence that the respondent W. A. Taylor & Co. has engaged in the acts and practices charged in the complaint hereinbefore issued with respect to alcoholic liquors sold in, or shipped for resale in, any States or territories other than those having "Fair Trade" laws or public policies in effect therein, within the intent and meaning of the Miller-Tydings Act (Title VIII of an act to provide additional revenue for the District of Columbia and for other purposes, approved August 17, 1937, Public Act 314, 75th Cong., 1st sess.), 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 hereinbefore issued on November 17, 1936, be and the same is hereby closed without prejudice to the right of the Commission, should the facts so 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. Maurice J. Moore and *Mr. John Francis Moore*, of New York City, for respondent.

MORTON SALT Co. Complaint, January 16, 1934. Original order, April 30, 1935. Docket 2150. 20 F. T. C. 309. Order granting motion to modify stay order,¹ etc., April 21, 1938.

¹ Commission order referred to, dated June 17, 1936, "granting motion to stay proceedings," reads as follows:

This matter coming on to be heard on motion of respondent Morton Salt Co. for stay of proceedings under the Commission's order of May 14, 1936, until final decision by the Commission in the matter of Dockets 2783 and 2784, re Smoke Products Co., et al., and Pennsylvania Salt Manufacturing Co., et al., respectively, and the Commission having considered the motion and the record and being now fully advised in the premises,

It is ordered, That the motion be, and is hereby, granted.

The Commission, in its order of May 14, 1936, above referred to, denied motion of respondent to vacate Commission's cease and desist order herein and to grant rehearing.

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature of product; in connection with the manufacture and sale of "Smoked Salt."

Order granting motion to modify stay order, as follows:

This matter coming on to be heard on motion of respondent Morton Salt Co., filed April 12, 1938, and the Commission having considered the motion and being now fully advised in the premises,

It is ordered, That the said motion be, and hereby is, granted, and this matter is to remain *in fieri* without prejudice to the right of the Commission forthwith to enter such final order as seems just at or after the Commission's final decision in the matters of Dockets Nos. 2783 and 2784.

Mr. Jay L. Jackson for the Commission.

Mr. H. H. Shelton and *Sanders, Gravelle, Whitlock & Howry*, of Washington, D. C., for respondent.

OVERLAND CANDY Co. Complaint, May 3, 1930. Original order, April 3, 1934. Docket 1822. 18 F. T. C. 297. Order dismissing complaint, etc., May 5, 1938.

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Complaint dismissed without prejudice 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 without prejudice to the right of the Commission to institute new proceedings if the public interest warrants.

Mr. Henry C. Lank for the Commission.

Edelson & Paullin and *Beach, Fathchild & Scofield*, of Chicago, Ill., and *Mr. W. Parker Jones*, of Washington, D. C., for respondent.

STARTUP CANDY Co. Complaint, January 31, 1936. Original order, June 19, 1937. Docket 2705. 25 F. T. C. 234. Order vacating, etc., May 16, 1938.

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Findings as to the facts and order to cease and desist were vacated by the following order:

This matter coming on to be heard upon the motion of counsel for the respondent to vacate and set aside the findings as to the facts and order to cease and desist issued herein on June 19, 1937, and the Commission having duly considered the said motion and the record, and being now fully advised in the premises;

It is ordered, That the motion of counsel for the respondent to vacate and set aside the findings as to the facts and order to cease

and desist issued herein on June 19, 1937, be, and the same hereby is, granted.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.
Mr. Walter G. Moyle, of Washington, D. C., for respondent.

NOTE.—The Commission, as of the same date, by similar orders and in response to the same motion, vacated and set aside the findings as to the facts and orders to cease and desist in three other candy lottery cases in which *Mr. P. C. Kolinski* and *Mr. Henry C. Lank* appeared for the Commission and *Mr. Walter G. Moyle*, of Washington, D. C., for respondents, namely:

SHUPE-WILLIAMS CANDY Co. Complaint, January 31, 1936. Original order, June 17, 1937. Docket 2708. 25 F. T. C. 170.

OSTLER CANDY Co. Complaint, June 8, 1936. Original order, June 17, 1937. Docket 2837. 25 F. T. C. 181.

GLADE CANDY Co. Complaint, June 19, 1936. Original order, June 17, 1937. Docket 2848. 25 F. T. C. 193.

JEFFERSON ISLAND SALT Co. Complaint, January 16, 1934. Original order, April 30, 1935. Docket 2151. 20 F. T. C. 320. Order amending stay order, May 20, 1938.¹

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature of product; in connection with the manufacture and sale of salt products.

Order amending stay order, as follows:

The matter of amending the stay order herein, dated March 5, 1937, having come on to be heard at the instance of the Commission, and the Commission having considered same and being now fully advised in the premises,

It is ordered, That the stay order dated March 5, 1937, extending the time for the filing of report of compliance with the order to cease and desist herein, be, and the same hereby is, amended, and this matter is to remain *in fieri* without prejudice to the right of the Commission forthwith to enter such final order as seems just at or after the Commission's final decision in the matters of Dockets Nos. 2783 and 2784.²

Mr. Jay L. Jackson for the Commission.

Carroll & McElwain, of Louisville, Ky., for respondent.

¹ The Commission also as of May 18, 1938, on which date it issued new findings and cease and desist order in the matter of Tarpon Springs Sponge Exchange, Inc., et al., involving restraint of trade in connection with sale of sponges (See ante at p. 1279), vacated original findings and cease and desist order issued as of January 5, 1938, not reported herein.

² Smoke Salt Products Co., et al., and Pennsylvania Salt Manufacturing Co., et al.

EVERY SALT Co. Complaint, November 13, 1934. Original order, November 28, 1936. Docket 2248. 23 F. T. C. 1047. Order granting motion to amend stay order, etc., May 20, 1938.

Charge: Misbranding or mislabeling as to nature of manufacture of product; in connection with the manufacture and sale of "Smoke Salt."

Order granting motion to amend stay order of March 5, 1937, as follows:

This matter coming on to be heard on motion of respondent Avery Salt Co., filed May 7, 1938, and the Commission having considered said motion and being now fully advised in the premises,

It is ordered, That the said motion be, and hereby is, granted, and this matter is to remain *in fieri* without prejudice to the right of the Commission forthwith to enter such final order as seems just at or after the Commission's final decision in the matters of Dockets Nos. 2783 and 2784.¹

Mr. Jay L. Jackson for the Commission.

Putney, Twombly & Hall, of New York City, for respondent.

CAREY SALT Co. Complaint, August 14, 1935. Original order, December 3, 1936. Docket 2516. 24 F. T. C. 42. Order amending stay order, etc., May 20, 1938.

Charge: Misbranding or mislabeling and advertising falsely or misleadingly as to nature of product; in connection with the manufacture and sale of "Smoke Salt."

Order amending stay order, as follows:

The matter of amending the stay order herein, dated March 5, 1937, having come on to be heard at the instance of the Commission, and the Commission having considered same and being now fully advised in the premises,

It is ordered, That the stay order dated March 5, 1937, extending the time for the filing of report of compliance with the order to cease and desist herein, be, and the same hereby is, amended, and this matter is to remain *in fieri* without prejudice to the right of the Commission forthwith to enter such final order as seems just at or after the Commission's final decision in the matters of Dockets Nos. 2783 and 2784.¹

Mr. Jay L. Jackson for the Commission.

Williams, Martindell & Carey, of Hutchinson, Kans., for respondent.

WALTER B. GALVIN AND LOUIS H. MOOSER, JR., trading as HAIR-TEX Co. Complaint, March 15, 1938. Order, May 26, 1938. (Docket 3359.)

¹ See footnote 2 on p. 1306.

Charge: Misrepresenting history and properties or results of product; in connection with the sale of hair and scalp preparations.

Record closed by the following order:

This matter coming on for consideration by the Commission, and it appearing that the respondents Walter B. Galvin and Louis H. Mooser, Jr., individuals and as copartners trading as Hair-Tex Co., had, prior to the issuance of the complaint, terminated the business through which the complained-of practices were carried on and asserted they had no intention to resume the same, 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 hereinbefore issued on March 15, 1938, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint, in accordance with its regular procedure.

Mr. Wm. T. Chantland for the Commission.

STIPULATIONS ¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST ²

2103. **Apple Butter—False and Misleading Brands or Labels and Advertising.**—Von Allmen Preserving Co., Inc., a corporation, engaged in the business of manufacturing various fruit preserves and pickles 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 from the alleged unfair methods of competition as set forth therein.

Von Allmen Preserving Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on its labels or other advertising matter of the words "Pure Apple Butter" to describe said product which contains less than 43 per centum of water soluble solids, and from the use of the words "Apple Butter" either alone or in connection or conjunction with the word "Pure" or with any other word or words or in any other way so as to import or imply that said product is in fact apple butter, that is to say, a product which contains not less than 43 per centum water soluble solids, when such is not the fact. (Dec. 2, 1937.)

2104. **Flooring and Roofing Material, Paints, Etc.—False and Misleading Advertising and Misrepresenting Business Status.**—United Laboratories, Inc., a corporation, engaged in the business, as a jobber, of selling and distributing, in interstate commerce of numerous products consisting chiefly of plastic rock flooring and roofing material, but also including waterproofing and damp-proofing materials, paints, var-

¹ For false and misleading advertising stipulations effected through the Commission's special board. See p. 1369 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, December 1, 1937, to May 31, 1938, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 2102, inclusive—may be found in vols. 10 to 25 of the Commission's decisions.

² 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."

nishes, enamels, and other related products, 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.

United 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 or through its salesmen, or in any other way, of statements or representations, the effect of which is to convey or which may tend to convey the belief that the said United Laboratories, Inc. is a group of laboratories organized and equipped to test, approve, and certify every type of maintenance product that is produced; or that the said corporation has a force of 300 men employed in the alleged various activities; or that the said corporation has in its employ a "Board of Consulting Engineers" whose duty it is to pass upon the various alleged tests of products to determine what products are to be stocked by said corporation; or that tests have been made by, or that its personnel has been connected with, the said United Laboratories, Inc., over a long period of time; or that the said United Laboratories, Inc. is a Maintenance Research Organization whose recommendations are unbiased; when such are not the facts. (Dec. 6, 1937.)

2105. "Hot Cups" and "Fudge Warmers"—False and Misleading Advertising and Disparaging Competitors.—Lacy Products Corp., engaged in the business of manufacturing electric "hot cups" and "fudge warmers" 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 from the alleged unfair methods of competition as set forth therein.

Lacy Products Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from anonymously disseminating among customers or prospective customers or the trade incomplete copies of proceedings of the Federal Trade Commission, the effect of which is to create an impression by such customers or trade that the Federal Government through its Federal Trade Commission is putting the trade on some sort of general notice with respect to alleged unlawful or unfair conduct on the part of a competitor or others, when such is not the fact. The said Lacy Products Corp. also agreed to cease and desist from the use of printed circular or other matter, the effect of which is to import or imply that the Federal Trade Commission has issued or is proceeding toward the issuance of its "cease and desist order" against a named individual or concern for the purpose of restraining such individual or concern from alleged unfair trade practices in violation of the organic Act of the Federal Trade Commission other than or in excess

of what is actually covered and contemplated by the said Commission's order. The said Lacy Products Corp. further agreed to cease and desist from distributing in interstate commerce circulars or any other printed matter setting forth findings, orders, or other public records of the Federal Trade Commission, unless the whole of such findings, orders, or other public records of the said Commission be printed in full and in the exact wording of the said Commission without any attempted interpretation of, addition to, or subtraction from such findings, orders, or public records, as made and entered by the said Commission; but in no case shall such findings, orders or other public records be used or published by the said Lacy Products Corp. for the purpose or with the effect of disparaging or injuring the business of a competitor who has complied with the orders, stipulations, and/or directions of the said Federal Trade Commission. The said corporation further agreed to cease and desist from the use in its printed or circular matter or otherwise of statements or representations to the effect that a competitor, whose identity is named or implied, is financially unsound, or is doing very little business and is about to fold up, or that the products offered for sale or sold by such competitor are imitations, cheap, defective, a cut price line, will not stand up, or that said products come in large numbers to the said Lacy Products Corp. for repair, when such are not the facts. The said corporation also agreed to cease and desist from stamping on its products sold in interstate commerce the symbol "No. S. P. D. S." so as to import or imply or which tend or may tend to convey the belief by purchasers that said products so stamped are approved by the Underwriters' Laboratories of Chicago, when in fact said products have not been so approved by said organization. (Dec. 7, 1937.)

2106. **Women's Undergarments—False and Misleading Brands or Labels and Advertising.**—Ralph Corn, Inc., a corporation, engaged in the sale and distribution of women's undergarments in interstate commerce, in competition with other corporations, individuals, firms, and partnership likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Ralph Corn, Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of the word "satin" or the words "pure dye" either independently or in connection or conjunction each with the other or with any other word or words as descriptive of products not composed of silk, the product of the cocoon of the silk worm, and from the use of the word "satin" or the words "pure dye" or "pure dye satin" in any way so as to import or imply that said products are composed of silk, when such is not the fact; unless, when said products are made of cloth or fabric which

is composed in substantial part of silk, and the word "satin" or the words "pure dye" or "pure dye satin" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the said descriptive word or words is or are printed so as to indicate clearly that said products are not made of cloth or fabric composed wholly of silk but are made in part of a material other than silk. (Dec. 10, 1937.)

2107. "Superstiles," Electric Fare Boxes, Etc.—False and Misleading Advertising.—Perey Manufacturing Co., Inc., a corporation, engaged under the trade name of "Perey Turnstile Company" in the business of manufacturing fare and admission collection equipment, such as turnstiles, electric fare boxes, and roto-gates, 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.

Perey Manufacturing Co., Inc., trading as "Perey Turnstile Company," in soliciting the sale of and selling its Superstiles in interstate commerce, agreed to cease and desist from the use in its advertisements or advertising matter of whatever kind or character of tabulations of alleged initial cost comparisons of said Superstiles and the electric fare box equipment of competitors, and which tabulations contain statements or representations, the effect of which is to mislead or deceive purchasers into the belief that the initial cost of such competitive equipment is much in excess of and/or other than what is actually the fact; or to convey or which may tend to convey the belief by purchasers that the equipment of modern buses is such as to necessitate the installation, with its attendant cost, of oversize batteries, special wiring, and special generators, if and when such buses use electric fare box equipment. The said corporation also agreed to cease and desist from the use in its said advertising of statements or representations, the effect of which is to import or imply or which tend or may tend to convey the belief that the use of electric fare boxes of competitors will entail the expenditure of \$200 to cover the cost of battery replacement over 2 years, recharging batteries and replacement of parts; or that insurance is decreased or savings effected on insurance by use of the Superstile over the electric fare box equipment of competitors, when such is not the fact. (Dec. 13, 1937.)

2108. Beer Product—False and Misleading Brands or Labels and Advertising.—Whitewater Brewing Co., a corporation, located at Whitewater, Wis., with a branch office at Chicago, Ill., from which it, together with one Alex Weingart, an individual, sell and distribute a beer product under the trade name or designation "Badger" in inter-

state 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.

Whitewater Brewing Co., and Alex Weingart, in soliciting the sale of and selling their beer product in interstate commerce, agreed to cease and desist from the use on labels affixed to said product or in advertising matter referring thereto of the words "The Pride of Wisconsin" or the word "Wisconsin" either alone or in connection or conjunction with the pictorial representation of the map of Wisconsin or in any way so as to import or imply that the beer product to which said words or word or pictorial representation refers has its origin in the State of Wisconsin and is brewed in said State, when such is not the fact. (Dec. 16, 1937.)

2109. Children's Dresses—False and Misleading Advertising.—Joseph Love, Inc., a corporation, engaged in the business of manufacturing dresses for infants and small children 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.

Joseph Love, Inc., in soliciting the sale of and selling its "Princess Elizabeth" dresses in interstate commerce, agreed to cease and desist from the use in connection with the name "Princess Elizabeth," or otherwise, of statements, pictorial or other representations and insignia identifying the said name with the present British heir apparent, and the effect of which is to import or imply or which may tend to convey the belief by purchasers that said dresses are of English make or origin and/or have received the endorsement or approval of a member of the British royal family, when such is not the fact. (Dec. 17, 1937.)

2110. Flavoring Products, Tooth Powder, Etc.—False and Misleading Brands or Labels and Advertising.—Clyde Foster, an individual trading as C. Foster Chemical Co., engaged in the business of selling and distributing flavoring products, tooth powder, and other 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.

Clyde Foster, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating or representing in his printed or advertising matter or otherwise that certain of his so-called silverware coupons have a value of \$1.15 or any value whatsoever. The said individual also agreed to cease and desist from labeling or otherwise representing his tooth powder as having a price

or value of 75 cents and/or from representing that his fork and spoon set has a price or value of \$1.50 and from representing that either of said products has a price or value in excess of that at which said product is sold in the usual course of competitive trade. The said individual further agreed to cease and desist from the use of the word "free" either independently or in connection or conjunction with any other word or words or in any way as descriptive of merchandise represented to be given free, when in fact the alleged "free" gift is not given free or as a gratuity but can be obtained only for and in consideration of the purchase of merchandise with which the alleged "free" gift is included, or when, in order to obtain certain of the alleged gifts, a further consideration of 35 cents or any other amount is required. (Dec. 20, 1937.)

2111. **Stationery, Etc.—False and Misleading Advertising.**—Myer Osoff, an individual, trading as Paramount Art Co., engaged in the business of printing acknowledgment cards, stationery, and the like, and in the sale and distribution thereof 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.

Myer Osoff, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertising matter of the word "Engraved," either alone or in connection or conjunction with the word "Plateless," or with any other word or words, or in any way, as descriptive of said products so as to import or imply or which may convey or tend to convey the belief by purchasers that said products are the result of impressions made from inked engraved plates commonly known to the trade and purchasing public as "Engraving" or "Embossing," when such is not the fact. (Dec. 20, 1937.)

2112. **Stomach Remedy—False and Misleading Advertising.**—Horace L. Wolfe and Sara Gwin Wolfe, copartners trading as "Wolfe's Laboratories," engaged in the business of compounding a preparation used as a remedy for stomach ulcers, and in the sale and distribution thereof under the trade designation "Wolfe's Compound" 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.

Horace L. Wolfe and Sara Gwin Wolfe, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist from the use in their advertising matter or otherwise of any and all statements or representations or the purported testimonials of alleged users of the product so as to import or imply or which

convey or tend to convey the belief by purchasers that said product has or possesses such therapeutic properties or value so as to be an adequate treatment or remedy for disorders such as ulcers of the stomach and gastritis or that the use of said product will cure such disorders. (Dec. 21, 1937.)

2113. **Electric Brooders—False and Misleading Advertising.**—Luty Hawkins, an individual trading as "Hawkins Million Dollar Hen," engaged in the business of manufacturing electric brooders and in the sale and distribution thereof 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.

Luty Hawkins, in soliciting the sale of and selling his brooders in interstate commerce, agreed to cease and desist from stating or representing by means of advertising matter or otherwise that the pad within the brooder will maintain a constant surface or contact temperature of 105° F. regardless of room temperatures and other conditions, when such is not the fact. The said individual also agreed to cease and desist from the use in said advertising matter or in any other way of the statement "Up to 400% Profit" so as to import or imply or which may tend to convey the belief by purchasers that they, as poultry raisers who use the Hawkins brooder, can make a profit of 400 percent or of any other specified amount on their total investment in the poultry business, when in fact such designated amount of profit is exaggerated and much in excess of the profit on the total investment which is probable of being made by such poultry raisers. (Dec. 21, 1937.)

2114. **Shirts—False and Misleading Brands or Labels and Advertising.**—Rossman-Weaver Co., a corporation, engaged in the sale and distribution, under the trade name "Blair Shirt Company" of shirts 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.

Rossman-Weaver Co., in soliciting the sale of and selling its shirts in interstate commerce, agreed to cease and desist from the use on its labels or tags or otherwise of the words "Non-Wilt" as descriptive of the collars of said shirts, when in fact said collars are not of the "Non-Wilt" or "fused" type of construction as these words are generally understood and accepted to mean by the trade and purchasing public. The said corporation also agreed to cease and desist from the use of the said words "Non-Wilt" in any way so as to import or imply that the collars of said shirts are of "fused" construction or that, because of such implied "Non-Wilt" or "fused" construction,

they will retain soft collar comfort and starched neatness and will not curl or wrinkle, when such are not the facts. The said corporation further agreed to cease and desist from the use of the words "Full Shrunk" or of any other words of similar import or equivalent meaning to designate or describe products which have not been pre-shrunk as that term is generally understood by the trade and purchasing public. (Dec. 22, 1937.)

2115. **Women's Coats and Suits—False and Misleading Brands or Labels and Simulating.**—Joseph Henschel, Jacob Siegel and Philip Alenikoff, copartners trading under the firm name and style of "Siegel & Alenikoff," engaged in the business of manufacturing women's coats and suits and in the sale and distribution thereof in interstate commerce, 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.

Hirsh & Sons, Inc., a corporation, engaged in the business of manufacturing women's coats, including sport coats, and in the sale and distribution thereof under the trade name "Hirshmaur," in interstate commerce, causing said products when sold, to be shipped from its place of business in New York or from its plant at Chicago, Ill., to purchasers thereof, department stores and other buyers, located in various States of the United States, and from more than 5 years last past has caused said products to be labeled in a distinctive style, hereinafter described, with the result that the said products so labeled have become well known to the trade and purchasing public by virtue of said distinctive label as the products of the said Hirsh & Sons, Inc. The distinctive label, as used by the said Hirsh & Sons, Inc., for more than 5 years last past, is of the dimension of approximately $2\frac{3}{4}$ inches square and all of the essential features thereon are set forth, in dark green and include, in particular, the trade name "Hirshmaur" arranged at the top of the label in elliptical form. Each letter of the said trade name contains on the face thereof a plurality of dots. In the center of the label appears a circle within a circle and between which circles are a number of figures, each in the form of a caret. Within the inner circle is the pictorial representation of a deer. On each side of the outer circle are pictorial representations of what appear to be pine trees, the inner two of which are of less height than the outer two. Near the bottom of the label are featured the words "Wrinkle-Dust & Moisture Proof." Below these words appear in much larger type the words "Sport Coat," each letter of the said words being so shaded as to show the background of the label. Said label contains a narrow border and within the same there are distinctive marks of irregular dimensions. Just

below the trade name on the said label and to the right of the circle heretofore described appear the words "Reg. U. S. Pat. Off."

Joseph Henschel, Jacob Siegel and Philip Alenikoff, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from plagiarizing the label of Hirsh & Sons, Inc., referred to in paragraph 2 hereof, or of otherwise duplicating the arrangement, appearance or topography of the said label either in whole or in part or in any other way so as to import or imply that the products to which such duplicating label is affixed are products of the said Hirsh & Sons, Inc. when such is not the fact; from the use of the word "Henshire" in connection or conjunction with any or all of the distinctive topographic or other features which characterize the label used by the said Hirsh & Sons, Inc., in soliciting the sale of and selling its products, so as to import or imply or which may tend to convey the belief by purchasers or prospective purchasers that the products offered for sale and sold by the said copartners are the products of the said Hirsh & Sons, Inc., when such is not the fact; from the use in connection with their trade designation or label of the representation "Reg. U. S. Pat. Off." or of any other similar representation to the effect that said trade designation or label is registered as a trade mark or otherwise in the United States Patent Office, when such is not the fact. (Dec. 23, 1937.)

2116. Ladies' Hosiery—False and Misleading Trade or Corporate Name.—Copal Levin, Bernard Levin, Joseph Levin, and Nathan Levin, copartners trading under the firm name and style of "Dainty Dot Hosiery Mills" engaged in the sale and distribution at wholesale of ladies' hosiery in interstate commerce, in competition with other partnerships, corporations, individuals, firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Copal Levin, Bernard Levin, Joseph Levin, and Nathan Levin, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word "Mills" as part of or in connection or conjunction with their trade name and from the use of the word "Mills" in any way so as to import or imply that the said copartners make or manufacture their said products and/or that they actually own, operate, or directly and absolutely control the plant or factory in which said products are made or manufactured, when such is not the fact. (Dec. 23, 1937.)

2118.¹ Cologne and Toilet Waters—False and Misleading Brands or Labels and Advertising.—Guerlain, Inc., a corporation, engaged in the

¹No. 2117 was assigned to December 23 stipulation as to the facts and agreement to cease and desist in the matter of Allen H. Rabin trading as The Rabin Co., Docket 3275, in which complaint, issued November 29, 1937 and charging respondent with misrepre-

business of selling and distributing certain cologne and toilet waters, 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.

Guerlain, Inc., in soliciting the sale of and selling its cologne and toilet waters in interstate commerce, agreed to cease and desist from the use on labels or stickers affixed to said products or in advertising matter referring thereto of the word "Paris" either alone or in connection or conjunction with any other word or words or in any way so as to import or imply or which tend or may tend to convey the belief by purchasers that said cologne and toilet waters have been made up into the completed, finished products at Paris, France, or in France, and/or have been imported as such completed, finished products from France into the United States of America, when such is not the fact. (Dec. 27, 1937.)

2119. Floor Wax—False and Misleading Advertising and Using Lottery Scheme in Merchandising.—Double B Products Co., Inc., a corporation, engaged in the business of manufacturing floor wax 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 from the alleged unfair methods of competition as set forth therein.

Double B Products Co., in soliciting the sale of and selling its merchandise in interstate commerce, agreed to cease and desist from the use in its advertising matter of any scheme, plan or method of sale or promoting the sale of said merchandise which involves the use of any gift enterprise, lottery or any scheme of chance whereby any article or thing of value is given as a prize or premium for or in consideration of the purchase of any other article; of the word "free" either independently or in connection or conjunction with any other word or words or in any way as descriptive of merchandise represented to be given free, when in fact the alleged "free," gift is not given free or as a gratuity, but can be obtained only for or in consideration of

senting qualities or properties of product in connection with the Avocado oil or other content or alleged content of his "Ruth Rogers" line of cosmetics, including cleansing and tissue creams, astringents, liquid powder base, face powder, rouge and lipstick, was dismissed without prejudice on December 27, 1937 by reason thereof.

Respondent admitted in such stipulation, as therein set forth, the making of false and misleading representations, as above indicated; and agreed (1) to cease and desist therefrom, and from claiming rich Vitamin D or skin nourishing qualities for his tissue cream, or connection with Avocado Beauty Guild of Hollywood, Calif., or its indorsement or sponsorship of his products, and, in event of substantial avocado content of any of his said products and use of word, to accompany same with equally conspicuous explanatory statement covering such partial content, and, (2) that in event of failure to conform to his aforesaid agreement such stipulation might be used in evidence against him in trial of any proceeding which Commission might direct. (See, for dismissal, *supra*, at p. 1299.)

the purchase of merchandise with which the alleged "free" gift is included. (Dec. 27, 1937.)

2120. **Knitted Outerwear—False and Misleading Brands or Labels and Prices.**—Louis Rubin, an individual trading under the various names "Princeton Knitting Mills," "Sports Knitted Sweater Mills," engaged in the business of manufacturing knitted outerwear for men, women and children and in the sale and distribution thereof 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.

Louis Rubin, agreed to cease and desist from selling and distributing in interstate commerce, or from selling and distributing in interstate commerce to others for sale, products to which are affixed tags bearing what purports to be retail selling prices, but which prices are exaggerated and fictitious and/or much in excess of the price or prices at which said products are sold in the ordinary course of trade. (Dec. 28, 1937.)

2121. **Jewelry—False and Misleading Advertising.**—Harry Krisman, Joseph Spector, and Louis Mitchell are copartners trading under the name and style of "Krisman-Frey Jewelers," engaged in the operation of a wholesale and retail business consisting of the sale and distribution of jewelry in interstate commerce 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.

Harry Krisman, Joseph Spector, and Louis Mitchell, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use on their stationery and in their advertising of whatever kind or character of the word "manufacturing" or "manufacturers" either alone or in connection with any other word or words which directly asserts or clearly imports or implies that they make or manufacture the products offered for sale and sold by them and/or that they actually own and operate or directly and absolutely control the factory in which said products are made or manufactured when such is not the fact. (Dec. 29, 1937.)

2122. **Floor and Wainscoting Products—False and Misleading Brands or Labels and Advertising.**—Armstrong Cork Co., a corporation, engaged in the business of manufacturing floor and wainscoting products and in the sale and distribution of same 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.

Armstrong Cork Co., in soliciting the sale of and selling its products in commerce as defined by the act, agreed to cease and desist from representing in any way by the use of the words "Linotile," "Accotile," "Temwood Tile," "Temlok De Luxe Tiles," or "Tile" and said products are "tile," unless in immediate conjunction with the words "Linotile," "Accotile," "Temwood Tile," "Temlok De Luxe Tile," or "Tile," wherever used, there appears in the same conspicuous type a word or words designating the material or substance from which the products are made, such as wood tile, glass tile, rubber tile, asbestos tile, copper tile, cork tile, or metal tile. (Dec. 29, 1937.)

2123. Razor Blades—False and Misleading Brand or Trade Name.—A. L. Mailman and J. L. Mailman, copartners trading under the firm name and style, "Pal Blade Company," engaged in the business of manufacturing razor blades which they, together with Otto E. Kraus, general manager of their branch office at Chicago, Ill., sell and have sold and distributed in interstate commerce, 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.

Florsheim Shoe Co., a corporation organized in 1922 under the laws of the State of Illinois as successor to the business theretofore conducted since 1892 as Florsheim & Co., is engaged primarily in the business of manufacturing shoes to which at all times, since 1892, it and its predecessors continuously applied the word "Florsheim." It and its predecessors spent large sums of money in advertising the name "Florsheim" as applied to shoes. It also sold to its customers novelties for resale or distribution to their customers for advertising "Florsheim" shoes. These novelties included memorandum notebooks, thermometers, match books, playing cards, key rings, ash trays, pencils, pocket knives, cigarette lighters, and golf balls. All of these novelties bore the trade name "Florsheim." As the result of such long continued and extensive advertising, the word "Florsheim" became and now is well known and favorably established in the public mind as designating products offered for sale and sold by Florsheim Shoe Co.

A. L. Mailman and J. L. Mailman and the said Otto E. Kraus, in offering for sale and selling razor blades in interstate commerce, agreed to cease and desist from the use as a brand or trade name for said razor blades, or otherwise, of the word "Florsheim" either alone or in connection or conjunction with any other word or words or in any other way so as to import or imply or which may tend to convey the belief by purchasers that said razor blades are products manufactured by or for Florsheim Shoe Co., referred to in paragraph two hereof, or that the said Florsheim Shoe Co. is in any way interested in the production of said products. (Dec. 30, 1937.)

2124. Razor Blades and Food Flavors—False and Misleading Trade Name, Brands or Labels, and Advertising.—Solomon Nathan, an individual trading as B. & N. Sales Co., engaged in the business of selling and distributing a large variety of merchandise, including razor blades and food flavors, 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.

Florsheim Shoe Co., a corporation organized in 1922 under the laws of the State of Illinois as successor to the business theretofore conducted since 1892 as Florsheim & Co., is engaged primarily in the business of manufacturing shoes to which at all times, since 1892, it and its predecessors continuously applied the word "Florsheim." It and its predecessors spent large sums of money in advertising the name "Florsheim" as applied to shoes. It also sold to its customers novelties for resale or distribution to their customers for advertising "Florsheim" shoes. These novelties included memorandum note books, thermometers, match books, playing cards, key rings, ash trays, pencils, pocket knives, cigarette lighters, and golf balls. All of these novelties bore the trade name "Florsheim." As the result of such long continued and extensive advertising, the word "Florsheim" became and now is well known and favorably established in the public mind as designating products offered for sale and sold by Florsheim Shoe Co.

Solomon Nathan, in offering for sale and selling his products in interstate commerce, agreed to cease and desist from the use as a brand or trade name for his razor blades or in advertising matter referring to said blades of the word "Florsheim," either alone or in connection or conjunction with any other word or words or in any way, so as to import or imply or which may tend to convey the belief by purchasers that said razor blades are products manufactured by or for Florsheim Shoe Co., referred to in Paragraph Two hereof, or that the said Florsheim Shoe Co. is in any way interested in the production of said products; from the use, in its advertising matter or on its products or the wrappers or containers thereof, of any price marking or other means of purportedly representing the retail selling price of a product, when in fact, said price marking or purported selling price is fictitious, exaggerated or in excess of the price for which said products are sold in the usual course of retail trade; from the use of the word "free," either independently or in connection or conjunction with any other word or words or in any way, as descriptive of merchandise represented to be given free, when in fact the alleged "free" gift is not given free or as a gratuity, but can be obtained only for and in consideration of the purchase of merchandise with which the alleged "free" gift is included; from

the use of the word "vanilla" either alone or in connection or conjunction with the word "extract" or with any other word or words, as descriptive of or to designate flavoring products which are not extracts or flavoring material made or prepared from the bean, pod, or capsule of the vanilla plant; provided that when said products simulate the flavor of vanilla and the word "vanilla" is used to represent such flavor, then in that case, the word "vanilla" shall be immediately accompanied by the word "imitation" or by some other word or words printed in type equally as conspicuous as that in which the word "vanilla" is printed so as to indicate clearly that the flavoring of said product is not that of genuine vanilla. (Dec. 30, 1937.)

2125. **Correspondence Courses—False and Misleading Advertising.**—Stewart Y. Morse, an individual trading as "Business Detective System," engaged in the business of conducting a home study course designated "Business Detective System" for the training of students in the art of locating defaulting debtors or customers of merchants and business concerns, selling and distributing his said home study courses 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.

Stewart Y. Morse, in soliciting the sale of and selling his home study courses in interstate commerce, agreed to cease and desist from advertising said courses of study under the classification "Help Wanted" so as to import and imply or which may tend to convey the belief by the public that the advertiser is in a position to offer employment, when such is not the fact. (Dec. 30, 1937.)

2126. **Building Material—False and Misleading Brands or Labels and Advertising.**—Johns-Manville Corp., engaged in the business of manufacturing various lines of building material, including certain merchandise in connection with which the word "tile" is used. It, or a wholly owned subsidiary sells and has sold and distributed said merchandise represented to be "tile" in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged and has entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Johns-Manville Corp., in soliciting the sale of and selling its products in commerce as defined by the act, agreed to cease and desist from representing in any way by the use of the words "Ceiling Tile," "Sanacoustic Tile" or "Tile" that said products are "tile," unless in immediate conjunction with the words "Ceiling Tile," "Sanacoustic Tile" or "Tile," wherever used, there appears in the same conspicuous type a word or words designating the material or substance from

which the products are made, such as wood tile, glass tile, rubber tile, asbestos tile, copper tile, cork tile or metal tile. (Dec. 30, 1937.)

2127. **Women's Coats and Suits—False and Misleading Brands or Labels and Advertising.**—David Konhauzer and Harry Behr, copartners trading as Konhauzer & Behr Co., engaged in the business of manufacturing women's and misses coats and suits and in the sale and distribution thereof in interstate commerce, 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.

David Konhauzer and Harry Behr, in soliciting the sale of and selling their coats in interstate commerce, agreed to cease and desist from the use on labels or otherwise of the words "Harris Tweeds" as descriptive of coats not made or fabricated from Harris Tweeds, a cloth made from virgin wool produced on any of the islands known as the outer Hebrides, and carded, spun and hand-woven by such Islanders in their own homes; and from the use of the said words "Harris Tweeds" in any way so as to import or imply that the products to which such words refer are made or fabricated from Harris Tweeds, when such is not the fact; of the word "imported" or the words "Made in England" either independently or in connection or conjunction each with the other or with any other word or words or in any way as descriptive of the wool of which said products are composed or fabricated, when in fact such wool is not imported from or woven in England; and from the use of the word "Imported" and the words "Made in England" in any way so as to import or imply that the products to which said words refer or the wool from which said products are made or fabricated are or is of English origin and/or imported from England, when such is not the fact. (Dec. 31, 1937.)

2128. **Tombstones and Monuments—False and Misleading Prices and Advertising.**—Searcy C. Spears and Allen M. Shackleford, copartners trading as "Marble Monument Company," engaged in the business of selling and distributing tombstones and monuments in interstate commerce, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Searcy C. Spears and Allen M. Shackleford, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in their leaflets, advertising matter or otherwise, of the statement "A Splendid Value at \$40.00" when in fact such alleged valuation is fictitious and much in excess of the price at which the product to which said statement refers is offered for sale,

sold and expected to be sold in the usual course of trade. Said copartners also agreed to cease and desist from the use of the statement "A Splendid Value at \$40.00" or "Price \$70.00" or any other price representation, in connection with a suggested retail price which is of a less amount than that of the alleged price representation so as to import or imply or which may tend to convey the belief by purchasers that the price of the product has been reduced and/or that the purchasers obtain for the lower figure a product actually having the value of the higher price representation, when such is not the fact. Said copartners further agreed to cease and desist from the use of the word "special" as descriptive of their advertised offer of a product so as to import or imply that the offer is one which, because it is made for a limited time only or for some other stated or implied reason, is other than the usual offer made in the regular course of trade, when such is not the fact. (Dec. 30, 1937.)

2129. **Shampoo—False and Misleading Brands or Labels.**—Sanford Products Corp., engaged in the sale and distribution of a shampoo under the trade designation "Sanford's Sheen Shampoo" 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.

Sanford Products Corp., in soliciting the sale of and selling its shampoo products in interstate commerce, agreed to cease and desist from the use on its labels, cartons or otherwise of the words "Not an oil" or "Not a soap" as descriptive of a product which is in fact, an oil soap; and from the use of the words "Not an oil" or "Not a soap" either independently or in connection or conjunction each with the other or with any other word or words so as to import or imply that the product to which said words refer does not contain oil and/or is not a soap product, when such is not the fact. (Jan. 6, 1938.)

2130. **Underwear, Sportswear, and Diapers—False and Misleading Brands or Labels.**—McLoughlin Manufacturing Co., a corporation, engaged in the manufacture and sale of underwear and sportswear and in selling and distributing diapers under the adopted trade name "Toss-A-Way 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.

McLoughlin Manufacturing Co., trading as "Toss-A-Way Company" agreed, in soliciting the sale of and selling its packaged or cartoned products in interstate commerce, to cease and desist from the use of the word "sterilized" either independently or in connection or conjunction with any other word or words as descriptive of said

products which are not in fact sterile, and from the use of the said word "sterilized" in any way so as to import or imply that said packaged or cartoned products are sterile and that they will continue to be and remain sterile and free from bacteria while contained in their original package or carton, when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "cotton" either alone or in connection or conjunction with "cellu" or with any other word or words or in any way so as to import or imply that the products to which said word or words refer are composed of cotton, when such is not the fact. (Jan. 10, 1938.)

2131. **Paint—False and Misleading Advertising.**—Congress Wall Paper Co., a corporation, engaged under its said corporate name and also under the trade name "Congress Wallpaper & Paint Company," in the sale and distribution of paints in commerce as defined by the act, 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.

Congress Wall Paper Co., in soliciting the sale of and selling its Dur-O-Flow house paint in commerce as defined by the act, agreed to cease and desist from the use of the phrases "From Factory to You," "No Middleman," "You Save the Difference" or "We Manufacture These Paints" or of any other phrases or words of similar meaning, either independently or in connection or conjunction each with the other or with any other word or words so as to import or imply that the said Congress Wall Paper Co. makes or manufactures said paint and/or that it actually owns and operates or directly and absolutely controls the plant or factory in which said paint is made or manufactured, when such is not the fact. (Jan. 10, 1938.)

2132. **Shirts—False and Misleading Brands or Labels.**—Girard Shirt Corp. engaged in the business of manufacturing shirts 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 from the alleged unfair methods of competition as set forth therein.

Girard Shirt Corp., in soliciting the sale of and selling its shirts in interstate commerce, agreed to cease and desist from the use on its labels or otherwise of the words "No Wilt" as descriptive of the collars of said shirts when in fact said shirt collars are not of the "non wilt" or "fused" type of construction as these words are generally understood and accepted to mean by the trade and purchasing public. Said corporation also agreed to cease and desist from the use of the words "no wilt" or the word "starchless" or other word or words of similar meaning so as to import or imply that the collars

of said shirts are of "fused" construction and/or that, because of such implied "fused" construction, said collars are proof against wrinkles and will retain their starched neatness and shape permanently and will not curl, wrinkle or wilt, when such is not the fact. (Jan. 7, 1938.)

2133. **Electric Revolving Clocks—Using Lottery Scheme in Merchandising and False and Misleading Advertising.**—Irving Kirschenbaum, an individual trading as "Knickerbocker Advertising Company," engaged in the sale and distribution of electric revolving clocks 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.

Irving Kirschenbaum, in soliciting the sale of and selling his revolving clocks in interstate commerce, agreed to cease and desist from the use in any manner whatsoever of any scheme, plan or method of selling or of promoting the sale of his said products which involves or includes the use of any lottery, alleged gift enterprise 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 for or in consideration of the payment of any sum of money for the privilege of procuring a chance to participate in such an award, or whereby the price to be paid for any article is determined by lot or chance. The said Irving Kirschenbaum also agreed to cease and desist from the use of the statement "A real \$5.00 value" or of any other statement of similar meaning; when in fact the alleged valuation is fictitious and much in excess of the price at which the product to which said statement refers is offered for sale or sold in the usual course of trade. (Jan. 11, 1938.)

2134. **Seed Inoculants and Plant Stimulators—False and Misleading Advertising.**—Delphi Packing Co., a Massachusetts Trust, heretofore administered by Adelia Maxwell and Edgar E. Maxwell, the latter now deceased, as trustees, for more than 1 year immediately prior to the death of Edgar E. Maxwell, engaged in the business of manufacturing two certain products, alleged seed inoculants and plant stimulators, one being for leguminous plants and the other for nonlegumes, sold and distributed said products under the present trade designation "Deep Root" 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.

Delphi Packing Co., in offering for sale and selling its said products in interstate commerce, agreed to cease and desist from the use in advertisements and advertising matter or in any other way of statements or representations to the effect or which may import or

imply that a bacteria inoculant used with nonlegumes will affect the growth in any way or will cause them to fix nitrogen from the atmosphere, when such is not the fact. They further agreed to cease and desist from stating or representing that the product designated "Deep-Root" is an inoculant or effective treating for seed of the leguminous class, or will protect and stimulate root growth, return the soil in which used back to a neutral state, cause or assist the plants treated therewith to draw or fix nitrogen from the air, build up the vitality of or return and store nitrogen in the soil in which used, prevent plant diseases such as root rot, smut and wilts, or improve the quality or better the yield of the seed treated therewith, when such are not the facts. (Jan. 13, 1938.)

2135. **Band Instruments—False and Misleading Trade Name, Brands or Labels, and Advertising.**—Art Musical Instruments, Inc., a corporation, with its principal place of business at Elkhart, Ind., organized in 1932, its president being Ferdinand A. Buescher, is engaged in the manufacture of a varied line of band instruments 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 from the alleged unfair methods of competition as set forth therein.

Buescher Band Instrument Co. of Elkhart, Ind. was organized by the aforesaid Ferdinand A. Buescher, together with others, in June 1904, and since which time it has been engaged continuously in the business of developing and manufacturing band instruments and in the advertisement and sale thereof throughout the United States under its corporate title, including the word "Buescher." Due to such long period of trading and extensive advertising, the said Buescher Band Instrument Co. has an established good will in its corporate name, and the name "Buescher" identifies the band instruments sold by it.

Art Musical Instruments, Inc., agreed, in offering for sale and selling its instruments in interstate commerce, to cease and desist from the use of the name "F. A. Buescher" or the name "Buescher" either alone or in connection or conjunction with any other words or in any way as a mark, brand or label for said instruments or in advertising matter referring to said instruments so as to import or imply or which tend or may tend to convey the belief that said instruments are produced, made or manufactured by or identified with Buescher Band Instrument Co. of Elkhart, Ind., when such is not the fact. (Jan. 17, 1938.)

2136. **Sweaters, Etc.—False and Misleading Brands or Labels.**—Appalachian Mills Co., a corporation, engaged in the business of manufacturing sweaters and other articles of wearing apparel 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 from the alleged unfair methods of competition as set forth therein.

Appalachian Mills Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on its labels or otherwise of the word "wool" either alone or in connection or conjunction with the word "part" or with any other word or words or in any way as descriptive of said products which contain no wool; and from the use of the said words "Part Wool" in any way so as to import or imply that the products to which said words refer are composed in substantial part of wool, when such is not the fact. (Jan. 17, 1938.)

2137. **Cosmetics—False and Misleading Advertising.**—Maison Jeurelle-Seventeen, Inc., a corporation, engaged in the business of manufacturing cosmetics 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 herein.

Maison Jeurelle-Seventeen, Inc., in offering for sale and selling its cosmetics in interstate commerce, agreed to cease and desist from stating or representing in its advertising matter or otherwise that said preparations are nonallergic or that they had removed therefrom all irritants known to cause and aggravate allergic conditions, when such is not the fact. The said corporation also agreed to cease and desist from the use in its advertisements of whatever kind or character of the statement "Deep Pore Cleanser cleanses your skin below the surface—relieving choked and clogged pores—banishing blackheads, whiteheads, and other annoying skin blemishes" or of any other statement of similar meaning so as to import or imply or which tends or may tend to convey the belief by purchasers that said preparation, when applied to the skin, will penetrate the skin and cleanse and benefit such skin below the surface thereof or banish or entirely remove blackheads and other similar skin blemishes, when such is not the fact. (Jan. 21, 1938.)

2138. **Corsets and Other Garments—False and Misleading Trade Name and Advertising.**—H. C. Logan, an individual trading as "Dr. Logan Health Garment," engaged in the business of selling and distributing corsets and other garments 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.

H. C. Logan agreed to cease and desist from the use of the abbreviation "Dr." of the word "doctor" in connection with the word "Logan" or otherwise as part of his trade name or in his advertising

matter used in connection with the offering for sale or selling his garments in interstate commerce so as to import or imply that there is such a doctor connected or associated with the said individual in the conduct of business by the latter and/or that said garments have been or are made under the supervision or advice of such doctor. Said individual also agreed to cease and desist from the use of the word "Health" as part of his trade name or in his advertising or printed matter used in connection with the offering for sale or selling his garments in interstate commerce so as to import or imply that said garments have special health features not possessed by the ordinary run of competitive garments, when such is not the fact. Said individual further agreed to cease and desist from stating or representing that said garments are "the perfect and final result of many years of experimenting by our foremost designers, physical culturists and medical authorities," when such is not the fact. Said individual also agreed to cease and desist from the use in his advertising or printed matter or in any way of statements or representations, the effect of which is to import or imply or which may tend to convey the belief by purchasers or prospective purchasers that said individual has in his employ persons who have been and are specially prepared in the art of making accurate and proper measurements and who are properly qualified to fit the garments, when such is not the fact. (Jan. 21, 1938.)

2139. **Can Openers—False and Misleading Advertising.**—Magic Products Co., a corporation, engaged in the business of manufacturing can openers and in the sale and distribution thereof under the trade name "Magic" 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.

Magic Products Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of exaggerated or erroneous statements or representations respecting the volume of sales and/or profits allegedly realized by dealers in its commodities. (Jan. 25, 1938.)

2140. **Corsets—False and Misleading Advertising.**—Stylette Corset Co., a corporation, engaged in the business of selling and distributing corsets 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.

Stylette Corset Co., in soliciting the sale of and selling its garments in interstate commerce, agreed to cease and desist from the use in its advertising or printed matter or otherwise of the words

"expert corsetiers" or of any other words, statement, or representation, the effect of which is to import or imply or which may tend to convey the belief by purchasers or prospective purchasers that the said corporation has in its employ experts or persons who have been and are specially trained in the art of making accurate and proper measurements and who are properly qualified to fit the garments, when such is not the fact. (Jan. 22, 1938.)

2141. Ointment for Varicose Ulcers—False and Misleading Trade Name and Advertising.—Lanac Chemical Co., a corporation, engaged in the business of compounding a paste or ointment to be used for the alleged treatment of varicose ulcers, and in the sale and distribution thereof under the adopted trade name "Dr. Latham Chemical 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.

Lanac Chemical Co. agreed to cease and desist from the abbreviation "Dr." of the word "doctor" in connection with the name "Latham" or otherwise as part of its trade name or in its advertising matter used in connection with the offering for sale or selling its product in interstate commerce so as to import or imply that there is such a doctor connected or associated with the said corporation who is a duly authorized or licensed physician having authority to practice the science of medicine or any branch of such science, when such is not the fact. Said corporation also agreed to cease and desist from the use in its advertisements and advertising matter of the statement "A positive way to heal varicose ulcers, old sores" or of any other statement of similar meaning so as to import or imply or which may tend to convey the belief by purchasers or prospective purchasers that said product is a complete and adequate cure for varicose ulcers and/or that it will remove the cause of such ulcers, when such is not the fact. The said corporation further agreed to cease and desist from stating or representing that its compound or preparation has been "used in leading clinic" or that a certain large varicose ulcer was cured in a period of 3 weeks time through the use of "Dr. Latham's Compound," when such is not the case. Said corporation also agreed to cease and desist from stating or representing its product to be a "new" product when in fact such is not the case. (Jan. 22, 1938.)

2142. Hosiery—False and Misleading Trade Name and Brands or Labels.—Fred Elfman, Louis Elfman, and William Elfman, copartners trading as "New Way Hosiery Company," engaged in the sale and distribution of hosiery, in interstate commerce, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and de-

sist from the alleged unfair methods of competition as set forth therein.

Belding-Heminway-Corticelli of New York, N. Y., is now and for a number of years past has been engaged in the sale and distribution of hosiery in commerce between and among various States of the United States. For many years, the said concern affixed to certain of its hosiery sold in interstate commerce a label which featured the picturization of a cat's head carrying a spool of thread suspended from the cat's mouth. The word "Corticelli" appeared below this picture. The same picture is now carried on the letterheads of said concern together with the trade name containing the word "Corticelli." Due to such manner of advertising and sales over a period of years, hosiery thus identified by brands or labels bearing the word "Corticelli" and the picturization of a cat's head carrying a spool of thread suspended from the cat's mouth is generally understood and recognized by the trade and purchasing public to be merchandise of the said Belding-Heminway-Corticelli.

Fred Elfman, Louis Elfman, and William Elfman, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word "Corticelli" and the picturization of the cat's head, or of either the word "Corticelli" or the picturization of the said cat's head, either independently or in connection or conjunction with any other word or words or in any way as a mark, brand, or label for said hosiery so as to import or imply or which may tend to convey the belief that said hosiery is the product of Belding-Heminway-Corticelli, when such is not the fact. (Jan. 26, 1938.)

2143. Caps—Failure to Disclose.—Abraham Sager, Max Sager, and David Lipman, copartners trading under the firm name and style of "Sager, Lipman & Company," engaged as jobbers in the sale and distribution of hats and caps in interstate commerce, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Abraham Sager, Max Sager, and David Lipman agreed, and each of said individuals agreed, to cease and desist from offering for sale and selling in interstate commerce caps made or manufactured from or which contain second-hand, old, worn, or used materials, unless and until there is stamped upon or securely affixed or attached to such caps in a conspicuous place so as to be readily and easily seen a brand or label which cannot be easily or readily removed and which clearly indicates thereon by suitable words or phraseology that said caps are made or manufactured from or contain second-hand, old, worn, or used materials. (Jan. 26, 1938.)

2144. **Furs—False and Misleading Brands or Labels and Advertising.**—Sears, Roebuck & Co., a corporation, engaged in the business of selling a general line of merchandise at retail and also by mail order and in the 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.

Sears, Roebuck & Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its catalogs or other advertising matter of the words "Hudson Seal" either alone or in connection or conjunction with any other word or words or in any way so as to import or imply that such coats are made from dyed muskrat, when such is not the fact; provided that, when or if the words "Hudson Seal" are used to describe coats made from dyed muskrat, then in which case, the correct name of the fur, "Muskrat," shall appear as the last name of the description and be immediately preceded by the words "Hudson Seal—Dyed" so as to read "Hudson Seal—Dyed Muskrat," each of said words being printed in equally conspicuous type and in a single line. Said corporation also agreed to cease and desist from representing, designating, or describing coats offered for sale or sold by it in interstate commerce in any way other than by the use of the correct name of the fur from which said coats are made as the last word of the description and it shall be printed in type not less conspicuous than that in which accompany descriptive words are printed; and when any dye or blend is used to simulate another fur, the true name of the fur, appearing as the last word of the description and printed as aforesaid, shall be immediately preceded by the word "dyed" or "blended" compounded with the name of the simulated fur, as thus: Black Seal—Dyed Coney, Brown Beaver—Dyed Coney. (Jan. 28, 1938.)

2145. **Perfumes—False and Misleading Brands or Labels and Advertising.**—Groville Sales Corp., engaged in the sale and distribution in interstate commerce of two certain lines of perfumes, one being known as the Grenoville line and the other as the Potter & Moore line, 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.

Groville Sales Corp. agreed to cease and desist from the use on labels or in advertising matter, referring to products offered for sale and sold in interstate commerce, of the words "London, England" or "Paris, France," or of the word "London," "England," "Paris," or "France," either independently or in connection or conjunction

with any other word or words, or in any way, so as to import or imply or which tend or may tend to convey the belief by purchasers that the said products, respectively, have been blended or compounded into the finished product at London, England, or in England, or at Paris, France, or in France and/or have been imported from England or France into the United States of America, when such is not the fact. (Jan. 27, 1938.)

2146. **Correspondence Courses, Text Books, Etc.—False and Misleading Advertising.**—Lee Mountain, an individual trading under such name, engaged in the sale of used text books, correspondence school lessons, and similar equipment and in the distribution thereof 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.

Lee Mountain, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his catalogs or other advertising matter of the statements "One may obtain the same instruction or training as one would by taking the course direct from the schools," "One may obtain practically the same instruction or training as one would by taking the course direct from the schools," or of any other statements of similar meaning so as to import or imply or which may tend to convey the belief by prospective students that they would receive lesson assignments which would be corrected by the said Lee Mountain with such additional and supplementary instructions as might be necessary in each individual case or that the student could obtain the same helpful instructions and training as the average correspondence school student would obtain from the correspondence school, when such is not the fact. (Jan. 31, 1938.)

2147. **Stationery, Etc.—False and Misleading Advertising.**—Personal Stationery Corp. of New York, a corporation, engaged in the printing of business stationery, calling cards and the like 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 from the alleged unfair methods of competition as set forth therein.

Personal Stationery Corp. of New York, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, in its advertisements or advertising matter distributed in interstate commerce or in any other way, of the word "engraving" or "engraved" either alone or in connection with the word "plateless" or with any other word or words as descriptive of its products so as to import or imply or which tend or may tend to convey the belief by purchasers that said products are the result

of impressions made from inked engraved plates commonly known to the trade and purchasing public as "engraving." (Feb. 1, 1938.)

2148. **Dinnerware—False and Misleading Prices and Advertising.**—Stetson China Co., Inc., a corporation, engaged in the sale and distribution of dinnerware, including china, glass, and silverware, 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.

Stetson China Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from using or placing in the hands of its dealer customers or others for their use of any advertising, plan, or method of sale wherein the stated value or regular price of any of its products do not reflect or represent the true value thereof or the regular, normal, or usual price at which said products are to be and are sold in the ordinary course of retail trade; the use of the word "free" either independently or in connection or conjunction with any other word or words or in any way as descriptive of merchandise represented to be given free, when in fact, the alleged "free" gift is not given free or as a gratuity but can be obtained only for or in consideration of the purchase of merchandise with which the alleged "free" gift is included; the use of the phrase "Save 50%" in connection with a purported retail selling price of products so as to import or imply that in buying said products at the price for which they are to be and are regularly sold in the usual course of retail trade, the purchaser effects a saving of the specified amount, when such is not the fact. (Feb. 1, 1938.)

2149. **Duplicating Machines—False and Misleading Advertising.**—Gordon Dhein, an individual trading as "Universal Repro-Graph Company," engaged in the business of selling duplicating machines 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.

Gordon Dhein agreed to cease and desist from the use on his letter-heads or other printed matter or in his advertising of whatever kind or character of the word "manufacturers," "manufactured," "factory" or of any other word or words of similar meaning so as to import or imply or which may cause or tend to cause purchasers to believe that the said Gordon Dhein makes or manufactures the products offered for sale or sold by him and/or that he actually owns and operates or directly and absolutely controls plants or factories in which said products are made or manufactured. The said Gordon Dhein also agreed to cease and desist from the use in his advertising

matter of the figure "\$7.95" or of any other price representation in connection or conjunction with the pictorial or other representation of a machine so as to import or imply or which may tend to confuse, mislead, or deceive purchasers into the belief that the pictured or represented machine can be purchased at the represented price when such is not the fact. The said individual further agreed to cease and desist from making any false or misleading statements or representations in his advertising matter or otherwise as to the earnings or the probable earnings of salesmen engaged in selling his products. (Feb. 1, 1938.)

2150. **Putty—False and Misleading Brands or Labels and Advertising.**—Harry Sussman and Michael Schnitzel, copartners engaged in the business of manufacturing putty and in the sale and distribution thereof 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.

Harry Sussman and Michael Schnitzel, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word "linseed" or the words "pure linseed" as descriptive of putty, when in fact the vehicle used in the mixing of said putty is not composed of linseed oil; and from the use of the word "linseed" either alone or in connection or conjunction with the word "pure" or with any other word or words or in any way so as to import or imply that the vehicle used in the mixing of said putty is composed of linseed, when such is not the fact; provided that, if and when the vehicle used in the mixing of said putty is composed in substantial part of linseed oil and the word "linseed" is used to describe the linseed oil content of said vehicle, then in which case the word "linseed" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "linseed" is printed so as to indicate clearly that the vehicle used in the mixing of said putty is not composed wholly of linseed oil but is composed in part of a material or matter other than linseed oil. (Feb. 8, 1938.)

2151. **Saddle Soap—False and Misleading Brands or Labels.**—Richard Trading Corp., engaged in the business of selling at wholesale a leather 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.

Richard Trading Corp., in soliciting the sale of and selling its "Bramford" soap in interstate commerce, agreed to cease and desist from stating or representing on labels affixed to said product or other-

wise that its said product conforms to United States Government specifications. (Feb. 8, 1938.)

2152. Caps—Failure to Disclose.—A. Gorbaty and David Gof, copartners trading as A. Gorbaty, engaged in the business of manufacturing caps and in the sale and distribution thereof to jobbers, including Maurice A. Volk and Simon Volk, copartners trading as Volk Manufacturing Co., engaged in offering for sale and selling said caps in interstate commerce, 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.

A. Gorbaty and David Gof agreed, and each of them agreed, to cease and desist from offering for sale and selling caps to the jobbing or other trade engaged in reselling said caps in interstate commerce, or from otherwise placing caps or causing them to be placed in the channels of interstate commerce, said caps being made of or manufactured from or containing second-hand, old, worn, or used material, unless and until there is stamped upon or securely affixed or attached thereto, in a conspicuous place so as to be readily and easily seen, a brand or label which cannot be easily or readily removed and which clearly indicates thereon by suitable words or phraseology that said caps are made or manufactured from or contain second-hand, old, worn, or used materials. (Feb. 8, 1938.)

2153. Caps—Failure to Disclose and False and Misleading Trade Name.—Maurice A. Volk and Simon Volk, copartners trading as Volk Manufacturing Co., engaged in the sale and distribution of caps in interstate commerce, 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.

Maurice A. Volk and Simon Volk agreed, and each of them agreed, to cease and desist from offering for sale and selling in interstate commerce caps which are made or manufactured from or which contain second-hand, old, worn or used materials, unless and until there is stamped upon or securely affixed or attached thereto, in a conspicuous place so as to be readily and easily seen, a brand or label which cannot easily or readily be removed and which clearly indicates thereon by suitable words or phraseology that said caps are made or manufactured from or contain second-hand, old, worn, or used materials. Said copartners also agreed to cease and desist from the use of the word "Manufacturing" as part of or in connection with their trade name or otherwise in soliciting the sale of and selling their products in interstate commerce so as to import or imply that the said copartners make or manufacture the products offered for sale and sold by them or that they actually own and operate

or directly and absolutely control the plant or factory in which said products are made or manufactured. (Feb. 8, 1938.)

2154. **Patent Medicines—False and Misleading Advertising.**—Edward G. Fabarius, an individual trading under his said name, engaged in the business of selling two patent medicines, namely, Peeke's Medicine and Root's Elepizone, 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.

For a number of years prior to October 1936, Edward G. Fabarius was engaged as an employee in a business which consisted of the preparation in accordance with certain formulae of two medicinal products, one being known as "Peeke's Medicine" and the other as "Root's Elepizone", the principal ingredients of each of which having been in medical use upwards of half a century to alleviate the discomforts incidental to epileptic seizures. The said business in which the said Edward G. Fabarius was employed as aforesaid had its origin in or about 1877 and since which time it has been continuously conducted by one Parker R. Whitcomb and his successors. For several years last past, said business has been carried on by Ellaline Whitcomb Chilvers, a daughter of the aforesaid Parker R. Whitcomb, under the firm names "Peeke Medicine Company" and "Root Medicine Company." During such period of time the said products have been extensively sold and advertised in interstate commerce by the said Parker R. Whitcomb and his successors and have become identified in the minds of the purchasing public with the said persons.

Edward G. Fabarius, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his letterheads, printed matter, or otherwise of statements or representations which directly assert or clearly import or imply that the Peeke Medicine Co. has changed ownership; that it is being operated by those who are unfamiliar with the compounding of Peeke's Medicine; that Edward G. Fabarius was the chief consulting chemist for the Peeke Medicine Co.; that Edward G. Fabarius prepared this medicine under the personal supervision of Professor W. H. Peeke up to the time of the latter's death in 1916, or at all; that Edward G. Fabarius is the only one who has the formula for Peeke's Medicine, when such are not the facts. (Feb. 8, 1938.)

2155. **Watches, Etc.—Failure to Disclose and False and Misleading Trade Name.**—Samuel B. Davis, an individual trading as Crescent City Smelting Co., engaged in the business of selling and distributing watches and other items of jewelry in interstate commerce, in com-

petition 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.

Samuel B. Davis agreed to cease and desist in offering for sale and selling in interstate commerce repaired, old, second-hand or used watches without prominently and conspicuously disclosing that such watches are not new and/or that they are repaired, old, second-hand, or used watches. Said individual also agreed to cease and desist from the use of the word "Smelting" as part of the trade name under which he conducts his business, and from the use of the word "smelting" in any other way so as to import or imply that he is engaged in the smelting business, that is to say, the process of treating ores or other crude materials, as the term "smelting" is generally understood to mean. (Feb. 8, 1938.)

2156. **Rubber Products—False and Misleading Advertising.**—Hartus R. Wilkinson, an individual trading under the name and style of "Defiance Rubber Company," engaged in the sale and distribution of rubber bands, sponge rubber, and other rubber goods 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.

Hartus R. Wilkinson, in offering for sale and selling his products in interstate commerce, agreed to cease and desist from the use in his advertising matter or otherwise of the word "Manufacturers" or the abbreviation "Mfrs." or of any other word or words of similar meaning so as to import or imply that the said Hartus R. Wilkinson makes or manufactures said products and/or that he actually owns and operates or directly and absolutely controls the plant, mill or factory in which said products are made or manufactured, when such is not the fact. (Feb. 10, 1938.)

2157. **Frozen Confections—Using Lottery Scheme in Merchandising.**—Joe Lowe Corp., engaged in the sale and distribution of sticks, bags, equipment and miscellaneous supplies used in connection with the manufacture of frozen confections of the type allegedly covered by certain United States Patent rights owned by Good Humor Corp. of America, an Ohio corporation, and under which patents rights the said Joe Lowe Corp. has been and is now licensed to license others to manufacture such confections. Pursuant to its license, the said Joe Lowe Corp. entered into agreements with the various manufacturers throughout the United States of America licensing the latter to produce frozen confections under the aforesaid patents. And the said Joe Lowe Corp. has sold its products, consisting of sticks, bags,

equipment, and miscellaneous supplies, to such licensed manufacturers who used said products in the manufacture of frozen confections. The said Joe Lowe Corp. causes and has caused said products, when sold, to be shipped from its place of business in the State of New York to such licensed manufacturers located in States other than the State of New York. In the course and conduct of its business, Joe Lowe Corp. has been at all times, in competition with other corporations, individuals, firms, and partnerships likewise engaged. Joe Lowe Corp. entered into the following agreement to cease and desist from the alleged unfair methods as set forth therein.

Joe Lowe Corp. agreed to cease and desist from using or licensing others to use in connection with the offering for sale and selling of frozen confections, any scheme, plan, or method of sale or of promoting the sale of its products which involves the use of any gift enterprise, lottery, or scheme of chance whereby any article is given as a prize or premium for or in consideration of the purchase of any other article. (Feb. 11, 1938.)

2158. Popcorn—False and Misleading Brands or Labels and Advertising.—Robinson Popcorn Co., Inc., a corporation, engaged in the processing and packing of popcorn 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 from the alleged unfair methods of competition as set forth therein.

Robinson Popcorn Co., Inc., in soliciting the sale of and selling its popcorn in interstate commerce, agreed to cease and desist from the use on the containers of its said product or in its advertising matter referring thereto of the phrases "100% Poppability," "Every Bag 100% Perfect" or of either of said phrases or of any other phrase, word or words of similar meaning so as to import or imply or which may tend to convey the belief to purchasers that said corn will pop 100 percent perfect or in its entirety, when such is not the fact. (Feb. 10, 1938.)

2159. Candy Products—Using Lottery Scheme in Merchandising.—Westminster Manufacturing Co., a corporation, and its officers Lee G. James, president, Enoch R. James, treasurer, and Harry E. James, secretary, engaged in the business of manufacturing candies 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 from the alleged unfair methods of competition as set forth therein.

Westminster Manufacturing Co. and Lee G. James, Enoch R. James, and Harry E. James, agreed, and the said corporation and

each of the said individuals agreed, in soliciting the sale of and selling candy products in interstate commerce to cease and desist from the use of any scheme, plan, or method of sale or of promoting the sale of said products which involves the use of any gift enterprise, lottery, or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article. (Feb. 10, 1938.)

2160. **Electric Belt—False and Misleading Advertising.**—William Ekern and Emma Lou Ekern, copartners trading under the firm name and style "Electrocure Company," engaged in the business of manufacturing a type of electric belt purportedly designed to benefit certain diseases and ailments of the human body, and in the sale and distribution of said belts 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.

William Ekern and Emma Lou Ekern, in offering for sale and selling their "Electrocure Belt" in interstate commerce, agreed to cease and desist from stating or representing by means of testimonials or otherwise in their advertising matter or in any way whatsoever that the said belt will have any physiological or pharmacological action within the body of the user thereof or any portion of such body subjected to the alleged magnetic field produced by it, or that it has any physical-therapeutic effect thereon or will aid in the prevention, treatment, or cure of any physical or mental sickness, ailment or disorder. (Feb. 11, 1938.)

2161. **Hair Clippers and Massage Machines—False and Misleading Advertising.**—John Oster Manufacturing Co., engaged in the business of manufacturing portable motor-driven hair clippers, massage machines and similar barber supply equipment, 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 from the alleged unfair methods of competition as set forth therein.

John Oster Manufacturing Co. agreed, in soliciting the sale of and selling its portable clipper in interstate commerce, to cease and desist from the use in its advertising matter or otherwise of statements or representations to the effect that the "Oster" clipper is the only portable clipper which permits complete and convenient sterilization; that the "Oster" clipper, when used, will produce no vibration or is capable of "vibrationless performance" or that substantially equivalent minimum vibrational performance is not possible with any of the competitive clippers on the market; that the said John Oster Manufacturing Co. is the only manufacturer of a portable clipper

that is able to power any size or type of cutting blade, when such are not the facts.

The said corporation also agreed to cease and desist, in connection with the offering for sale and selling its electric "Scientific Massage Machine," from the use in its advertising or otherwise of statements or representations such as "Massage assists the hair appendages in their proper functioning," "Stimulates organic changes," "Soothes the nerves," "Correct facial massage is an excellent aid to beauty, it keeps the natural color in the cheeks, minimizes the head, cheek, and neck wrinkles, it tends to eliminate the fine lines from the eyes," "Helps remove the double chin," or of any other statements or representations of similar meaning, when in fact there is no actual proof that any such results can be obtained from the use of said machine. (Feb. 11, 1938.)

2162. **Lubricating Product—False and Misleading Trade Name, Brands or Labels, and Advertising.**—Kotofom Corporation of America is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal place of business located at South Bend, in the State of Indiana. Lubritex Manufacturing Co. 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, Ill. Edward J. Becker serves as president of the said Kotofom Corporation of America and as chairman of the said Lubritex Manufacturing Co. Lubritex Manufacturing Co. is engaged in the business of manufacturing a lubricating product containing an amount of graphite placed in a motor carrier oil and which product it ships from its place of business at Chicago, Ill., to Kotofom Corporation of America at South Bend, Ind., which corporation, trading as "Lubritex Laboratories," in turn, sells and has sold said product in interstate commerce, in competition with other corporations likewise engaged. Said corporations entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Kotofom Corporation of America and Lubritex Manufacturing Co., in connection with the offering for sale and selling "Lubritex" in interstate commerce or placing said product in the hands of others for sale in interstate commerce, agreed to cease and desist from the use, either directly or through salesmen or in advertising matter or otherwise, of any and all statements or representations to the effect that said product, containing graphite, will penetrate the microscopic pores of metal surfaces or fill up scores, scars or scratches and thus prevent loss of power from friction-drag and "blow-by" and assure maximum operating efficiency and gas and oil economy; that any effective purpose is served by the filling of the pores and scratches

with said product; that gasoline and oil consumption will be noticeably different or that 20 percent or more will be saved in gasoline and oil because of the use of said product; that said graphite product will eliminate "dry starting"; that the use of said product will effect or afford a permanent lubrication; that the use of said product will prevent unworn bearing surfaces from becoming worn or will build up worn bearing surfaces; that salesmen engaged in selling said product will realize profits up to 113 percent or \$10 or \$12 per day, when in fact there is no positive proof or definite evidence to substantiate such representations. Said corporations also agreed, and each of them agreed, to cease and desist from the use of the word "new" as descriptive of said product whose lubricating property is attributable to its graphite content, a medium which has been in use as a lubricant for many years last past. Said corporations also agreed, and each of them agreed, to cease and desist from stating or representing that the lubricating substance, graphite, that is contained in said product has its origin in Asia Minor and/or that the motor oil used as a carrier for said substance is a "Pennsylvania" motor oil, when such are not the facts. The said Kotofom Corporation of America also agreed to cease and desist from the use in connection with the sale of its product in interstate commerce of the word "Laboratories" as part of or in connection with its trade name, and the said Lubritex Manufacturing Co. agreed to cease and desist from placing said product in cans or cartons for sale in interstate commerce under a trade or other name containing the word "Laboratories," when in fact no laboratories are maintained for scientific experimentation. (Feb. 11, 1938.)

2163. **Plushes and Cotton and Rayon Goods—False and Misleading Brands or Labels and Advertising.**—Herman D. Mendelsohn, an individual trading as H. D. Mendelsohn Co., engaged in the sale and distribution of merchandise, including plushes and cotton and rayon goods, 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.

Herman D. Mendelsohn, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use on his letterheads, in his advertising matter, or otherwise of the word "manufacturers" or of any other word or words of similar meaning, 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 Herman D. Mendelsohn makes or manufactures the represented products offered for sale and sold by him and/or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. The said indi-

vidual also agreed to cease and desist from the use of the word "silk" either alone or in connection or conjunction with any other word or words as descriptive of products which are not composed of silk, the product of the cocoon of the silk worm, and from the use of the word "silk" in any way so as to import or imply that said products are composed of silk, when such is not the fact. (Feb. 15, 1938.)

2164. **Lubricating Product—False and Misleading Brands or Labels and Advertising.**—Colt-Worthington Oil Works, Inc., a corporation, is engaged in the business of compounding greases and lubricating oils, the latter including "Pylon" which contains a colloidal graphite as an ingredient and is of two types, "C" for addition to lubricating oil, and "F" for addition to fuel used in internal combustion motors, both gasoline and Diesel. Pylon "F" is merely Pylon "C" to which has been added about 20 percent petroleum naphtha. Said corporation has sold said products in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, and has entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Colt-Worthington Oil Works, Inc., in soliciting the sale of and selling its "Pylon" product in interstate commerce, agreed to cease and desist from the use in its advertisements or on the containers of said product of statements or representations which directly assert or clearly import or imply that said product is the only product of its kind, or that it will penetrate the naked metal and thus make the metal self-lubricating or self-lubricated, or that it and the colloidal graphite contained therein will prevent or forever banish metal to metal contact, or that it will eliminate hard carbon, as distinguished from light, flaky carbon, or that it is a product of experienced lubricating engineers or the result of research experience in laboratory or proving grounds, or that the use of colloidal graphited lubricants will prolong the life of internal combustion engines, increase their efficiency, or reduce noise, wear, oil and gasoline consumption, when such are not the facts. (Feb. 16, 1938.)

2165. **Men's Suits and Topcoats—False and Misleading Brands or Labels and Advertising.**—Sheldon Tailoring Co., a corporation, engaged in the sale and distribution of men's suits and topcoats 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.

Sheldon Tailoring Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its printed or advertising matter or otherwise of the word "Wool" or the words "All Wool" or the phrase "100% All Wool" as

descriptive of products which are not composed of wool, and from the use of the word "Wool" in any way so as to import or imply that the products to which said word refers are composed of wool, when such is not the fact; *Provided*, That if said products are composed in substantial part of wool and the word "Wool" is used to describe such wool content, then in that case the word "Wool" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Wool" is printed so as to indicate clearly that said products are not composed wholly of wool but are composed in part of a material or materials other than wool; *Provided further*, That if said products are composed of two or more fabrics or materials, each in substantial quantity, and the name of each of said materials is used to describe it, then in that case, the names of the materials shall be printed in equally conspicuous type and arranged in the following manner, to wit: The prevailing materials shall be named first and followed by the name of the other material or materials in the order of their predominance. (Feb. 19, 1938.)

2166. **Books—False and Misleading Advertising.**—Walter J. Black, an individual trading as Book Coupon Exchange, engaged in the sale of sets of books, 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.

Walter J. Black, in offering for sale and selling his books in interstate commerce, agreed to cease and desist from the use in his advertising matter of the statement "Embossed and Stamped in Gold" or of any other statement of similar import as descriptive of the markings or letterings of said books which are not in fact, embossed or stamped in gold or gold leaf; and from the use of the word "gold" in any way so as to import or imply that the material used in the markings or letterings of said books is gold or gold leaf, when such is not the fact. (Feb. 17, 1938.)

2167. **Men's Hosiery—False and Misleading Brands or Labels and Advertising.**—Baker-Cammack Hosiery Mills, a corporation, engaged in the business of manufacturing men's hosiery 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 from the alleged unfair methods of competition as set forth therein.

Baker-Cammack Hosiery Mills, 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 independently or in connection or conjunction with any other word or words as descriptive of hosiery or of the inner lining thereof which is not composed of silk, the

product of the cocoon of the silk worm, and from the use of the word "silk" in any way so as to import or imply that said hosiery or the inner lining thereof is composed wholly of silk when such is not the fact; *Provided*, That if said hosiery or the inner lining thereof is composed in substantial part of silk and in part of a material or materials other than silk, and the word "silk" is used as descriptive of such silk content, then in that case the word "silk" shall be immediately 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 said hosiery or the inner lining thereof is not composed wholly of silk but is composed in part of a material or materials other than silk; *Provided further*, That if the hosiery or the inner surface thereof is composed of two or more fabrics or materials, each in substantial part, and the name of each of the materials is used to describe it, then in that case, the names of the materials shall be printed in equally conspicuous type and arranged in the following manner, to-wit; The prevailing material shall be named first and followed by the name of the other material or materials in the order of their predominance. (Feb. 28, 1938.)

2168. **Ball Bearings—Failure to Disclose and False and Misleading Advertising.**—Harold Benedict Co., Inc., a corporation, engaged in the business of selling ball bearings 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.

Harold Benedict Co., Inc. agreed to cease and desist from advertising, offering for sale or selling used bearings or merchandise in interstate commerce without properly and conspicuously disclosing the fact that said products are used, old, worn, second-hand products, and from the use of any and all statements or representations, oral or written, the effect of which is to import or imply that said products are new and unused, when in fact such is not the case. (Mar. 1, 1938.)

2169. **Burial Vaults—False and Misleading Advertising.**—Con-O-Lite Corp., is the owner of United States Letters Patent relating to the manufacture of burial vaults, the alleged composition of which is a hard and abrasive carbon to which are added gauged proportions of Portland Cement and astringent chemicals. The said corporation is engaged in the business of selling licenses to manufacturers who, in turn, are engaged in the manufacture of burial vaults constructed under said patents and in the sale thereof in interstate commerce. The said Con-O-Lite Corp. cooperates and has cooperated with its said licensee manufacturers in the sale of said burial vaults in inter-

state commerce through advertisements and advertising matter relating to said vaults and which advertising matter the said Con-O-Lite Corp. has caused to be inserted in publications shipped from the state where published or printed through and into other states. Con-O-Lite Corp., cooperating with and assisting said licensee manufacturers in soliciting the sale of and selling in interstate commerce burial vaults manufactured under said Letters Patent, in competition with other manufacturers, 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.

Con-O-Lite Corp., in connection with soliciting the sale of and selling burial vaults constructed under or in accordance with the aforesaid United States Letters Patent, agreed to cease and desist from the use in interstate commerce and from cooperating with others in the use in interstate commerce of advertisements and advertising matter of whatever kind or character in which statements or representations are made that directly assert or clearly import or imply that said vaults will give or afford complete and lasting or eternal protection or assurance of perfect preservation, regardless of the passage of time, to bodies encased therein, or that said vaults will endure immune to disintegration or to electrolysis, oxidation, and corrosion which destroys so-called ordinary materials, or that said vaults are proof against destructive forces or will remain forever impervious to water or will make a sunken grave forever impossible. Said corporation also agreed to cease and desist from the use in its said advertising matter of the aforesaid statements or representations or of any other statements or representations of similar meaning, the effect of which is to convey or tend to convey the belief by purchasers that said statements or representations as to the alleged eternal or everlasting durability ascribed to said vaults are based upon tests which actually have been made, when in fact, no such tests have been or can be made. (Mar. 1, 1938.)

2170. Books—False and Misleading Advertising.—Doubleday, Doran & Co., Inc., engaged in the business of publishing books, while its wholly owned subsidiary, Garden City Publishing Co., Inc. is engaged in the publication of reprints, sell, and distribute their respective publications 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.

Doubleday, Doran & Co., Inc. and Garden City Publishing Co., Inc., in soliciting the sale of and selling books in interstate commerce, agreed to cease and desist from the use in advertisements or

advertising matter of the words "Gold Stamping" or "Stamped in Gold" as descriptive of said books which are not in fact stamped in gold or gold leaf, and from the use of the word "Gold" in any way so as to import or imply that the material used in marking or stamping said books is gold or gold leaf, when such is not the fact. (Mar. 3, 1938.)

2171. **Candy—False and Misleading Brands or Labels and Advertising.**—Euclid Candy Co. of New York, Inc., a corporation, engaged in the business of manufacturing candy and in the sale thereof 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.

Euclid Candy Co. of New York, Inc., in soliciting the sale of and selling its candy or fudge in interstate commerce, agreed to cease and desist from the use in its circular matter or on the boxes containing said product of the words "Kitchen-Made" in connection with the picturization of a woman apparently engaged in the making of candy at home so as to import or imply that said candy is a home-made product, when such is not the fact. The said corporation also agreed to cease and desist from the use of the words "Kitchen-Made" in any way as descriptive of its candy so as to import or imply or which tend to convey or may tend to convey the belief that said candy is a home-made product as distinguished from a factory-made product. (Mar. 4, 1938.)

2172. **Food Products—False and Misleading Advertising.**—Nature Food Centres, Inc., a corporation, engaged in the sale and distribution, under the trade names "Health Mode Products Company," "Health Mode Bakeries," "Live Brand," and "Zubrant," of food products in interstate commerce, 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.

Nature Food Centres, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of whatever kind or character of statements or representations, the effect of which is to import or imply that its "Bongo" product is beneficial to all types of ailments and diseases or that said product is health-preserving for everybody or that it has therapeutic value in connection with any type of infectious disease, such as tuberculosis; that its "Zubrite" product has any therapeutic value in regard to constipation due to mechanical disturbances, such as adhesions; that its product designated "Live Vegetable Laxative Tablets" will tone up the entire alimentary tract

or will destroy germs in colon or soothe colonic inflammation; that the minerals allegedly present in its product "Pure Kelp Tablets" are a recognized aid in the treatment and prevention of glandular disturbances, goitre, anemia, rickets, low vitality, and many other ailments due to mineral deficiency, or that all of said ailments are the result of mineral deficiencies and that these will be supplied through the use of said Pure Kelp Tablets; that its product designated "Live Chocolate Garlic Tablets," due to its garlic content, will aid and cure the following: Colds, Coughs, Tuberculosis, Asthma, Bronchitis, Kidney Troubles, Arthritis, Dizziness, High Blood Pressure, Neurasthenia, Nerve Depletion, Stomach Troubles, Intestinal Disorders, Rheumatism, Fatigue, Insomnia, when in fact there is no proper basis for such statement or representation; that its product designated "Grainalfa Food Tonic" will cure sexual impotency, that its product designated "Live Vegetable Tonic Tablets" contains all of the lacking minerals for the cure of anemia, kidney trouble, liver trouble, stomach ailments, rheumatism, neuritis, nervousness, and under-nourishment in children, or that all of said ailments or diseases result from the lack of certain organic minerals which will be supplied through the use of said product; that its product designated "Vitolectic Oil," which is to be applied externally, will permanently cure, or cure, any organic disease conditions or, in fact, any of the diseases as follows: Colds, grip, hay fever, influenza, bronchitis, sore throat, inflamed eyes, sinus trouble, asthma, swollen tonsils, barber's itch, athlete's foot, pelvic pains, abdominal pains, headaches, sores, sprains, bruises, lame muscles, cramps, rheumatism, arthritis, falling hair, toothache, pyorrhea, and partial deafness; that persons whose diet is "20% alkaline and 80% acid" are tottering on the brink of the grave, when in fact there is no basis for such statement; that all persons who use "Vegethin Tea and Tablets" or either of said products, will reduce in weight regardless of the cause of obesity or that said products will be absolutely safe for everybody; that the penetrating qualities claimed for its "Zubrant Tooth Powder" are supported by ample proof and that the said product is the result of experiments, investigation and study in its own laboratory or laboratories, when such is not the fact; that its product designated "Live Vegetable Calcium Tablets" is an effective treatment for tooth decay, bone diseases, anemia, goitre, female troubles, nervous breakdowns, asthma, tuberculosis, migraine headaches, eczema, epilepsy, insanity, high blood pressure, gland diseases, pyorrhea, stomach ulcers, earache, poor memory, and general debilitation; that the use of its product "Live Vegetable Phosphate Tablets" will relieve or is an adequate treatment for all nervous diseases regardless of the cause thereof; that its product designated "Live Solvent Vegetable Tablets" will be of benefit in all cases of arthritis, sciatica or any other type of rheumatism without further

qualification; that the use of its product "Live Vegetable Iron Tablets" will in all cases bring new life and pep to the user or rid such user of nervousness or revitalize such user; that its product "Herbalm" will effect "first aid" for the relief and cure of constipation or is a proper treatment for constipation in all cases; that its product "Live Brand Vitamin Tablets" contain all of the important vitamins, when in fact there is no adequate proof that all of the important vitamins have been actually added to said product in its natural state; that its product "F. H. V. Tablets" has therapeutic properties so that its use will cleanse livers which are supercharged with poisons or will ward off acidosis by keeping the blood stream pure and at the same time keep the individual at the top-notch of physical health or will be an effective liver tonic unless and until such statements and representations are supported by adequate proof; that, with reference to its product "G. P. L. Tablets," garlic has long been known as a powerful internal antiseptic valuable in destroying bodily toxins and helpful in kidney, liver and intestinal ailments, or that lettuce has soothing and sedative qualities and is an excellent tonic in cases of nervous exhaustion or depletion, or that parsley is helpful to weak kidneys and irritated bladders; that its "Peroka Tablets" are a preventative and quick relief for ulcers of the stomach and allied disorders; that its product "Live Brand Peppermint Leaves" will relieve headache, insomnia, brain-fag and other nervous troubles, or that it is one of the most potent purifiers, or that it will neutralize poisons in the system and increase resistance; that its product "Live Dietetic Corrective Compound" will prevent or help prevent diabetes or will prove valuable in the treatment of that disease or will accomplish what drugs, as insulin, will do for such disease. Said corporation also agreed to cease and desist from the use in its advertising matter or otherwise of such unqualified statements or representations as "Are you digging your grave with a sugar spoon," "The curse of white sugar," "Don't eat white sugar candies," "Let's do away with death dealing diets," "Don't poison your system with salt," "Ordinary white table salt now has its addicts who are slowly killing themselves," "A cause of cancer!" "Our most reputable physicians say that the growth of cancer is quickened by inorganic salt and water added to the body," and the like. (Mar. 4, 1938.)

2173. **Plush and Pile Fabrics—False and Misleading Brands or Labels.**—The Hind & Harrison Plush Co., a corporation, engaged in the business of manufacturing so-called plush and pile fabrics simulating various furs in appearance, 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 Hind & Harrison Plush Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use or from placing in the hands of others for their use of labels on which appears the word "fur" as descriptive of said products not made or fabricated from the fur or pelt of a fur-bearing animal, and from the use of the said word "fur" so as to import or imply that the products to which said word refers are made or fabricated from the fur or pelt of a fur-bearing animal, when such is not the fact. Said corporation also agreed to cease and desist from the use or from furnishing its customers for their use of labels bearing the word "Seal" either alone or in connection with the word "Hudson" or "Fur" or any other word or words so as to import or imply that the products thus labeled are made or fabricated from the fur or pelt of a seal, when such is not the fact. Said corporation further agreed to cease and desist from the use or from furnishing its customers for their use of labels bearing the words "Angor Lam" or any other phonetic spelling or contraction of the word "Lamb" either alone or in connection with the word "Fur" or with any other word or words so as to import or imply that the products to which said word or words refer are made or fabricated from the fur or pelt of a lamb, when such is not the fact. (Mar. 4, 1938.)

2174. Hosiery—False and Misleading Brands or Labels.—Danville Knitting Mills, a corporation, engaged in the business of manufacturing hosiery for men, women and children 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 from the alleged unfair methods of competition as set forth therein.

Danville Knitting Mills, in connection with the offering for sale and selling its hosiery in interstate commerce, agreed to cease and desist from the use of the word "wool" either alone or in connection with any other word or words as a mark, stamp or brand for said hosiery which is not composed of wool, and from the use in any way of the words "wool," "Wulmix," or "Wolray" or any other simulation or phonetic spelling of the word "Wool" so as to import or imply or which may tend to convey the belief by purchasers that the hosiery thus designated or referred to is composed of wool, when such is not the fact; from the use of the word "silk" either alone or in connection with the word "pure" or with any other word or words as descriptive of hosiery which is not in fact composed of silk, the product of the cocoon of the silk worm, and from the use of the word "silk" in any way so as to import or imply that the hosiery to which said word refers is composed of silk, when such is not the fact; *Provided*, That if the body or boot of said hosiery is composed of silk, with the top, heel and toe thereof composed of material other than silk, and the

word "silk" is used to describe the silk content of said hosiery, then in which case, the word "silk" shall be immediately 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 said hosiery is not composed wholly of silk or so as to indicate clearly that the top, heel and toe thereof are not composed of silk or are composed of material other than silk; from the use of the words "rayon and silk" either alone or in connection with any other word or words as descriptive of hosiery which is not in fact composed wholly of rayon and silk, each in substantial quantity, and from the use of the words "rayon and silk" in any way so as to import or imply that the hosiery to which said words refer is composed wholly of rayon and silk, each in substantial quantity, when such is not the fact; *Provided*, That if the body or boot of said hosiery is composed of rayon and silk, each in substantial quantity, with the top, heel and toe thereof composed of material other than rayon and silk, and the words "rayon and silk" are used to describe the rayon and silk content of said hosiery, then in which case, the words "rayon and silk" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the words "rayon and silk" are printed so as to indicate clearly that said hosiery is not composed wholly of rayon and silk or so as to indicate clearly that the top, heel and toe thereof are not composed of rayon and silk or are composed of material other than rayon and silk. (Mar. 5, 1938.)

2175. Molasses—False and Misleading Brands or Labels.—William H. Burns, an individual, trading as Atlantic Syrup Refining Co., engaged, among other things, in the business of selling molasses in interstate commerce, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

William H. Burns, in soliciting the sale of and selling his molasses product in interstate commerce, agreed to cease and desist from the use of the words "Extra Fancy Barbados Molasses" as a mark, stamp, brand, or label for said product which is not composed wholly of molasses originating from the Island of Barbados, and from the use of the word "Barbados" either alone or in connection with any other word or words or in any way as descriptive of molasses other than Barbados Molasses; provided that, if said product is composed of a blend having as an ingredient thereof Barbados Molasses in substantial quantity and another ingredient or ingredients other than Barbados Molasses, and the word "Barbados" is used to refer to such Barbados Molasses content, then in which case the word "Barbados" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Barbados" is

printed so as to indicate clearly that said product is not composed wholly of Barbados Molasses but is a blend or product in which Barbados Molasses is but one of two or more ingredients. (Mar. 9, 1938.)

2176. Trophies and Hollow-ware—False and Misleading Advertising.—Dodge, Inc., a corporation, engaged in the business of manufacturing trophies and hollow-ware 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.

Dodge, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter or otherwise of the word "Sungold" to represent, designate or describe said products, and from the use of the word "Gold" either independently or in connection with the word "Sun" or with any other word or words that may import or imply that said products are composed of gold, when such is not the fact; provided that, if a part of the product is plated with gold in substantial thickness, and the words "Gold-Plated" are used to describe such part of said product that is substantially plated with gold, then in which case, the words "Gold-Plated" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Gold-Plated" are printed so as to indicate clearly that only the part of said product so represented is plated with gold in substantial thickness and which will otherwise properly and accurately limit the word "Gold" to describe only the part of said product which is actually plated with gold in substantial thickness. (Mar. 9, 1938.)

2177. Pile Fabrics—False and Misleading Brands or Labels.—Collins & Aikman Corp., Inc., engaged in the business of manufacturing pile fabrics and in the sale thereof 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.

Collins & Aikman Corp., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use or from furnishing others for their use labels on which appear the words "Hudson Seal" or the word "Kurlifir" or any simulation or phonetic spelling of the word "fur" in any way so as to import or imply that the products thus labeled are made or fabricated from the fur or pelt of a seal or fur bearing animal, when such is not the fact. (Mar. 10, 1938.)

2178. Men's Hose—False and Misleading Advertising.—Weber and Heilbronner, Inc., a corporation, engaged in the business of selling,

by mail order and otherwise, men's hose, among other things, 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.

Weber and Heilbronner, Inc., agreed, in offering for sale and selling its hose in interstate commerce, to cease and desist from the use in its advertisements and advertising matter or otherwise of the word "silk" either alone or in connection with the word "pure" or with any other word or words as descriptive of said hose which is not in fact composed wholly of silk, the product of the cocoon of the silk worm, and from the use of the word "silk" in any way so as to import or imply that the hose to which said word refers is composed wholly of silk, when such is not the fact; provided that, if the body or boot of said hose is composed of silk, with the top, heel and toe of said hose composed of material other than silk, and the word "silk" is used to describe the silk content of said hose, then in which case, the word "silk" shall be immediately 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 said hose is not composed wholly of silk or so as to indicate clearly that the top, heel and toe of said hose are not composed of silk or are composed of material other than silk. (Mar. 15, 1938.)

2179. Tools—Failure to Disclose.—Eugene Henry, Clyde Spartman, Percy Henry, and William Henry, co-partners trading under the firm name and style of "Stream Line Tools," engaged in the business of selling a line of tools, including files, in interstate commerce, 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.

Eugene Henry, Clyde Spartman, Percy Henry, and William Henry, agreed and each of them agreed, to cease and desist from offering for sale or selling in interstate commerce old, worn, used, or second-hand products which have been resharpened and reconditioned without clearly disclosing and indicating the fact that said products are resharpened and reconditioned and/or are not new. (Mar. 17, 1938.)

2180. Comforters, Cushions, Etc.—False and Misleading Advertising.—Comfy Manufacturing Co., a corporation, engaged in the business of manufacturing comforters, cushions, and other articles of merchandise 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 agree-

ment to cease and desist from the alleged unfair methods of competition as set forth therein.

Comfy Manufacturing Co., in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from the use of the word "Down" either independently or in connection or conjunction with the word "Snuggle" or with any other word or words so as to import or imply that the filler content of said products is composed of down obtained from water fowl; and from the use in its advertising matter or in advertising matter furnished by it to others for their use of the word "Down" in any way which tends or may tend to convey the belief by the purchasing public that the filler content of said products is composed of the down obtained from water fowl, when such is not the fact. (Mar. 17, 1938.)

2181. Men's Suits and Overcoats—False and Misleading Trade Name and Advertising.—Louis F. Dedekind, an individual trading as Western Wool Growers Association, engaged in the business of selling men's suits and overcoats 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.

In the year 1920, a number of wool growers, for the most part located in Montana, formed an association which was named "Western Wool Growers Association" and whose purpose was to convert, and which did convert, surplus wool owned by the association members into garments and blankets and which products were thereafter sold by the said association to the wholesale and retail trade throughout the United States. The said association had an office at Chicago, Ill. which was managed by Louis F. Dedekind. The said association ceased to function as such late in the year 1921.

Louis F. Dedekind agreed to cease and desist from the use of the words "Western Wool Growers Association" as a trade name under which to advertise, offer for sale or sell his products in interstate commerce and from the use of the trade name "Western Wool Growers Association" or of any simulation thereof either alone or in connection with the statement "Since 1920—17 Years of Progress" or in any way so as to import or imply that the business conducted by the said individual is that of the Western Wool Growers Association referred to in paragraph 2 hereof, or is a continuation of the business formerly conducted by the said Western Wool Growers Association, or that his said business had its origin in 1920, or that his business is that of a group or association of companies or individuals engaged in the growing of wool which is used in making the garments sold by him, or that his business is other than a private business. The said individual also agreed to cease and desist from

the use of the words "manufacturing tailors" as descriptive of the business conducted by him, and from the use of the word "manufacturing" in any way so as to import or imply that the said individual or the so-called "Western Wool Growers Association" actually owns and operates or directly and absolutely controls the plant, mill, or factory in which are made or manufactured the products sold by said individual, when such is not the fact. (Mar. 17, 1938.)

2182. **Motor Oil—False and Misleading Advertising.**—Lion Oil Refining Co., a corporation, engaged in the refining of a motor oil and in the sale and distribution of said product under the trade name "Naturalube" 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.

Lion Oil Refining Co., in soliciting the sale of and selling its Naturalube product in interstate commerce, agreed to cease and desist from stating or representing that said product "Will not sludge," when in fact said product will sludge. (Mar. 17, 1938.)

2183. **Ladies' Hosiery—False and Misleading Advertising.**—Emanuel M. Roth, an individual trading as E. M. Roth Hosiery Co., engaged as a distributor in the business of selling ladies' hosiery, 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.

Emanuel M. Roth, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use on his stationery or printed matter of whatever kind or character of the word "Manufacturers" as descriptive of the business conducted by him, and from the use of the word "Manufacturers" either alone or in connection with any other word or words or in any way so as to import or imply that he makes or manufactures the products sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured when such is not the fact. (Mar. 22, 1938.)

2184. **Poultry Remedies—False and Misleading Advertising.**—G. E. Conkey, a corporation, engaged in the business of selling certain poultry remedies, including "Conkey's Nikala Worm Tablets" and "Conkey's Poultry Worm Powder," in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreements to cease and desist from the alleged unfair methods of competition as set forth therein.

G. E. Conkey Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from statements or

representations in its advertisements and advertising matter or otherwise, the effect of which is to convey the belief by purchasers or prospective purchasers or which may import or imply that said product is an effective remedy or treatment for the removal of all types of worms or tape worms and/or possesses deworming capabilities in excess of what is actually the fact. (Mar. 21, 1938.)

2185. **Finger Nail Polish—False and Misleading Advertising.**—Juliette D'Arian Horney, an individual, trading as Countess D'Arian Cosmetic Co., engaged in the sale of cosmetics, including finger nail polish designated "Countess D'Arian Creme Polish for Brittle Nails" and a finger nail polish remover and conditioner, 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.

Juliette D'Arian Horney, in soliciting the sale of and selling said "Countess" D'Arian products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter or otherwise of statements or representations which directly assert or import or imply that the said products, or either of them, due to the Vitamin F content thereof or for other reason, will relieve brittleness in finger nails when externally applied thereto, or will permit said nails to "breathe," or will nourish or feed said nails or have any effect upon the nails to which the same is externally applied other than to mechanically lubricate or soften the same. (Mar. 25, 1938.)

2186. **Baby Chicks—False and Misleading Advertising.**—James W. E. Drew, an individual trading as Trinity Heights Hatchery, engaged in the business of hatching baby chicks and in the sale thereof 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.

James W. E. Drew, in soliciting the sale of and selling baby chicks in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter of statements or representations, the effect of which is to import or imply or which may tend to import or imply that all of the baby chicks sold by him were hatched from 240 to 320 egg layers or from egg layers of any other designated quantity and/or that all of said chicks, when grown, would be egg layers of the designated quantity, when and if such is not the fact; that said chicks, regardless of their breed, would be larger bodied upon maturity than those of similar breeds sold by competitors or that all of said chicks, when grown, would be of such size as to be properly designated "Giant Type," when and if such is not the fact. (Mar. 28, 1938.)

2187. **Tie Fabrics—False and Misleading Brands or Labels and Advertising.**—John Hand & Sons, Inc., a corporation, engaged in the business of manufacturing tie fabrics and its sales agents, James Rosenthal and Robert J. Wright, copartners trading as Rosenthal & Wright, engaged in the sale and distribution of the said products to tie manufacturers in interstate commerce, in competition with other corporations, partnerships, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

John Hand & Sons, Inc. and James Rosenthal and Robert J. Wright, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the words "woven by hand" or the word "woven" in connection or conjunction with the words "by hand" or with the picturization of a hand or in any other way so as to import or imply that said products are woven by hand or on a hand loom, when such is not the fact. (Mar. 29, 1938.)

2188. **Medicinal Product—False and Misleading Brands or Labels and Advertising.**—Scientific Manufacturing Co., a corporation, engaged in the business of manufacturing medicinal products, including Pheno-Isolin in both liquid and ointment form, the ointment consisting essentially of Pheno-Isolin incorporated in a wax or paraffin base, 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.

Scientific Manufacturing Co., in soliciting the sale of and selling its product, Pheno-Isolin, in interstate commerce, agreed to cease and desist from the use of its labels, in its advertising, or otherwise, of statements or representations which directly assert or import or imply that said product is either an antitoxin or a germicide or that it has or possesses antitoxic properties or acts as a "sure" germicide when used as or in connection with the treatment of the various maladies named or referred to in said advertising. Said corporation also agreed to cease and desist from stating or representing that said product, when used as directed, will prevent or destroy infection, dissolve all kinds of bacteria, neutralize all bacteria toxins, or be useful as an antiseptic, disinfectant, or germicide for all kinds of injury, skin infections, sore and septic sore throats, diphtheria, and the like, or eliminate the possibility of tetanus or blood poisoning, cure all cases of athlete's foot, or beneficially treat all cases of ulcerated cancers, or be a remedy for hemorrhoids generally. Said corporation further agreed to cease and desist from the use in its advertising of

whatever kind or character, on its labels, or otherwise, of any and all statements or representations, the effect of which is to convey or which may tend to convey the belief that the product, Pheno-Isolin, possesses or has properties or value as a germicide, antiseptic or disinfectant in excess of what is actually the fact. (Apr. 15, 1938.)

2189. Safety Razors—False and Misleading Trade Name and Advertising and Using Lottery Scheme in Merchandising.—J. H. Tigerman, Inc., a corporation, engaged in the business of assembling a type of safety razor provided with massaging attachments and in the sale thereof 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.

J. H. Tigerman, 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 or in any other way of the word "electric" either alone or in connection with any other word or words as descriptive of its shaver or clippers whose shaving action is accomplished by the use of a cutting blade which functions only as does that employed in connection with an ordinary safety razor, and from the use of the word "electric" in any way so as to import or imply or which may tend to convey the belief by purchasers that the shaving action of said device is accomplished by electrically induced vibration or movement of the cutting parts thereof, when such is not the fact; of the work "Slick" or any other simulation of the word "Schick" either alone or in connection or conjunction with any other word or words as a trade name for its shaving device so as to import or imply or which may tend or tends to confuse, mislead, or deceive purchasers into the belief that said device is a product which is made or manufactured by Schick Dry Shaver, Inc., of Stamford, Connecticut; of the price representation "\$10.00" or the statement "\$10.00 Value" or of any other price representation or valuation of its product which is greatly exaggerated and much in excess of the price at which said product is offered for sale or sold in the usual course of business; of any scheme, plan, or method of selling or promoting the sale of its products which involves or includes the use of any lottery, gift enterprise, 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 for or in consideration of the payment of any sum of money for the privilege of procuring a chance to participate in such award or whereby the price to be paid for any article is determined by lot or chance. (Apr. 15, 1938.)

2190. Shotguns—False and Misleading Brands or Labels and Advertising.—L. Oppleman, Inc., a corporation, engaged in the business of selling sporting goods and other merchandise, including shotguns, 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.

I. **Oppleman, Inc.**, in soliciting the sale of and selling its shotguns in interstate commerce, agreed to cease and desist from the use of the word "Nitro" as a mark, stamp, or brand for said guns which in fact have not been individually proven by test to be suitable for use with nitro powder; and from the use of the word "Nitro" either alone or in connection with any other word or words or in any way as descriptive of the guns so as to import or imply that said guns have been individually proof-tested to determine and establish the suitability thereof for use with nitro powder, when such is not the fact. (Apr. 18, 1938.)

2191. **Woolen Fabrics—False and Misleading Trade or Corporate Name and Advertising.**—**Darley Mills Co., Ltd.**, a corporation of England, trades in the United States of America through its representatives, **Morris Rodstein and William Iselin and Co., Inc.**, engaged in the sale and distribution of woolen fabrics 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.

Darley Mills Co., Ltd., **Morris Rodstein and William Iselin and Co., Inc.**, in soliciting the sale of and selling products in interstate commerce, agreed to cease and desist from the use of the word "Mills" as part of or in connection or conjunction with the corporate or trade name under which said business is conducted, and from the use of the word "Mills" or "Manufacturers" either alone or in connection with the words "Leeds, England" or with any other word or words or in any way so as to import or imply that the said **Darley Mills Co., Ltd.**, has mills at Leeds, England, or that it makes or manufactures the products sold as aforesaid under the said name "**Darley Mills Co., Ltd.**," when such is not the fact. (Apr. 21, 1938.)

2192. **Fountain Pens—False and Misleading Advertising.**—**Nassau Pen & Pencil Corp.**, engaged in the business of selling at wholesale fountain pens and pencils, principally to pitchmen or itinerant demonstrators, 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.

Nassau Pen & Pencil Corp., in connection with the offering for sale and selling its fountain pens in interstate commerce, agreed to cease and desist from the use of the words "Life Time Guarantee" or of any other words or statement of similar meaning so as to import

or imply or which tend or may tend to convey the belief by purchasers that the said pens are of a quality properly represented or referred to as "life time" or are pens whose span of usefulness or durability justifies a "life time" guarantee, when such is not the fact. (Apr. 22, 1938.)

2193. Electric Shavers—Maintaining Resale Prices.—Schick Dry Shaver, Inc., a corporation, engaged in the business of manufacturing electrically operated dry shavers 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 from the alleged unfair methods of competition as set forth therein.

Schick Dry Shaver, Inc., in connection with the offering for sale and selling its products in interstate commerce, agreed to cease and desist making agreements, either oral or written, which involve cooperation with its dealer-customers to maintain a fixed or dictated retail selling price or to restrain, limit or otherwise impede the channels of distribution of said products, the effect or tendency of which said agreements is to take away the dealer's right to legitimately fix or otherwise control the price at which he may desire to sell said products which he has purchased and owns, or to sell such products to whom he may desire and at such profit as he may elect; carrying into effect its sales policy by cooperative methods in which the said corporation and its dealer-customers undertake to prevent others from obtaining Schick Dry Shavers or at less than the price designated by said corporation by the practice of reporting the names of dealers who do not observe such retail prices; by causing dealers to be enrolled upon "Do Not Sell" or blacklists of offending purchasers who are not to be supplied or further supplied with the products of said corporation or unless and until they have given satisfactory assurance of their purpose to maintain such designated price in the future; by employing salesmen to assist in such plan by reporting dealers who do not observe such resale price, and giving orders of purchase only to such dealers as sell at the suggested price and refusing to give such orders to dealers who sell at less than such price or who sell to others who sell at less than such price; by utilizing serial numbers or other symbols upon said products with a view to ascertaining the names of dealers who sell said products at less than the suggested price or who sell to others who sell at less than such price in order to prevent such dealers from obtaining further supplies of said products; by accomplishing the fulfillment of a price or sales policy fixed by said corporation through the utilization of any other cooperative means, including the pledge by dealer-customers not to sub-job or to divert goods to other dealers.

Provided, That nothing herein contained shall prohibit contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and *Provided further*, That the preceding proviso shall not permit any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between the Schick Dry Shaver, Inc., and any other manufacturer or producer, or between wholesalers, or between brokers, or between factors, or between retailers of the products of the Schick Dry Shaver, Inc., or between persons, firms, or corporations in competition with each other in the products of the Schick Dry Shaver, Inc. (Apr. 26, 1938.)

2194. Courses of Instruction, Books, Etc.—False and Misleading Trade Name and Advertising.—John A. Youngstrom and Edward C. Dusatka, copartners trading as “American College,” engaged in the business of conducting a school, both resident and correspondence, offering courses of instruction designated “Business Administration,” “Secretarial Science,” and “Complete Accountancy,” selling said courses of instruction, including books, mimeograph lesson papers, and the like, in interstate commerce, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

John A. Youngstrom and Edward C. Dusatka, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word “College” as part of or in connection or conjunction with their trade-name, and from the use of any trade-name containing the word “College” in their advertising or printed matter distributed in interstate commerce so as to import or imply or which may confuse, mislead, or deceive prospective students into the belief that the said copartners are conducting a college or that their school is a college, that is to say, an educational institution for instruction in various branches of higher learning and which is empowered to confer degrees in said branches. Each of the said copartners also agreed to cease and desist from representing, either directly or through their salesmen or by any other

means whatsoever, that their school is equipped with campus, gymnasium, swimming pool, and buildings and that it supports all usual college activities except a football team, or that it will furnish accommodations whereby resident students may earn their room and board or that it will secure employment for the student immediately upon completion by him or her of the course of instruction, or that civil service positions would be obtained without further efforts through the Government, or that said school maintains in its own premises the best Diesel Engineering School in the United States, or that it has 1,500 or other designated number of resident students, or that the amount stated at the time of enrollment covers all possible charges, or that students would receive regular college credits for their work at school, when such are not the facts. Said copartners also agreed to cease and desist from stating or representing, either directly or through their salesmen or advertising matter, that so-called scholarships offered by them have a designated valuation, when in fact such valuation is fictitious and much in excess of regular fixed tuition. Said copartners further agreed to cease and desist from stating or representing that said scholarship is tendered as a reward for merit to but one or two students in each town or community, when in fact the scholarship award is given to anyone who can be induced to enroll regardless of the number or the scholastic record of the student. Said copartners also agreed to cease and desist from the use in their advertising or printed matter of the pictorial representation or photograph of a building in connection with a group of persons and the statement "American College Group" so as to import or imply or which may tend to mislead or deceive prospective students or purchasers into the belief that the pictured building is owned or occupied by the said school. (Apr. 29, 1938.)

2195. **Furniture—False and Misleading Advertising.**—William Patrick King, an individual, trading as The Sample Furniture Shops, engaged in the business of selling furniture 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.

William Patrick King, in soliciting the sale of and selling his furniture in interstate commerce, agreed to cease and desist from the use in his advertising matter of whatever kind or character of the words "furniture market samples" or of any other words, phrase, or statement of similar meaning as descriptive of said furniture which directly asserts or imports or implies that said furniture has been displayed or exhibited by or for the manufacturer thereof at any of the established or recognized furniture exhibition buildings, such as

those located in Chicago, Ill., New York City, and Jamestown, N. Y., Grand Rapids, Mich., and High Point, N. C., and, therefore, is furniture of the type customarily designated "furniture market samples" by the trade and which the trade and a substantial portion of the purchasing public generally understands and recognizes the said words to mean. The said William Patrick King also agreed to cease and desist from the use in his advertising matter of statements or representations to the effect that furniture offered for sale and sold by him is the "entire output of two large furniture factories" or that the business conducted by the said William Patrick King is that of a wholesaler or factory distributor or that said merchandise is offered for sale or is purchasable at factory prices, when such is not the fact. (Apr. 25, 1938.)

2196. **Colloidal Product—False and Misleading Advertising.**—Mineral Plant Food Co., a corporation, engaged in the business of marketing a colloidal product under the trade name of "Phoscaloids" 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.

Mineral Plant Food Co., in soliciting the sale of and selling its product "Phoscaloids" in interstate commerce agreed to cease and desist from the use in its advertising matter of whatever kind or character of statements or representations which directly assert or import or imply that the said product has been subjected to 3,000 or other specified number of field tests, when such is not the fact. Said corporation also agreed to cease and desist from stating or representing that the mineral elements contained in said product are "rare" so as to import or imply that such mineral elements are other than those which are encountered in varying proportions in practically all soils in the United States of America, when such is not the fact. (May 4, 1938.)

2197. **Silk and Rayon Products, Etc.—False and Misleading Brands or Labels and Advertising.**—B. Altman & Co., a corporation, engaged in the business of operating a number of department stores located in New York City and White Plains, N. Y., and in East Orange, N. J., and from which stores the said corporation sells and distributes 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.

B. Altman & Co., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Silk" or "Satin" either alone or in connection with any other word or words as descriptive of products not composed of silk, the

product of the cocoon of the silk worm, or as descriptive of products made of rayon; and from the use of either of the said words in any way so as to import or imply that the products to which said word refers are composed of silk, when such is not the fact; the use of the words "Metal Cloth" as descriptive of products which are not composed of fabric woven wholly or in substantial part of threads of metal; the use of the word "Celanese" or "Acetate" in advertising, describing, branding, labeling, or otherwise representing products composed of rayon, unless, when said word "Celanese" or "Acetate" is so used, then in that case, the said words shall be immediately accompanied by the word "Rayon" printed in type equally as conspicuous as that in which the word "Celanese" or "Acetate" is printed so as to clearly and unequivocally indicate the true fabric content of said products; representing in any way that rayon products advertised, offered for sale, or sold by said corporation are not rayon or are something other than rayon. (May 4, 1938.)

2198. Electric Safety Razors—Maintaining Resale Prices.—Progress Corp., engaged in the business of selling, among other articles of merchandise, electrically operated safety razors under the trade name "Packard Lektro-Shaver" 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.

Progress Corp., in connection with the offering for sale and selling its Packard Lektro-Shavers in interstate commerce, agreed to cease and desist making agreements, either oral or written, which involve cooperation with its dealer customers to maintain a fixed or dictated retail selling price or to restrain, limit, or impede the channels of distribution of said products, the effect or tendency of which said agreements is to take away the dealer's right to legitimately fix or otherwise control the price at which he may desire to sell the said products which he has purchased and owns, or to sell such products to whom he may desire and at such profit as he may elect; carrying into effect its sales policy by cooperative methods in which the said corporation and its jobbing or retailer customers undertake to prevent others from obtaining Packard Lektro-Shavers at less than the price designated by the said corporation by the practice of reporting the names of dealers who do not observe such resale price; by causing dealers to be enrolled upon blacklists of so-called "undesirable" purchasers who are not to be supplied with the products of said corporation unless and until they have given satisfactory assurance of their purpose to maintain such designated price in the future; by employing salesmen to assist in such plan by reporting dealers who do not observe the suggested resale price, and giving orders of purchase only to such dealers

as sell at the suggested price and refusing to give such orders to dealers who sell at less than such price or who sell to others who sell at less than such price; by utilizing serial numbers or other symbols upon said products with a view of ascertaining the names of dealers who sell said products at less than the suggested price, or who sell to others who sell at less than such price in order to prevent such dealers from obtaining further supplies of said products; *Provided*, That nothing herein contained shall prohibit contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and *Provided further*, That the preceding proviso shall not permit any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between the Progress Corp. and any other manufacturer or producer, or between wholesalers, or between brokers, or between factors, or between retailers of the products of the Progress Corp., or between persons, firms, or corporations in competition with each other in the products of the Progress Corp. (May 4, 1938.)

2199. Ladies' Undergarments—False and Misleading Brands or Labels and Advertising.—Ralco Undergarment Corp., engaged in the business of manufacturing ladies' undergarments made of rayon, rayon and silk, and in the sale thereof 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.

Ralco Undergarment Corp., 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 or in its advertising of whatever kind or character pertaining thereto of the words "Pure Dye" or the word "Satin" or "Crepe" either alone or in connection or conjunction each with the other or with any other word or words as descriptive of said products which are not composed of silk, the product of the cocoon of the silk worm, and from the use of the said words "Pure Dye," "Satin," or "Crepe" in any way so as to import or imply that the products or the material from which said products are made is composed of silk, when such is not the fact. The said corporation

further agreed to cease and desist from causing its products, which are made from fabric composed of rayon, to be invoiced, offered for sale, sold, distributed, advertised, described, branded, labeled, or otherwise represented as being something other than rayon or without clearly and unequivocally disclosing the fact that the said products are made from fabric composed of rayon. (May 2, 1938.)

2200. Dresses and Blouses—False and Misleading Brands or Labels and Advertising.—Hecht Brothers Co., Inc., a corporation, engaged in the business of operating department stores in the City of New York, at Baltimore, Md., and in Washington, D. C., and in selling a general line of merchandise, including dresses and blouses, in interstate commerce and within the District of Columbia, 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 connection with the advertisement, offering for sale or selling of its garments in interstate commerce agreed to cease and desist from the use of the word "Crepe" as descriptive of those of its said garments made from fabric other than silk, the product of the cocoon of the silk worm, and from the use of the said word "Crepe" in any way so as to import or imply that the product to which the said word refers is composed of silk, when such is not the fact. (May 5, 1938.)

2201. Ladies' Suits—False and Misleading Brands or Labels and Advertising.—Bergdorf & Goodman Co., a corporation, engaged in the business of conducting a specialty department store at which it sells and has sold merchandise, including ladies' suits, 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.

Bergdorf & Goodman Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "silk" either alone or in connection or conjunction with any other word or words as descriptive of said products which are not in fact composed of silk, the product of the cocoon of the silk worm, and from the use of the word "silk" in any way so as to import or imply that the products to which the said word "silk" refers is composed of silk, when such is not the fact. (May 11, 1938.)

2202. Bottled Beverages—False and Misleading Brands or Labels, Trade Name, and Advertising.—New Century Beverage Co., Inc., a corporation, engaged in the sale and distribution of bottled beverages, including ginger ale, 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.

New Century Beverage Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the picturization of a Shamrock and/or the color green in connection with the word "Belfast" so as to import or imply that said product is made or manufactured in or imported from Ireland; provided that, if the word "Belfast" is used as a trade name or in connection with the advertising or labeling of said product, then in that case it shall be made clearly and conspicuously to appear by suitable words that said product is of domestic origin or that it is not imported from or made or manufactured in Ireland. (May 9, 1938.)

2203. Dental Cements—False and Misleading Advertising.—Louis Silverman, an individual trading as L. Silverman, engaged in conducting a mail-order business of selling and distributing dental and laboratory equipment and supplies 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.

Lee S. Smith & Son Manufacturing Co. is a Pennsylvania corporation, having its principal place of business located at Pittsburgh, Pa. L. D. Caulk Co. is a Delaware corporation, with its principal place of business located at Milford, Del. S. S. White Dental Manufacturing Co. is a Pennsylvania corporation, whose principal place of business is located at Philadelphia, Pa. Each of these corporations, for a long period of time, has been engaged in the manufacturing and sale of products, including cements used by dentists for filling, inlay, crown, and bridge work; causing said cements, when sold, to be transported from its place of business to purchasers thereof located in various States of the United States. Through the many years the said corporations have acquired the good-will of the dental supply trade and the products manufactured by them have become well and favorably known to the members of the dental profession because of the established quality thereof.

Louis Silverman, agreed, in offering for sale or selling his dental cements in interstate commerce, to cease and desist from the use in his advertising matter or in any other way of the name "Smith's" or "Caulk's" or "S. S. White" so as to import or imply that said cements are of recent or current make or manufacture by the old established houses referred to in paragraph 2 thereof, when such is not the fact; *Provided*, That, if the name of an old established house is so used as to properly and truthfully indicate the origin or maker of dental cement which is not of recent or current manufacture,

then in that case, it shall be made to appear prominently and conspicuously by suitable words or explanation that said cement is not of recent or current manufacture by the house whose name is used as aforesaid. The said Louis Silverman also agreed to cease and desist from selling or offering for sale old, deteriorated or inefficient dental cement without clearly disclosing that said cement is not new or of recent or current manufacture, but is cement that is old, deteriorated or inefficient. (May 20, 1938.)

2204. Rugs—False and Misleading Advertising.—Neshan G. Hintlian, Inc., a corporation, engaged in the business of selling Persian rugs at retail 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.

Neshan G. Hintlian, Inc. agreed to cease and desist from the use, in connection with the advertisement or sale of its products in commerce as defined by the act, of any simulation of the official emblem or insignia of either Iran or Turkey so as to import or imply or which may convey or tend to convey the belief by purchasers that the products sold by the said corporation have the approval or sanction of the Governments of said countries, or either thereof, or that the use by said corporation of such emblems or insignia has been or is authorized by the Governments of said countries, or either thereof, when such is not the fact. Said corporation also agreed to cease and desist from the use on its sign or other advertising matter of the words "New York" or the word "Istanbul" so as to import or imply that it has a branch office or other financial interest at New York, U. S. A., or at Istanbul, Turkey, when such is not the fact. (May 26, 1938.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS ¹

01952. *Skin Preparation—Qualities and Indorsements.*—The Glessner Co., a corporation, operating under the trade name of Sofskin Co., Findlay, Ohio, vendor-advertiser, was engaged in selling a cosmetic designated Sofskin Creme, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the skin absorbs Sofskin;
- (b) That Sofskin imparts new health to the skin, nails, or cuticle;
- (c) That Sofskin is a vanishing cream, or that it vanishes entirely;
- (d) That Sofskin is recommended by 12,000 beauticians, or any other number, unless established by competent evidence;
- (e) That Sofskin will bring beauty to "all" hands and skin;
- (f) That this preparation covers more skin surface than any other hand creme or hand lotion;
- (g) That age lines vanish by the use of Sofskin;
- (h) That Sofskin is a competent treatment, or an effective remedy, in all cases of rough, red hands;
- (i) That this preparation "prevents" chapping, irritation, dry skin, or wind-burn;
- (j) That Sofskin will smooth out harsh lines;
- (k) That Sofskin is miraculous, or that one application will smooth out lines and roughness, or leave the skin soft and white;
- (l) That Sofskin "ends" shiny nose or face. (Dec. 1, 1937.)

01953. *Books and Pamphlets—Qualities and Opportunities.*—H. H. Wulff, an individual, doing business under the trade name of The Tri-City Service, P. O. Box 151, Davenport, Iowa, vendor-advertiser, was engaged in selling books and pamphlets, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the treatments described in respondent's book "Why Your Feet Hurt" will cure all foot troubles or make the feet free from aches or pain;
- (b) That respondent's book describes treatments which will cure fallen arches, bunions, pain in the ball of the foot, heel pains or other troubles;

¹Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, December 1, 1937, to May 31, 1938, inclusive. For digest of previous stipulations, see vols. 14 to 25 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602, et seq.

(c) That respondent's book will inform the reader how to have strong, capable, painless or tireless feet;

(d) That respondent's booklet "Hundreds of Best Markets for Your Photographs" will enable one to earn \$10 to \$50 a week. (Dec. 1, 1937.)

01954. Medicinal Preparations—Qualities, Indorsements, and Free Product.—T. E. Botkin, an individual trading as Ar-Be Products Co., P. O. Box 266, Piqua, Ohio, vendor-advertiser, was engaged in selling medicinal preparations designated Vitam Perles, Ar-Be Tablets and Ar-Be Herb Tablets, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vitamin E is necessary for normal reproduction in humans, or that Vitamin E promotes good disposition, behavior or emotional balance;

(b) That Vitamin E is widely used by Doctors treating cases of impaired vigor, sluggish glands, mental or physical fatigue;

(c) That respondent's Vitam Perles constitute a potent tonic for male and female or either;

(d) That respondent's Vitam Perles are recommended as a stimulant for weak glands or nerves;

(e) That five drops or any amount of respondent's Vitam Perles each day is sufficient to prevent degeneration of the sex glands; or that science declares such to be a fact;

(f) That the preparation made according to formula furnished by respondent is a "Pep Cocktail" or will give one "pep", "vigor", or "vitality", or that such formula is free;

(g) That respondent's Ar-Be Tablets stimulate the digestive organs or assist in normalizing the system. (Dec. 1, 1937.)

01955. Correspondence Course—Qualities, Opportunities, and Free Product.—International Secret Service Institute, a corporation, 68 Hudson St., Hoboken, N. J., vendor-advertiser, was engaged in selling a correspondence course in Secret Service and Crime Detection, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this course will qualify the student for a position with the U. S. Secret Service, or constitutes Secret Service training, or enables the graduate to become a Secret Service Agent;

(b) That respondent operates the only institution that offers a practical course of study in Scientific Crime Detection and Secret Service;

(c) That one taking this course cannot help but learn and cannot fail to graduate as a practical detective and secret service agent;

(d) That respondent guarantees to develop the student into an intelligent Secret Service Agent, or one capable of handling any investigations—minor or major in character;

(e) That all students will be provided with money making opportunities;

(f) That upon graduation, one will be a competent, perfectly developed, first-class all-around investigator, detective, and secret service agent;

(g) That anything is given free when the price thereof is included in that of another article, or when the recipient is required to purchase anything or perform any service before qualifying to receive the "gift";

(h) That respondent's instruction discusses every problem likely to confront a detective, or that the student cannot fail to understand what his procedure should be in order to solve any given case;

(i) That this course places every field of crime detection at the disposal of the student;

(j) That detective work is a certain and lucrative source of income every month in the year;

(k) That this course will qualify, in whole or in part, anyone for a position as a Special Agent of the U. S. Department of Justice, or as a "G-Man," or that the course will make one eligible for examination by the U. S. Civil Service Commission;

(l) That the Federal Bureau of Investigation employs "G-Women";

(m) That respondent's course is similar, superior or in any way comparable to that of "The National Crime Institute", the training offered newly appointed Special Agents of the Federal Bureau of Investigation or that the former covers the field more thoroughly or gives greater detail;

(n) That any information furnished students is "confidential";

(o) That the National Home Study Council has approved respondent's course. (Dec. 2, 1937.)

01956. Medicinal Preparation—Nature, Qualities, Safety, Composition, Free Products, Indorsements, Etc.—Cosmo Carrano, an individual operating under the trade names of Oceanview Medical Products, Oceanview Specialty Co., and D. M. C. Products, P. O. Box 1709, New Haven, Conn., vendor-advertiser, was engaged in selling a medicinal preparation designated D. M. C. Vegetable Pills, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Directly or by reasonable implication that this preparation is an abortifacient;

(b) That this preparation is guaranteed safe or harmless, or that it is safe or harmless unless such representation is qualified to indicate that it is safe or harmless only when used according to directions;

(c) That a sample treatment is sent for 25 cents only if ordered immediately on receipt of the offer;

(d) That everyone who uses this preparation will experience freedom and relief;

(e) That the use of D. M. C. Pills will build up strength and health in the muscles, or in any particular muscles;

(f) That this product will effect a "cure";

(g) That this preparation will enable one to know the joy of perfect health and freedom;

(h) That D. M. C. Pills constitute a perfect treatment;

(i) That the use of this product will get "rid" of or "eradicate" pain or any other symptom or condition;

(j) By the use of a trade name including the word "Vegetable" or otherwise, that this product is composed entirely of safe and harmless vegetable ingredients;

(k) That the use of this preparation will not jeopardize the health;

(l) That the continued use of this product will sweep away all objectionable conditions;

(m) That anything is given "free" when in truth and in fact the price thereof is included in that of another article for which a charge is made, and which must be purchased before the gift is furnished, or that any article is free so long as the furnishing thereof is dependent upon the payment of any money for any purpose;

(n) That any D. M. C. Pills are twice as strong, or "double strength";

(o) That this product is mild and gentle in operation, or that it will not disturb the system;

(p) That this product is used or recommended by doctors and nurses throughout the country;

(q) That D. M. C. remedies tone up the entire system;

(r) That action overnight may be assured;

(s) That D. M. C. Pills are prepared according to any U. S. P. formula, or are according to U. S. P. standards;

(t) That one takes no risk when using D. M. C. Pills;

(u) That any price is special or half of regular cost, unless such statement be accurate with reference to the price actually charged for the article, and the terms of the offer are clearly and fully stated and strictly adhered to. (Dec. 2, 1937.)

01957. Medicinal Preparation—Qualities.—Carter Drug Co., a corporation, Carlisle, Pa., vendor-advertiser, was engaged in selling a medicinal preparation designated Mustar-Spice, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Carter's Mustar-Spice

1. Will stop a cold;

2. Will allay fever;

3. Is a penetrant;

4. Affords double quick relief;

5. Is a protection or insurance against common colds;

6. Will prevent and relieve common colds in head or chest; or

7. Will prevent and relieve muscular aches or pains unless limited to superficial minor aches or pains;

(b) That Carter's Mustar-Spice is one of the most penetrating and effective home remedies for many common ailments;

(c) That Carter's Mustar-Spice is a "healing" ointment;

(d) That Carter's Mustar-Spice is an adequate remedy in the treatment of colds. (Dec. 6, 1937.)

01958. Deodorant—Qualities.—Feminine Products, Inc., a corporation, 53 Park Place, New York, N. Y., vendor-advertiser, was engaged in selling a deodorant designated Arrid, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product "cannot" or "will not" irritate the skin;

(b) That the product "ends" odor unless clearly indicated in direct connection therewith that such effect as the product may have will be temporary;

(c) That the product "cannot" itch;

(d) That the product detours perspiration to other parts of the body;

(e) That the product "stops" perspiration unless limited to underarm perspiration. (Dec. 6, 1937.)

01959. Breeder Frogs—Free Products, Limited Offers, Demand, Etc.—L. H. Baer, L. Babineaux, and David Babineaux, copartners, operating under the firm names of Louisiana Frog Co. and American Frog Industries, Box 333, Rayne, La., vendor-advertisers, were engaged in selling Breeder Frogs, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any article is free when the payment of money or the rendering of a service is required, or when the price thereof is included in the purchase price of other articles;

(b) That any offer is limited to a definite period of time unless all offers to purchase under the terms of the offer received after the expiration thereof, are refused;

(c) That the demand exceeds the supply, or that the frog market is inadequately supplied;

(d) That frogs have no known diseases;

(e) That any stated city or cities or any number of cities consume any amount of frogs within any period of time unless and until such is a fact. (Dec. 6, 1937.)

01960. Paint Products—Business Status.—D. Del Vecchio, an individual doing business under the trade name of Peoples Hardware Stores, 1434 Florida Avenue, N. E., Washington, D. C., is engaged in selling paint products, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

That respondent's paint products are sold at factory prices, or from factory to consumer, or otherwise representing that said products are manufactured by him. (Dec. 6, 1937.)

01961. Food Tablet—Qualities and Business Status.—Health Research Foundation, a corporation, Ann Arbor, Mich., vendor-advertiser, was engaged in selling a "food tablet" designated Vimm, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vimm Tablets will—

1. Build resistance to colds;
2. Give you better health;
3. Guarantee against colds;
4. Prevent attacks of headaches, indigestion, colds, fever, anemia, skin eruption, overweight, underweight, nervousness, or lack of energy and strength;
5. Promote general health;
6. Provide essentials in diet;
7. Promote growth in children;
8. Build bones;
9. Prevent rickets;
10. Give the health essentials without the fats, proteins or carbohydrates;
11. Supplement regular meals by supplying "the essential" vitamins;

12. Build up bodily tissues;
 13. Create a tremendous reserve of resistance against fatigue, weariness, and lowered resistance;
 14. Balance your health budget;
 15. Keep one in perfect physical trim; or
 16. Maintain perfect health;
- (b) That Vimm—
1. Builds resistance to disease;
 2. Aids in promoting characteristics of youth;
 3. Aids children cutting teeth;
 4. Reduces skin "troubles";
 5. "Corrects" unnatural or faulty elimination; or
 6. Provides nutritional health protection to pregnant women;
- (c) That "A Vimm tablet with each meal and your dietary troubles are over";
- (d) That Vimm is the "startling new" food;
- (e) That no meal is complete without Vimm;
- (f) That Vimm marks the sure road to physical perfection;
- (g) That V-I-M-M spells vigor and vitality.

The respondent further agreed, in soliciting the sale of its product, to cease and desist from using the words "Research Foundation" as its corporate or trade name until the scope of its activities shall justify the use of such words. (Dec. 7, 1937.)

01962. Medicinal Preparation—Qualities and Business Status.—The Adlerika Co., a corporation, 98 South Wabasha St., St. Paul, Minn., vendor-advertiser, was engaged in selling a medicinal preparation designated Adlerika, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Adlerika is indicated in cases of "chronic" constipation;
- (b) That Adlerika conquers all ordinary constipation;
- (c) That Adlerika brings "immediate" relief from chronic constipation;
- (d) That "One dose" of Adlerika relieves gas pressing on heart so that one is permitted to sleep soundly all night, unless "gas" is qualified to mean gas on the stomach or intestines;
- (e) That Adlerika greatly reduces bacteria and colon bacilli;
- (f) That "one dose" of Adlerika relieves gas and chronic constipation;
- (g) That Adlerika is a
 - (1) Vegetable product,
 - (2) Corrective;
- (h) That Adlerika cleans where ordinary ingredients or laxatives do not even reach;
- (i) That Adlerika relieves stomach distress "at once," or removes or eases stomach distress and starts one upon a return to full pep and vitality;
- (j) That Adlerika will remove "poisonous" waste matter from the bowel that has been causing gas, sour stomach, headache or nervousness, indigestion, and sleepless nights;
- (k) That Adlerika removes bowel "congestion" unless congestion is qualified to mean congestion of the contents of the bowels;
- (l) That Adlerika acts on both upper and lower bowels while ordinary laxatives act on lower bowel only;

(m) That Adlerika gives the "system" a thorough cleansing, aids in removing the cause of most stomach distress and acid indigestion, or rids it of harmful bacteria;

(n) That Adlerika gets "rid" of gas and bloating and cleans foul "poisons" out of both upper and lower bowels;

(o) That Adlerika removes intestinal or bowel congestion in half an hour;

(p) That Adlerika is the only product on the market that gives one Double Action, namely, laxative and carminative action;

(q) That Adlerika may be taken regularly without any harmful effect whatsoever, or can be given with utmost safety to child or adult, or that other similar products contain harmful drugs or ingredients;

(r) That Adlerika will help in keeping women's skin lovely and free from blemishes, unless limited to indicate blemishes or bad complexion caused by internal disturbances;

(s) That Adlerika has enabled people who have been almost slaves to drugs and "constipation cures" over long periods of time not only to obtain relief from "ills," but full recovery and energy, and clean, clear complexions they never hoped to see again;

(t) Adlerika will regulate the system;

(u) That Adlerika quickly gives the digestive system a complete cleansing and aids its regulation;

(v) That Adlerika quickly helps overcome a sluggish irregular system, and aids in eliminating the cause of most stomach distress;

(w) That Adlerika will rid the system of accumulated poisons;

(x) That one of the chief reasons for Adlerika's quick effectiveness is because it is a liquid and is thus quickly absorbed by the "system" unless the word system is qualified to mean gastro-intestinal system;

(y) That over 60 percent of all persons using Adlerika take it to relieve the effects of food that does not agree with them;

(z) That respondent has 10,000 agencies in the United States and Canada. (Dec. 7, 1937.)

01963. Insulation Material—Qualities, Etc.—Reynolds Corp., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling "Reynolds Metallation" consisting of aluminum foil mounted on Kraft paper and sold for insulation purposes, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That radiation is responsible for 70 percent of the heat loss from houses, or any other percentage unless supported by competent authority;

(b) That Reynolds Metallation will stop the passage of heat of any type in any amount or percentage except such type and amount or percentage as has been established by competent factual evidence;

(c) That thickness and bulk have little to do with stopping radiant heat, unless the representation is limited by direct reference to reflective insulation only (because in reflective insulation thickness and bulk are not factors);

(d) That Reynolds Metallation reflects and stops 95 percent of the heat that normally comes through the roof, unless limited by direct reference to radiant heat;

(e) That Reynolds Metallation is "impervious" to the passage of heat;

(f) That Reynolds Metallation is resistant to fire unless limited to types found by competent scientific tests to be substantially fire-resistant under normal conditions of use;

(g) That Reynolds Metallation will remedy unhealthy conditions causing colds, grippe, and influenza, unless limited to extreme changes in temperature that may be reduced by insulation; or that—

1. The installation cost will be paid by reduced sick time and doctor bills; or
2. One's family will be more healthy after his home is metallated. (Dec. 1, 1937.)

01964. Device for Locating Metals, Hidden Treasures, Etc.—Qualities, Prices, and Guarantee.—R. D. Burchard, Jr., an individual trading as Radio Metal Locating Co., P. O. Box 2670, Cleveland, Ohio, vendor-advertiser, was engaged in selling a device for locating Metals, Hidden Treasures, etc., designated Radio Metal Locator, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the New Radio Treasure Locator distinguishes between metals, such as gold, silver, etc., other than iron;

(b) That the price of \$127.50 is an "introductory" price;

(c) That the "Bonded Notary Public Money Back Guarantee"

1. Is a "bonded" guarantee;
2. Is a "Notary Public" guarantee. (Dec. 8, 1937.)

01965. Skin Cream—Composition, Qualities, and Indorsement.—Associated Distributors, Inc., a corporation, 111 W. Monroe St., Chicago, Ill., vendor-advertiser, was engaged in selling a skin cream designated Essence of Life Face Cream, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's cream contains a newly found substance;

(b) That this product contains the very elements put into the skin by nature in the exact and same proportion as these vital elements are present in the skin itself;

(c) That the said product will nourish the skin or resupply vital elements, or that it is a substitute for a proper diet;

(d) That this product keeps the skin soft, except by constant application;

(e) That this product supplies life to the skin;

(f) That the results achieved by the use of this product are "miraculous";

(g) That this product will give skin the age of 40 or 50 the appearance of skin of 20;

(h) That eminent dermatologists are recommending the use of this product unless such be the fact;

(i) That the use of this cream is the one means or a means to possess the beautiful skin of youth;

(j) That this product supplies to the skin any nutritive substance which is not supplied in adequate amounts by the consumption of the average dietary and by suitable exposure to sunshine;

(k) That the said cream feeds any substance into the skin unless established by competent scientific tests;

(l) That this cream will "clear" the skin of blackheads, blemishes, coarse pores, roughness, dryness, or scaliness, or that it will "end" any of said conditions, or any others;

(m) That any substance therein contained is found only in this cream;

(n) That the use of this cream "rejuvenates" the skin. (Dec. 8, 1937.)

01966. Medicinal Preparations—Qualities and Business Status.—Herb Juice—Penol Co., Inc., a corporation, doing business under the trade name of Pow-O-Lin Laboratories, Danville, Va., vendor-advertiser, is engaged in selling certain medicinal preparations designated Pow-O-Lin, Penol Emulsion, Miller's Herb Extract, and Laxative also known as Miller's Herb Juice, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Pow-O-Lin:

1. Relieves biliousness, nervousness, indigestion, and "countless" ills due to constipation, unless limited to temporary relief of constipation;
2. Cleanses the intestines of dreadful poisons;
3. Brings "lasting" relief from constipation, indigestion, dizziness, and run-down condition;
4. Gives relief from aches and pains; unless such aches and pains are due to constipation;
5. Is helping thousands who were never helped before by any medicine;
6. Increases or helps increase weight;
7. Regulates the organs so that they work smoothly and regularly as Nature intended them to do;
8. Clears up the skin; or
9. Builds up the appetite;

(b) That Penol Emulsion is so thoroughly emulsified that it remains in this state even after it enters the human system;

(c) That Miller's Herb Extract and Laxative Compound (also known as Miller's Herb Juice):

1. Clears the body of the poisonous wastes brought on by constipation, unless limited to temporary relief of constipation;
2. Relieves "chronic" constipation;
3. Relieves intestinal trouble or lack of evacuation, unless caused by constipation;
4. "Rids" the body of wastes;
5. Gives relief from constipation, unless limited to temporary relief;
6. Purges the system of poisonous wastes.

The respondent further stipulates and agrees, in promoting the sale of its products, to cease and desist from using the word "laboratory" or "laboratories" as a part of its trade name, unless and until it actually owns or operates a "laboratory" or "laboratories." (Dec. 8, 1937.)

01967. Medicinal Preparation—Qualities, Composition, and Business Status.—R. M. Allport, an individual, trading and doing business as Armall Agency and Armall Laboratories, 9204 Superior Ave., Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal

preparation designated Armall Ointment, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Armall Ointment will give either quick or sure relief or is of value in the treatment of Psoriasis, Eczema, Ringworm, Athlete's Foot, Itch, Pruritis, or Tinea;

(b) That with the use of Armall Ointment Itch stops instantly or that the skin will heal completely;

(c) That Armall Ointment will correct Scalp Diseases;

(d) That the success of Armall Ointment in the treatment of Eczema, Psoriasis, Athlete's Foot, Dandruff, Alopecia, Itch, or Pimples has been phenomenal;

(e) That Armall Ointment will either eradicate or control skin diseases;

(f) That Armall Ointment will control dandruff;

(g) That Armall Ointment will;

(1) Penetrate the skin or scalp;

(2) Kill germs;

(h) That Armall Ointment is the best medical treatment known to science for skin and scalp disorders;

(i) That Armall Ointment contains glandular extracts from sheep or stimulants and tissue building agents;

(j) That Armall Ointment will stimulate or nourish;

(k) That Armall Ointment will effect quick or permanent relief;

(l) That heretofore it has been necessary to import preparations such as Armall Ointment.

(m) That Armall Ointment will cause sores to heal.

The respondent further stipulates and agrees to cease and desist from the use of the word "laboratory" in his trade name or otherwise indicating that he maintains a laboratory. (Dec. 8, 1937.)

01968. Medicinal Preparation—Qualities, Indorsement, and Source or Origin of Product.—Joseph Personeni, Inc., a corporation, 496 West Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Ferro-China Bisleri, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product will renovate, restore, nourish, animate, or increase the blood supply;

(b) That respondent's product will enrich, strengthen, or build up the blood unless limited to aiding in such results by increasing the hemoglobin contents of the blood;

(c) That the use of respondent's product will bring or restore health;

(d) That through the use of respondent's product one becomes strong, or regains vitality lost from sickness, heat, or other causes, unless limited to its aid as a mild stimulating tonic;

(e) That respondent's product is the "Fountain of Youth" for young and old;

(f) That respondent's product regenerates or restores, rebuilds, gives or brings back strength to the user, unless limited to such aid as a mild stimulating tonic will contribute or to the benefits that would be derived by increasing the hemoglobin content of the blood;

(g) That respondent's product is an effective or strengthening tonic or a tonic builder, unless limited to such aid as a mild stimulating tonic will contribute or to the benefits that would be derived by increasing the hemoglobin content of the blood;

(h) That respondent's product conditions the stomach, or fortifies or rebuilds the body or system;

(i) That one can collect his provision of good blood for the winter by drinking respondent's product;

(j) That respondent's product is a cure;

(k) That respondent's product is a fountain of strength;

(l) That respondent's product helps the circulation of the blood or strengthens the muscles;

(m) That the superiority of respondent's product is universally recognized by chemists, pharmacists, or physicians and specialists in all countries;

(n) That respondent's product reestablishes the equilibrium of forces upset by disease or irregular habits;

(o) That respondent's product will enable one to overcome disease or withstand the rigors of winter;

(p) That respondent's product is the one thing that can perform a miracle or enable one to come out victorious in the struggles or battles of life;

(q) That respondent's product "exclusively" will enrich the blood;

(r) That respondent's product is the king of body builders or the body builders of kings;

(s) That respondent's product will "correct" conditions of lowered vitality in healthy or sick individuals;

(t) That respondent's product is an effective treatment for men who are subject to "special or demoralizing" weakness;

(u) That respondent's product is preferred in all parts of the world as a rebuilder or regenerator;

(v) That respondent's Ferro-China Bisleri is imported from Italy. (Dec. 13, 1937.)

01969. False Teeth—Qualities, Etc.—Florence J. Sprafka, an individual doing business under the trade name of Ashland Dental Laboratories, 1247 North Ashland Ave., Chicago, Ill., vendor-advertiser, was engaged in selling False Teeth, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the artificial dentures sold by respondent are "perfect" in fit, comfort, and/or quality;

(b) That respondent can and/or does, with her own "special measuring method", fit one exactly with beautiful lifelike teeth;

(c) That respondent has, owns or possesses a "special" measuring method, or that the "measuring method" used by respondent differs materially from that of other vendors of artificial dentures by mail;

(d) That the artificial dentures sold by respondent are of such beautiful, natural appearance, and splendid fit that they will give a lifetime of comfort and satisfaction;

(e) That it would be "difficult" or "almost impossible" to duplicate the quality of materials used by respondent;

(f) That a person can always take accurate impressions of his own gums, in his own home, and/or that satisfactory dentures can always be made from such impressions. (Dec. 13, 1937.)

01970. **Hair Preparation—Qualities.**—Samuel Kosofsky, an individual trading as Lakro Co., 135 W. 42d St., New York, N. Y., vendor-advertiser, was engaged in selling a certain preparation known as Undrus Liquid, formerly designated Wundrus Water, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

That respondent's product will "re-color" hair or "restore" the color of gray hair, or that the product is a color restorer. (Dec. 13, 1937.)

01971. **Electric Suspensory—Qualities and Trade Name.**—M. Hatzenbuehler, an individual trading and doing business as Lorenz Truss and Electric Works, 5842 S. Tripp Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a product designated Electric Suspensory, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That his Electric Suspensory preserves health or improves strength;
- (b) That his Electric Suspensory is of value in the treatment of run-down condition, weak nerves, lost strength, rheumatism, poor circulation of the blood or low vitality;
- (c) That his Electric Suspensory:
 1. Will give strength or vigor;
 2. Will tone the system;
 3. Makes one feel peppy and lively;
 4. Gives one a healthy appearance;
- (d) That the treatment by his Electric Suspensory goes directly to the spot;
- (e) That every man who cares anything about his health, manly vigor, personality or appearance should order an Electric Suspensory;
- (f) That his Electric Suspensory is better for one's system and stomach than pills and tablets;
- (g) That his Electric Suspensory is a straight to the point invention;
- (h) That his Electric Suspensory saves time and money going to a Specialist;
- (i) That for weak, run-down conditions, weak nerves or back, nervousness, poor circulation of the blood, rheumatism, low vitality, or tired feeling his Electric Suspensory has no equal.

The respondent further agreed to cease and desist from using form letters which purport to have been signed by anyone that is not connected with the manufacture, sale or distribution of his Electric Suspensory.

It is further agreed that the respondent will cease and desist from the use of the word "Doctor" or its abbreviation "Dr." as a part of the name of his Electric Suspensory or in any other manner representing that a doctor has been or is active in the development, manufacture, sale or distribution of said product. (Dec. 13, 1937.)

01972. **Feminine Hygiene Preparation—Qualities and Trade Name.**—Dayton Laboratories, Inc., a corporation, trading as Surete Laboratories, 1442 Springfield St., Dayton, Ohio, vendor-advertiser, was

engaged in selling a preparation designated Surete, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That use of the product "insures" personal cleanliness or that it affords "absolute" cleanliness;
- (b) That use of the product will protect beauty or peace of mind;
- (c) That the product will prevent "disorders";
- (d) That the product will destroy all vaginal germ life;
- (e) That the product is "healing", unless limited to its aid to nature in the process thereof;
- (f) That the product is "sure" or that by its use one "need not worry";
- (g) Inferentially or otherwise, that the product is a competent or effective contraceptive.

The respondent further agrees to cease and desist from the use of the word "laboratories" as a part of its trade name or as a part of any name under which it may trade, unless and until respondent owns and controls or operates a laboratory wherein research and scientific tests are conducted by a competent scientist. (Dec. 15, 1937.)

01973 Soldering Tool—Trade or Corporate Name and Qualities, Etc.—Comet Welder Co., a corporation, Halifax St., Cincinnati, Ohio, vendor-advertiser, was engaged in selling a Comet Welder, a soldering tool, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) Using the word "welder" as part of the trade name of its corporation, in selling this product;
- (b) Using the word "welder" as part of the trade name for this product;
- (c) Representing that this product—
 1. Embodies a new scientific principle of welding;
 2. Is a genuine electric arc welder, or an arc welder of any kind;
 3. Is a real welder's tool;
 4. Generates tremendous heat to weld all metals;
 5. Fuses broken parts permanently stronger than ever, or at all;
 6. Welds all weldable metals;
 7. Does many welding jobs done by expensive welders;
 8. Makes the strongest weld known;
 9. Produces a white-hot flame, or 7,000 degrees of instant intense heat;
 10. Repairs by welding broken fenders, auto bodies, leaky pails, radiators, running boards, machinery parts, galvanized cans, or any article composed of metals or alloys, such as steel, iron, or tin;
 11. Produces amazingly quick and perfect results;
 12. Starts welding the minute it is attached to a storage battery in an automobile;
 13. Makes all ordinary soldering irons obsolete;
 14. Is used by thousands of professional welders all over the world;
 15. Uses standard welding rods. (Dec. 15, 1937.)

01974. Blood Disease Formula—Safety, History, and Nature.—Etta Campbell and Frances M. Heinzelmann, copartners, doing business under the firm name of Heinzelmann Co., 313 East 12th St., Kansas

City, Mo., vendor-advertiser, was engaged in selling a "Blood Disease Formula" designated Heinzelmann's Remedy, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the "Blood Disease Formula", or Dr. Heinzelmann's Remedy, can be used by the sufferer at home with beneficial results, no matter how caused or how long standing;

(b) That "Blood Disease Formula," or Dr. Heinzelmann's Remedy, has been used for years and has given its own proof;

(c) That "Blood Disease Formula," or Dr. Heinzelmann's Remedy, is not a new, untried formula or an experiment;

(d) That "blood disease" can be properly treated by self-medication.

The respondents further agreed, in promoting the sale of their product, to cease and desist from the use of the words "Blood Disease Formula," or similar words, to designate said product. (Dec. 15, 1937.)

01975. Cereal Food—Qualities or properties, Guarantees, and Free Product.—The Kellogg Co., a corporation, Battle Creek, Mich., advertiser-vendor, was engaged in selling a cereal food designated Kellogg's All Bran, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Kellogg's All-Bran—

1. Regulates the system,
2. Cleanses the system,

3. Tones up the system, or that it has any other direct effect upon the "system";

(b) That All-Bran gives the "body" internal exercise;

(c) That this product "corrects constipation," or is a competent treatment or an effective remedy for constipation, unless expressly and clearly limited to constipation due to insufficient bulk;

(d) That Kellogg's All-Bran will prevent or constitute a competent treatment for wrinkles and pimples, or that it is a competent treatment for any symptom or condition unless such statement has been justified by competent scientific evidence;

(e) That Kellogg's All-Bran is "guaranteed" unless clearly and specifically limited to the refund of the purchase price, or to the quality of the product;

(f) That Kellogg's All-Bran exercises and strengthens intestinal muscles, unless limited to cases in which the intestinal muscular wall has become impaired due to lack of peristaltic movement and exercise;

(g) That Kellogg's All-Bran will "rid" one of or "end" constipation;

(h) That Kellogg's All-Bran is not irritating to the intestines, unless such statement is limited to persons whose intestines are normal, or contains a further statement excepting those persons who may, because of a pathological condition or hypersensitivity, be expected to suffer irritation of the intestines by reason of the intake of fibrous substances;

(i) That anything is given "free" when in truth and in fact the price thereof is included in that of another article which must be purchased before one is qualified to receive the gift;

and from making any other claims or assertions of like import, unless such be the fact as established by competent and reputable scientific test and experiment. (Dec. 15, 1937.)

01976. Medicinal Preparation—Trade Name, History, Qualities, Etc.—James F. Jordan, an individual, doing business under the trade name of Jordan Laboratories, R. D. 3, Ithaca, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. Jordan's Blood Alterative, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Using the word "Laboratory" or "Laboratories" as part of the trade name of his business until such time as he shall actually maintain an establishment or establishments equipped with apparatus for research purposes, in which actual experiments are conducted;

(b) Representing that his preparation is compounded by pharmacists or manufacturing pharmacists, unless and until such time as said preparation is actually compounded by licensed pharmacists;

(c) Using the word "doctor" or the abbreviation "Dr." before his name in advertising his preparation or as a part of the trade name of his preparation;

(d) Representing or designating his product as a blood alterative for high blood pressure;

(e) Representing that his preparation conforms to the requirements of the "Federal Food and Drug Act";

(f) Representing that his preparation is prepared from an unusual prescription of an eminent physician;

(g) Representing that his preparation—

1. Provides a competent remedy or treatment for high blood pressure;
2. Conquers high blood pressure;
3. Has relieved thousands of high blood pressure;
4. Enables one to get rid of a most serious ailment that is slowly but almost imperceptibly stealing one's health away;
5. Assures one joy and happiness;
6. Is a harmless vegetable remedy;
7. Tremendously benefitted many sufferers where all other means of relief have persistently failed;
8. Acts directly on the blood stream, removing impurities and poisons from the system, reducing the blood pressure in the veins and arteries as well by elimination through the alimentary tract excessive water contents of the blood usually excreted through the sweat glands;
9. Often produces restorative action or removes more poison bile and other impurities from the blood than any other known remedy;
10. Is especially prepared to aid in gradual change in the blood pressure to normal so no violent reaction of the heart or other organs may occur;
11. Causes pain and suffering to vanish;
12. Gives relief from blood pressure as easily as a child may obtain relief from a common cold;
13. Is "guaranteed" to produce any specified result;
14. Is a pioneer in the field or that there is nothing else like it now available;

15. Contains nothing harmful to the most delicate system;
16. Is the only efficient remedy available to relieve high blood pressure, or that it will bring the patient back to normality;
17. Is a corrective acting upon the blood;
18. Serves as potent remedies that acts upon the blood, and their vital action, removes the cause of the disorder causing pain and suffering to vanish as if by magic;
19. Or a preparation containing similar ingredients restored anyone to health from a very serious attack of rheumatism;
20. Or a preparation containing similar ingredients relieved anyone of a severe condition of high blood pressure, enabling them to return to their work within ten (10) days;
21. Has restored persons beyond human aid to health;
22. Will make a person suffering with high blood pressure perfectly well within a week, or any other specified period of time;

(h) Representing that high or low blood pressure is not a disease; or otherwise making representations relative to the causes, effects, symptoms, or course of said disease unless such representations are in accord with reliable scientific authority;

(i) Representing that respondent's preparation will cause a decided improvement in one's health in general in a short time or at all;

(j) That respondent's remedies are without equal for the relief of bodily pains;

(k) Representing that any beneficial results will be produced within any specified time. (Dec. 14, 1937.)

01977. Medicinal Preparation—Qualities, Composition, and Business Status.—Harry Seligman, an individual trading as Harry Treats Co., 1242 South St., Philadelphia, Pa., vendor-advertiser, was engaged in selling a medicinal preparation designated Prescription 1739 for kidneys and bladder, and Special "D" Herbal Tonic, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product Rx 1739 for kidneys and bladder is a competent treatment or effective remedy for diseases of the kidneys or bladder or the physiological conditions which arise from said conditions;

(b) That respondent's product Rx 1739 is a competent treatment for inflammation of the urinary tract, mucous discharges, bladder pain, sting, backache, leak, running ring, getting up at night, nervousness, rheumatic pains, leg pains, foul odor, loss of pep, sediment, reddish water;

(c) That respondent's product Rx 1739:

1. Has antiseptic properties;

2. Promotes the healing of raw or inflamed tissues;

(d) That respondent's product Rx 1739 relieves old and new cases;

(e) That respondent's product Special "D" Herbal Tonic is a competent treatment or effective remedy for—heat flashes, sores, eczema, nervous excitement, gritting of the teeth, fits, spells, nightmares, bad dreams, worry, heaving feeling, believing that some one is working on you, such as evil spirits, fixed or crossed condition, something alive—so-called witchcraft—Natural or Unnatural;

(f) That respondent's product Special "D" Herbal Tonic is made from herbs gathered from the four corners of the earth;

(g) That each bottle of respondent's Special "D" Herbal Tonic makes the user feel better or stronger with power;

(h) That respondent's Special "D" Herbal Tonic is "successfully used in our medical clinics."

The respondent further agreed to cease and desist from representing that it maintains or conducts a medical clinic. (Dec. 16, 1937.)

01978. Medicinal Preparations and Cosmetics—Qualities, Safety, Composition, Free Product, Trade Names, Earnings, Etc.—Carnation Co., a corporation, 118 Olive St., St. Louis, Mo., vendor-advertiser, was engaged in selling medicinal preparations and cosmetics designated Klenjoy Tablets, Carnation Cough Syrup, Bick's Salve, Carnaco Vegetable Oil Soap, Carnation Toilet Cream, Cutivel Cold Cream, Fee-teza, Sanisalva Healing Salve, Bixlax Tablets, Carnation Castoria, Lanabalm, Carnation Linimentine, Carnation Blue Ribbon Liniment, Bick's Aspirin, Bick's Mentholated Camphor Cream, Blue Ribbon Disinfectant, Carnation Dental Cream, Carnation Hair Vigor, Carnation Lemon Beauty Balm, and Carnation Shaving Lotion, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

1. Inferentially or otherwise, that Klenjoy Tablets will remove all stains;
2. That Klenjoy Tablets will not injure the most delicate fabrics;
3. That Klenjoy Tablets will do "your washing" in any shorter period of time than "ordinarily required";
4. That Klenjoy Tablets is "absolutely" harmless;
5. That Klenjoy Tablets contains no injurious chemicals, alkali or soda;
6. That Klenjoy Tablets "lengthens" the life of Clothes;
7. That Carnation Cough Syrup is a competent treatment or an effective remedy for colds, hoarseness, irritations of the throat * * * or coughs, unless limited to coughs due to colds;
8. That Carnation Cough Syrup "insures" rest or sleep;
9. That Bick's Salve will prevent the spread of a cold;
10. That Bick's Salve is "healing" or "penetrating";
11. That Bick's Salve is a competent treatment or an effective remedy for colds, croup, sore throat, bronchitis, chest congestion, burns, boils, insect bites, tonsillitis, rheumatic pains, neuralgia pains, piles or catarrh;
12. That either Carnaco Vegetable Oil Soap or Sanisalva Salve or a combination thereof is a competent treatment or effective remedy for pimples, roughness, blackheads, skin irritations, sores or ulcers;
13. That the Toilet Cream will prevent sunburn, suntan, blackheads, or skin irritations;
14. That Cutivel Cold Cream is "healing";
15. That Cutivel Cold Cream is absolutely necessary to every woman, or for those whose skin is delicate;
16. That Cutivel Cold Cream will "nourish" the skin or tissues, or that it is a skin "food";
17. That Cutivel Cold Cream will bring to the surface impurities which it is impossible to remove with soap and water;
18. That Cutivel Cold Cream banishes blackheads or wrinkles or that it brings about a complete transformation;

19. That Cutivel Cold Cream will cause the skin to become firm or that by its use blood circulation is accelerated or that a "healthy, natural beauty results";
20. That Lactosene Cream will remove impurities from the skin or that it will eradicate blackheads, pimples, or wrinkles;
21. That Feeteza "heals" any condition resulting from sweating feet;
22. That Sanisalva Salve is healing;
23. That Sanisalva Salve is a competent treatment or an effective remedy for sores, wounds, nasal catarrh, pimples, piles, or "cutaneous affections";
24. That Bixlax Tablets is a "tonic";
25. That Bixlax Tablets will prevent constipation;
26. That Bixlax Tablets will stimulate the normal function of the bowels;
27. Inferentially or otherwise, that Bixlax Tablets is absolutely harmless;
28. That any of its products contains any ingredients or any number or percentage of ingredients other than actually contained therein;
29. That Carnation Castoria is made from purely vegetable ingredients;
30. That Carnation Castoria is "absolutely" harmless;
31. That Carnation Castoria is a competent treatment or an effective remedy for constipation, unless limited to the relief of such condition;
32. That Carnation Castoria is a competent treatment or an effective remedy for diarrhoea, sleeplessness, or minor bowel troubles of children;
33. That Lanabalm is made after the formula of a noted French Physician;
34. That Lanabalm is "healing";
35. That Lanabalm is a competent treatment for the relief of gout, rheumatism, neuralgia or lumbago;
36. That any of its products contains the same qualities or ingredients as any other of its products when such is not a fact;
37. That Carnation Linimentine is a counter-irritant;
38. That Carnation Linimentine is a competent treatment or effective remedy for rheumatic pains, neuralgia, colds, or stiff joints;
39. That Carnation Linimentine will stimulate circulation or overcome congestion;
40. That Blue Ribbon Liniment is a competent remedy for the relief of the pains caused by lumbago, rheumatism, neuralgia, swellings, bruises, colds, stiffness in joints, or "conditions due to congestion";
41. That Blue Ribbon Liniment will banish congestion or that it brings about normal circulation;
42. That Blue Ribbon Liniment is a competent remedy or treatment for cramps or colic;
43. Inferentially or otherwise, that in all cases Bick's Aspirin will not upset the stomach or that its use will leave no harmful effects;
44. That Bick's Mentholated Camphor Cream is a competent treatment or an effective remedy for sore or irritated nose or lips, colds or other congested conditions, or nasal catarrh, or headaches;
45. That Bick's Mentholated Camphor Cream is "healing";
46. That Blue Ribbon Disinfectant affects only germs and odors;
47. That Blue Ribbon Disinfectant is more powerful than carbolic acid and yet it is perfectly safe to handle;
48. That any number or percentage of diseases come through the mouth unless such is a fact;
49. That Carnation Dental Cream will "whiten" the teeth or that it is of aid in the prevention of disease;

50. That Carnation Dental Cream will—
- (a) Keep the gums healthy;
 - (b) Prevent acid mouth;
 - (c) Overcome halitosis;
51. That Carnation Hair Vigor will bring the hair back to its "natural" color or that it will—
- (a) Stimulate hair growth;
 - (b) Promote hair growth;
 - (c) Eliminate or prevent dandruff;
52. That Carnation Lemon Beauty Balm will be effective as a treatment for skin irritations or freckles;
53. That Carnation Lemon Beauty Balm is "healing" or that it will keep the skin white or that it will prevent chafing or irritation;
54. That Carnation Shaving Lotion is a competent treatment or an effective remedy for skin irritations unless limited to suit conditions as result from shaving;
55. That Carnation Shaving Lotion will prevent infections;
56. That any article is free unless given without the payment of money or the rendering of any service or when the price thereof is included in the purchase price for other articles.

The respondent further agreed to cease and desist from using the word "Vigor" or any similar word as a part of the trade name for the product heretofore known as "Carnation Hair Vigor."

The respondent further agreed to cease and desist from using the word "Healing" or any similar word as a part of the trade name for the product designated "Sanisalva Healing Salve."

The respondent further agreed to cease and desist from using the word "Lemon" as a part of the trade name for the product heretofore known as "Carnation Lemon Beauty Balm," unless words are used in direct connection therewith in equally conspicuous type indicating that the product is only lemon scented.

The respondent further agreed to cease and desist from using the word "Tonic" or any similar word as a part of the trade name for the product heretofore known as "Bixlax Laxative Tonic Tablets."

The respondent further agreed:

(a) 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;

(b) 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;

(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 of respondent's salespersons or dealers under normal conditions in the due course of business; and

(d) 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. (Dec. 16, 1937.)

01979. Correspondence Course—Free Product and Earning.—D. Rogers Stewart, an individual, trading as Stewart School, 3555 Aberdeen Ave., Alton, Ill., vendor-advertiser, was engaged in selling a course in Sign Painting and Lettering, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

That any article is "free" unless the article is furnished without the payment of money or the rendering of any service.

The respondent further agreed:

1. Not to make unmodified representations or claims of earnings in excess of the average earnings of those purchasing respondent's course, achieved under normal conditions in the due course of business;

2. 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 those purchasing respondent's course, under normal conditions in the due course of business;

3. 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 those purchasing respondent's course under normal conditions in the due course of business;

4. 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. (Dec. 17, 1937.)

01980. Heating Stove—Qualities and Disparaging.—Estate Stove Co., a corporation, Hamilton, Ohio, vendor-advertiser, was engaged in selling a certain heating stove designated Estate Heatrola, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That an Estate Heatrola—

1. Will cut fuel costs by any stated amount or percentage,
2. Pays for itself,
3. Gives much more heat from so much less fuel,
4. Cuts fuel bills nearly in half,
5. Will not use half as much coal,
6. Gives twice as much heat, or,
7. Will improve health or lower doctor bills,

unless such statements clearly explain the type of appliance with which comparison is made, and that no such claims will be made unless they have been justified by competent, reliable tests;

(b) That unless it is an Estate Heatrola, a stove is "half-heating, fuel-eating";

(c) That the Estate Heatrola is "the one" home heater that pays for itself. (Dec. 17, 1937.)

01981. **Hair Preparations.—Qualities, Composition, and Free Product.—**Laco Products, Inc., a corporation, 4201 Philadelphia Ave., Baltimore, Md., vendor-advertiser, was engaged in selling a preparation for the hair designated Laco Shampoo and Laco Sterilized Olive Oil, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That either Laco Olive Oil or Laco Shampoo feeds the scalp;
- (b) That anything is given free when in truth and in fact the cost thereof is included in the price of another article;
- (c) That Laco will avoid broken hair ends or dry and brittle hair;
- (d) That Laco sets dye permanently or avoids changes of color;
- (e) That Laco restores life to hair or overcomes dry and lifeless hair;
- (f) That Laco penetrates crevices and pores of the hair, or that it restores vitality;
- (g) That Laco gives the hair health protection;
- (h) That Laco will do things no other shampoo can;
- (i) That Laco is made from pure olive oil or that it is a natural olive oil product when in truth and in fact it contains other ingredients in substantial quantities;
- (j) That there are no chemicals—no fats or fillers in Laco Shampoo;
- (k) That Laco Shampoo is composed of nothing except olive oil, soda, and water. (Dec. 17, 1937.)

01982. **Oil Burners—Qualities, Price, and Business Status.—**L. A. Cocklin, an individual trading and doing business as Laco Oil Burner Co., 117 Union St., Griswold, Iowa, vendor-advertiser, was engaged in selling oil burners designated Laco Oil Burners, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Laco Oil Burners get every atom of heat from the oil used;
- (b) That Laco Oil Burners deliver all heat into the room;
- (c) That with the Laco Oil Burner, no heat is wasted up the chimney;
- (d) That Laco Oil Burners will produce any definite amount of heat unless such representations are limited to the actual results proven by scientific tests;
- (e) That with Laco Oil Burners one gets 20 percent more heat surface, unless in direct connection therewith it is stated that such comparison is with former Laco models;
- (f) That the price of Laco Oil Burners is \$100, or any other figure not justified by facts, lower than other heaters;
- (g) That with Laco Oil Burners one can save 25 percent in fuel costs;
- (h) That he makes the "only" really big stove on the market or the "biggest" stove on the market, unless such statement is qualified as to the type for which the same would be a fact.

The respondent further agreed to cease and desist from the use of the word "President," or any other title in his advertising literature, not compatible with the fact that the business is that of an individual. (Dec. 17, 1937.)

01983. Medicinal Preparation—Qualities, Composition, Free Product, and Business Status.—The H-A Relief, Inc., a corporation, 12 Sherman Ave., Mansfield, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated H-A Relief Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That H-A Relief Tablets constitute a competent treatment for asthma or common head cold;

(b) That H-A Relief Tablets comprise a competent treatment or an effective remedy for Hay Fever or Rose Cold unless specifically limited to a mild palliative effect;

(c) That this preparation will insure freedom from hay fever, or that it will prevent such a condition;

(d) That this product is composed of roots and herbs, or any other terminology intimating that the finished product does not contain drugs;

(e) That this preparation will—

1. Increase resistance; or

2. Fortify the system against irritating pollen; or

3. Keep one's affliction under control;

(f) That anything is given free when in truth and in fact the price thereof is included in that of another article, or when any payment must be made before the "free" article is given;

(g) That "All capsules direct from laboratory," or any other terminology indicating that H-A Relief, Inc., manufactures this preparation;

(h) That H-A Relief Tablets will break up a cold in a day or at all. (Dec. 17, 1937.)

01984. Supporter—Qualities.—Otto F. Hempel, an individual trading as The Perno Co. and The Bee-Cell Co., 720 White Building, Buffalo, N. Y., vendor-advertiser, was engaged in selling a product designated Bee Cell Supporter, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product will be of effect for the "worst" case of prolapsus;

(b) That use of respondent's product will enable one to be "well";

(c) That the product is of effect for womb trouble, unless limited to uncomplicated prolapsus;

(d) That the product is germ proof;

(e) That the product soothes, unless limited to the relief of pain caused by pressure or strain due to prolapsus of the uterus;

(f) That the product supports an internal organ other than the uterus, unless limited to the indirect and partial support afforded the bladder. (Dec. 15, 1937.)

01985. Medicinal Preparation—Qualities.—Consolidated Drug Trade Products, Inc., a corporation, 544 So. Wells St., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Calocide, and agreed in soliciting the sale of and selling said product

in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Calocide is a competent treatment or an effective remedy for—
1. Burning, aching or sore feet,
 2. Corns,
 3. Callouses,
 4. Pains and aches,
 5. Tired feet,
 6. Tender feet,
 7. Bunions,
 8. Frost bites,
 9. Puffed feet,
 10. Foot misery, or
 11. Ingrowing nails,

unless expressly limited to the relief of those cases caused or aggravated by conditions for which a mild astringent would constitute an effective treatment;

(b) That Calocide will penetrate the pores and reach the underlying tissues;

(c) That Calocide will achieve any particular results within a specified period of time;

(d) That callouses can be "eradicated" or pains in the feet "stopped" by the use of Calocide;

(e) That Calocide will keep the feet healthy;

(f) That the use of Calocide will enable one to wear the shoes he likes and/or stand on his feet all day without any suffering;

(g) That Calocide will be of value to everybody in pain, or everybody feeling terrible;

(h) That Calocide will make feet fit for any day of work or play. (Dec. 20, 1937.)

01986. Cod Liver Oil Tablets—Qualities.—Consolidated Drug Trade Products, Inc., a corporation, 544 S. Wells St., Chicago, Ill., vendor-advertiser, was engaged in selling a certain product designated McCoy's Cod Liver Oil Extract Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That cod liver oil and halibut liver oil upset the stomach, unless limited to delicate stomachs;

(b) That McCoy's Cod Liver Oil Extract Tablets—

1. Will help one who is run down, lacks resistance, or is constantly subject to colds, or,

2. Will enable one to gain in weight and strength,

unless such claims are specifically limited to cases in which such conditions are due to aggravated by a vitamin deficiency which would be supplied by the administration of said tablets, in accordance with directions;

(c) That the administration of McCoy's Cod Liver Oil Tablets will make children eager to eat the food they should have. (Dec. 20, 1937.)

01987. Toothpaste—Qualities and Indorsements.—Zonite Products Corporation, a corporation, Chrysler Building, New York, N. Y.,

vendor-advertiser, was engaged in selling a toothpaste designated Dr. Forhan's Toothpaste, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Dr. Forhan's Toothpaste

1. "Goes deeper," until such a claim is established as a fact;
2. Saves gums;
3. Aids gums to stay youthful; or
4. Gives teeth "two way protection";

(b) That Dr. Forhan's Toothpaste has been long used by dentists everywhere to combat gum troubles;

(c) That Dr. Forhan's Toothpaste "whitens" teeth and "safeguards" gums at the same time;

(d) That cleaning teeth and massaging gums with a tube of Dr. Forhan's Toothpaste for 9 months (or any other period of time) will enable one to "leave" for Hollywood and enter the movies;

(e) That Forhan's is known by millions of people to be the original toothpaste designed to care for the gums as well as the teeth. (Dec. 13, 1937.)

01988. Medicinal Preparation—Safety, Qualities, and Business Status.—W. Robert Peters, an individual trading as Serosol Laboratories, 524 So. Spring St., Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated Serosol, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product is safe;

(b) That the product contains no harmful ingredients or that its use will leave no harmful effects;

(c) That the product will steady the nerves or enable one to sleep more restful;

(d) That the product will cause restoration of physical vigor or mental power;

(e) That drunkenness is a disease;

(f) That the product will bring one back to normal health;

(g) That the product will enable one to curb or stop the drink or liquor habit;

(h) That the product will prevent the craving or desire for alcoholic stimulants;

(i) That the product will enable one to overcome the desire for alcohol.

The respondent further agreed to cease and desist from using as a part of his trade name the word "Laboratories" or any other word or words of similar tenor, or effect, unless and until he actually maintains a place where scientific investigations are conducted. (Dec. 21, 1937.)

01989. Antiseptic—Trade Name and Qualities.—S. B. Hamilton, an individual, trading and doing business as Dr. S. B. Hamilton, Gay St. & Wall Ave., Knoxville, Tenn., vendor-advertiser, was engaged in selling a preparation designated Dr. Hamilton's Oral Antiseptic, and agreed in soliciting the sale of and selling said product in inter-

state commerce to cease and desist from representing directly or otherwise:

- (a) That said product, by the use in the trade name of the word "Antiseptic" or otherwise, is antiseptic;
- (b) That said product is recommended for or is of value in the treatment of Hoarseness, Throat Irritation, Pyorrhea, Trench Mouth, Sore or Bleeding Gums, Bad Breath, or similar ailments;
- (c) That said product will check the growth of germs which lodge in the throat;
- (d) That immediate relief is noticed after the use of said product;
- (e) That with the use of said product one may guard against throat irritations;
- (f) That the use of said product is a dependable way to check bad breath;
- (g) That one's health may be safeguarded by the use of said product;
- (h) That said product:
 1. Will sterilize one's mouth;
 2. Aids in healing gums;
 3. Is specially prepared to promote a healthy mouth and gums;
 4. Is an efficient deodorant;
 5. Will overcome unpleasant breath;
 6. Is a breath purifier. (Dec. 21, 1937.)

01990. Soot Remover and Flue Cleaner—Qualities.—F. C. Foard & Co., Inc., a corporation, Box 481, Bridgeport, Conn., vendor-advertiser, was engaged in selling a soot remover and flue cleaner designated Imp, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That fuel saving of 25 percent or any definite percentage may be expected from the use of respondent's product "Imp";
- (b) That "all" soot in flues, pipes, furnace, and chimney reverts to smoke or that the use of Imp leaves the furnace, flue, or chimney free from "all" soot, or removes all the soot;
- (c) That Imp is the one and only way to banish soot quickly and cheaply;
- (d) That fire departments have found Imp to be the most effective agent for extinguishing chimney fires;
- (e) That Imp is the most scientific and effective furnace and chimney soot destroyer and chimney fire extinguisher in the world. (Dec. 22, 1937.)

01991. Caffeine Tablets—Qualities, Opportunities, Free Product, and Trade Name.—Frank C. Starek, an individual doing business under the trade name of Wide-O-Wake Co., 82 W. Washington St., Chicago, Ill., vendor-advertiser, was engaged in selling caffeine tablets designated Wide-O-Wake Tablets, and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's tablets are—
 1. A new or outstanding discovery;
 2. A new, scientific discovery;
 3. A new product;

(b) That respondent's tablets—

1. Banish fatigue;
2. Overcome drowsiness or drive away fatigue from night driving;
3. Clear the head of that sluggish feeling;
4. Constitute a relief from sleepiness and drowsiness;
5. Provide "safe" relief from sleepiness and drowsiness;
6. Enable one to drive safely;
7. Keep one awake while driving;

(c) That respondent's tablets sell themselves;

(d) That respondent's salespersons or agents do not risk a single penny of their own money; unless respondent reimburses said agents or salespersons for all transportation charges in addition to the cost of the merchandise;

(e) That respondent furnishes salespersons or agents a handsome selling kit "free"; unless such kit is furnished without requiring the sale or purchase of any goods or the rendering of any service.

The respondent further agreed in soliciting the sale of his product in interstate commerce to cease and desist from using the words Wide-O-Wake as a trade name for a product composed of the ingredients contained in the product herein involved. (Dec. 22, 1937.)

01992. Medicinal Preparation—Nature and Qualities.—Stanco Inc., a corporation, 2 Park Ave., New York, N. Y., vendor-advertiser, was engaged in selling a certain preparation designated Nujol, and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the action of Nujol resembles that of the natural secretions of the intestines or that it is nature's own lubricant;

(b) That by the use of Nujol the intestines will be brought back to that state of internal cleanliness without which good health is impossible;

(c) That Nujol may be taken "under any condition";

(d) That any definite number or percentage of cases of any ailment are due to constipation or that Nujol will prevent any condition;

(e) That Nujol removes the cause of any ailment, unless limited to such ailments as are due to ordinary constipation;

(f) Inferentially or otherwise that Nujol is a competent treatment or an effective remedy for skin troubles;

(g) That Nujol is a competent treatment or an effective remedy for constipation unless limited to the relief of temporary constipation;

(h) That constipation is the cause of "most" skin troubles;

(i) That no one needs to have a sallow, muddy complexion, or that Nujol prevents intestinal poison that ruins your health and complexion;

(j) Inferentially or otherwise that Nujol will rid one of piles;

(k) That Nujol "puts the whole system in order";

(l) That the action of Nujol is "corrective" unless limited to the relief of ordinary constipation;

(m) That Nujol is of aid in the treatment of influenza;

(n) That Nujol will remove the poisons from the "body";

(o) That Nujol is not a medicine or laxative. (Dec. 23, 1937.)

01993. Medicinal Preparation—Qualities, Composition, Safety, and Certification.—Indian River Medicine Co., a corporation, LaFollette, Tenn., was engaged in selling a medicinal preparation designated

Scalf's Indian River Tonic, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the product will prevent colds;
- (b) That the product keeps one's resistance to colds built up, unless it contains a sufficient amount of Vitamin A to materially add in building resistance to infection and then only that it will aid in securing such results;
- (c) That the product is a health "builder";
- (d) That the product will enable one afflicted with rheumatism to become well or strong;
- (e) That the product will enable one to attain vigorous health;
- (f) That the product is effective for the proper conditioning of the "system";
- (g) That the product will enable one to "throw off" cold weather ailments;
- (h) That the product is a "natural vegetable compound" or that it is purely a vegetable compound, unless the formula is changed to make such statement a fact;
- (i) That the product will keep one in good health or that it will rebuild one's health;
- (j) That the product is "nature's own health builder";
- (k) That if one is nervous or cannot sleep at night or is tired and worn out when arising, or if one's head or joints ache and pain, the product will rid one of the cause of such conditions;
- (l) That the product will bring back the health and strength of one suffering with kidney poison, unless clearly limited to its action as a diuretic and diaphoretic;
- (m) That the product will enable one to "overcome" indigestion, gas pressure, improperly functioning liver, a serious kidney condition or a wrecked nervous system;
- (n) That the product will produce no harmful effects;
- (o) That the product will enable one afflicted with a general broken down condition of the nervous system to regain one's health or to become entirely well;
- (p) That the product will cause the health of one suffering from stomach troubles, sleeplessness, nervousness, shortness of breath, or tired feeling, to become in fine condition;
- (q) That the product is the "natural" way to relief;
- (r) That the product will rid one of a cold;
- (s) That the product will tone up the "system";
- (t) That the product will afford "certain" relief;
- (u) That the product will afford relief from chronic "ailments," unless such ailments as it may afford relief therefrom are stated in direct connection therewith;
- (v) That the product gives one the added energy one needs;
- (w) That the product is a competent treatment or an effective remedy for indigestion, kidney trouble, asthma, colds, coughs, rheumatism, nervousness, headaches, or liver trouble, unless limited to the symptoms of such conditions;
- (x) That the product is "certified" or that it has passed strict or rigid regulatory medical tests;
- (y) That the product will stimulate the "blood stream." (Dec. 23, 1937.)

01994. Surgical Dressings—Qualities and Trade Names.—Surgical Dressings, Inc., 65 Brookside Ave., Jamaica Plain, Boston, Mass., vendor-advertiser, was engaged in selling certain products designated

Sterilastic Bandages, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the bandages permit the skin to breathe;
- (b) That the bandages permit the natural functioning of the pores;
- (c) That any of its products afford "wound protection" unless limited to such protection as a surgical bandage or dressing may reasonably be expected to afford;
- (d) That any of its products have been sterilized, unless and until said products are sterilized and free from bacteria after being packaged and at the time of sale by respondent.

The respondent further agreed to cease and desist from using the words "sterilastic," "sterilized," or "sterile," or any other word or words of similar import or meaning as a part of the trade name for, or as a descriptive term for any of its bandages or dressings, unless and until said bandages or dressings are sterilized and free from bacteria after packaging and at the time of sale by the respondent. (Dec. 23, 1937.)

01995. Medicinal Preparation—Qualities.—Tryco Co., Inc., a corporation, 620 West Olympic Blvd., Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated Tryco Ointment, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's product will "baulsh," "heal," "end," or "cure":
 1. Athlete's foot,
 2. Ringworm,
 3. Barber's itch,
 4. Weeping eczema,
 5. Impetigo,
 6. Rashes,
 7. Poison ivy,
 8. Mosquito bites,
 9. Cold sores,
 10. Scabies,
 11. Pimples,
 12. Sun poisoning,
 13. Itching scalp,
 14. Chafing,
 15. Superficial skin itching;
- (b) That skin rashes disappear like magic;
- (c) That respondent's product will kill ringworm parasites unless such claims are limited to those organisms which come in contact with the preparation;
- (d) That respondent's product works like a "miracle";
- (e) That respondent's product is a competent treatment for wet eczema;
- (f) That respondent's product is a competent treatment for rashes or itch unless limited to those caused by superficial organisms;
- (g) That respondent's product is a competent treatment for poison ivy, insect bites, cold sores, scabies, pimples not superficial, sun poisoning, "itchy scalp," chafing, or soft corns. (Dec. 23, 1937.)

01996. Medicinal Preparations—Qualities and Indorsements.—Carlton Routzahn, an individual doing business under the trade name of Bland Products Co., 3319 N. Clark Street, Chicago, Ill., was engaged in selling medicinal preparations designated FLO (XX and XXX strength), and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Flo Compound (XX and XXX)—

1. Brings quick results in the most stubborn cases of delayed or unnatural menstruation;
2. Is pure and harmless;
3. Is safe and effective; or
4. Is effective for returning the flow in abnormal delays in menstruation;

(b) That women have gone abnormally as long as 3 months (or any other period of time) when with the use of Flo Compound they get rid of the condition of abnormal delay without pain or inconvenience;

(c) That Flo Compound is a competent remedy in the treatment of amenorrhoea, or painful, suppressed menstruation;

(d) That Flo Compound is a dependable potent periodic relief compound to combat pain or delay, or to correct abnormal conditions in the menstrual cycle;

(e) That the standard ingredients of Flo Periodic Relief Compound Pills have been constantly used by doctors and nurses everywhere;

(f) That Flo Compound tones up the organs and brings the desired relief and happiness;

(g) That the persistent use, over a week or so, of Flo Compound (XX strength) usually brings about return of the abnormally delayed flow;

(h) That Flo Relief Compound supplies an abundance of rich health-giving blood to delicate female organs. (Dec. 27, 1937.)

01997. Stamped Embroidering Materials—Guarantee, Free Product, Business Status, Special Offers, Earnings, Etc.—William M. Kalos, an individual trading as Artex Novelty Co., 44 Court St., New York, N. Y., vendor-advertiser, was engaged in selling Stamped Embroidering Materials, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That an unsatisfied customer will "lose nothing," or that respondent's "guarantee" protects the customer or that a customer takes no chances, unless and until the respondent remunerates such customer for the full purchase price of the materials and any other expenses that the customer may have incurred in connection therewith;

(b) That any article is "free" when the price thereof is included in the purchase price of another article or when the payment of any money or the rendering of any service is required;

(c) That the respondent is a manufacturer, unless and until the respondent shall own, control, or operate a factory wherein such materials are made;

(d) That any offer is limited or special unless a definite period of time is set and all offers to purchase under the terms of such offer received after the expiration date thereof are refused;

(e) That respondent has made arrangements with any person, firm or corporation to purchase or sell goods made by his customers, unless and until definite arrangements are made with persons, firms or corporations whereby they will endeavor to sell all of the goods embroidered by respondent's customers.

The respondent further agreed to cease and desist from representing by the use of such words as "Help Wanted," singularly or in combination or in any other manner, that the respondent has employment to offer, when such is not a fact.

The respondent further agreed:

(a) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time customers, achieved under normal conditions in the due course of business;

(b) 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 customers 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 of respondent's customers under normal conditions in the due course of business; and

(d) 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. (Dec. 27, 1937.)

01998. Salad Dressing—Quality, Sterilized, Certified, Etc.—The Glidden Co., an Ohio corporation, trading and doing business as Durkee Famous Foods, 2900 Fifth St., Berkeley, Calif., vendor-advertiser, was engaged in selling a salad dressing designated Durkee's Mayonnaise and sometimes referred to as Durkee's Certified Mayonnaise, and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the method of packing Durkee's Mayonnaise sterilizes the mayonnaise, or that Durkee's Certified Mayonnaise is sterilized;

(b) That the method of packing Durkee's Mayonnaise removes all air from the jar;

(c) That Durkee's Mayonnaise is the only mayonnaise packed with the Vapor Vacuum seal, unless such statement is limited to the area where such is the fact;

(d) That only with Durkee's Mayonnaise may one be assured of real fresh mayonnaise;

(e) That Durkee's has developed the Vapor Vacuum Pack;

(f) That the method of packing Durkee's Mayonnaise now enables one for the first time to buy mayonnaise, knowing it is fresh;

(g) That the Vacuum Pack assures the everlasting freshness of mayonnaise;

(h) That any person endorsing or recommending respondent's product is the director of or connected with any Science Institute, unless such organization is a bona fide institute engaged in scientific research.

It is further agreed that the respondent will cease and desist from representing, directly or otherwise, that said product is "Certified"

mayonnaise, or that the ingredients thereof are "certified," unless in direct connection therewith it is stated that such certification is by an employee of the respondent company. (Jan. 5, 1938.)

01999. Gasoline and Oil—Tailor Made and Qualities.—Skelly Oil Co., a corporation, Kansas City, Mo., vendor-advertiser, was engaged in selling gasoline and oil designated Skelly Aromax Gas and Oil, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That "only" Skelly Tailor Makes or that "only" Skelly adds virgin gasoline to meet weather conditions;
- (b) That Skelly Aromax is Tailor Made for "each community";
- (c) That automobiles using Skelly Aromax will "start for sure";
- (d) That Aromax gas plus K-27 will keep motors clean "from now on";
- (e) That Skelly Oil gives 35 percent to 50 percent or any definite percentage longer life;
- (f) That Skelly Aromax gives different or higher mileage per gallon than all other gas, or that Skelly always gives better mileage per gallon than all other gas;
- (g) That through the use of K-27, a cleaner motor is guaranteed, mileage between valve grinding is doubled, freedom from carbon deposits or related troubles is insured;
- (h) That through the use of K-27 Skelly Aromax becomes the only gasoline which will keep the motor clean or free from starting drag. (Jan. 5, 1938.)

02000. Cosmetics—Qualities.—Marvello Toilet Co., a corporation, 5403 W. Lake St., Chicago, Ill., vendor-advertiser, was engaged in selling cosmetics designated Marvello Face Cream and Marvello Face Powder, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the skin becomes roughened and irritated after using Marvello Cream, because new skin is forcing the old;
- (b) That Marvello Cream will keep the skin healthy, clear and/or smooth, during pregnancy or otherwise;
- (c) That Marvello Cream will not cause the skin to roughen or peel off as long as it remains healthy;
- (d) That Marvello Cream will purify the complexion or prevent or remove wrinkles, unless limited to helping delay the formation of wrinkles in the superficial skin structures;
- (e) That Marvello Cream is a competent treatment or effective remedy for, or that it will remove—
 1. Pimples;
 2. Scars;
 3. Moth patches;
 4. Blackheads;
 5. Blemishes;
- (f) That Marvello produces any specified results by coaxing the formation of new skin, or in any manner other than by inducing desquamation of the outer layers of the skin;
- (g) That this preparation preserves the skin. (Jan. 5, 1938.)

02001. Medicinal Preparation—Qualities, Guarantee, Etc.—William Cooper & Nephews, Inc., a corporation, 1909 Clifton Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated Pulvex Worm Capsules, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's Pulvex Worm Capsules expel tape, round (ascarid), and hook worms in one dosing or that all three kinds of worms are expelled by one dosing;

(b) That the percentage of dog ailments due to worms is greater than is established by competent statistical data;

(c) That respondent's product or results therefrom are "guaranteed." (Jan. 6, 1938.)

02002. Shampoo, Rinse, and Tonic for the Hair—Qualities and Free Products.—Guaranteed Products, Inc., a corporation operating under the trade name of Swedish Shampoo Laboratories, 27 W. 20th St., New York, N. Y., vendor-advertiser, was engaged in selling preparations designated Blondex Shampoo, Blondex Golden Rinse, Blondex Hair Tonic and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Blondex Shampoo or Rinse is not or does not contain a dye or bleach;

(b) That a shampoo with Blondex will have the same effect as a sun bath;

(c) That Swedish Shampoo and Rinse lighten hair 2-3-4 shades with one application;

(d) That anything is supplied "free" when in truth and in fact the price thereof is included in that of another article which must be purchased before qualifying to receive the gift;

(e) That these products, or any of them, will keep the hair healthy;

(f) That Blondex Shampoo is a competent treatment or an effective remedy for hard and/or brittle hair;

(g) That Blondex is a combination shampoo and rinse, unless clearly explained that reference is made to a shampoo and a separate rinse, sold in the same package;

(h) That golden hair can be assured all brown blonds by the use of Blondex;

(i) That Blondex Hair Tonic will—

1. Keep hair free from dandruff;

2. Keep hair thick;

3. Check falling hair; or

4. Stimulate the growth of new hair;

(j) That Blondex will bring out or produce natural color of the hair. (Jan. 7, 1938.)

0551. Window Washers—Earnings.—Carter Products Corp., a corporation, 954 Front Ave., Cleveland, Ohio, vendor-advertiser, was engaged in selling a product designated Window Washers and the

respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(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 of respondent's salespersons or dealers under normal conditions in the due course of business;

(b) 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

(c) 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.

It is understood and agreed that this stipulation is supplemental to and in no way changes the terms of Stipulation No. 0551, and upon the acceptance and approval of this stipulation by the Commission, the terms of both shall be in full force and effect. (Jan. 10, 1938.)

02003. **Cleanser for False Teeth—Qualities.**—Phillips & Benjamin Co., Inc., a corporation, 136 Grand St., Waterbury, Conn., vendor-advertiser, was engaged in selling a preparation recommended for cleaning false teeth, designated Stera-Kleen, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Stera-Kleen—

1. "Ends" bad taste and odor; or
2. Makes your plates "cool;"

(b) That Stera-Kleen removes the blackest stains, tartar and tarnish or causes the blackest stains, film, mucin and tartar to disappear like magic unless it is explained that a number of treatments, over a period of time, are required to bring about such results. (Jan. 10, 1938.)

02004. **Stock and Poultry Feed—Qualities, Guarantees, and Testimonials.**—Sargent & Co., a corporation, 411 E. Grand Ave., Des Moines, Iowa, vendor-advertiser, was engaged in selling stock and poultry feed, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's Mineral Meal gives the "perfect" or complete balance of minerals and protein;

(b) That respondent's Mineral Meal saves more than one-third or any definite amount of corn;

(c) That 1 pound of respondent's Mineral Meat Meal will save 10 pounds, or any definite amount of corn;

(d) That respondent "guarantees" its Mineral Meat Meal to save 5 bushels of corn per 100 pounds or get hogs ready for market 60 to 90 days, or any definite number of days, earlier;

(e) That respondent's Dairy Supplement "guarantees" higher milk production;

(f) That respondent's Dairy Supplement saves up to 40 percent, or any definite percentage of grain, or doubles milk production, unless limited to its use under conditions where protein and vitamins are lacking, or deficient, in the natural feed;

(g) That the use of respondent's Dairy Supplement will increase the dairy-men's milk production or profits 40 percent, or any definite percentage figure;

(h) That one bag of respondent's Dairy Supplement added to one-half ton of home-grown feeds will equal the milk-producing value of a ton of home-grown grain;

(i) That respondent's Dairy Supplement is "extra rich" in vitamins;

(j) That respondent's Dairy Supplement contains "all" the vitamins necessary to keep cows healthy and up to full milk production;

(k) That Sargent Laying Mash is "vitamin rich" or "super rich in vitamins";

(l) That respondent's Laying Mash will increase egg production from 25 to 50 or 100 percent, or up to any definite percentage;

(m) That respondent's Laying Mash keeps hens laying all winter;

(n) That results from the use of Sargent Laying Mash are immediate, unless the flock is being fed on ordinary farm rations;

(o) That the average Sargent-fed hen will lay 200 eggs a year or more;

(p) That Sargent's Laying Mash will give twice the production of eggs.

The respondent further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. This shall not preclude the publication of reports of controlled experiments conducted by competent and reputable educational institutions, or experimental stations. (Jan. 10, 1938.)

02005. Poultry Medicine—Qualities and Guaranty.—Truslow Poultry Farm, Inc., a corporation trading and doing business as Toxite Laboratories, Box 23, Chestertown, Md., vendor-advertiser, was engaged in selling a preparation designed to prevent the spread of diseases in poultry, designated Toxite, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Toxite kills all disease germs;

(b) That Toxite will stop chick losses or disease;

(c) That by using Toxite one may raise 95 percent or any other definite percentage of chicks;

(d) That by the use of Toxite, fowls, animals, buildings, or premises may be "rid" of insects, mites, germs, diseases, or parasites;

(e) That Toxite by itself or in conjunction with any method of care will "prevent" losses from brooder pneumonia, white diarrhea, coccidiosis, round or tape worms, lice, mites, ticks, bedbugs, or other pests;

(f) That Toxite will stop or eliminate disease;

(g) That Toxite was developed to insure poultry and livestock against disease and sickness;

(h) That Toxite works like magic;

(i) That Toxite soaks through manure or litter in a few minutes;

(j) That Toxite kills all bacteria and parasites with which it comes in contact;

(k) That Toxite is a remedy or treatment for colds, pox, roup or bronchitis unless it is clearly stated that it is only the symptoms of such diseases with which it is efficacious;

(l) That for the extermination of insects, bugs or mites, Toxite has no equal;

(m) That by the use of Toxite tuberculosis may be exterminated;

(n) That Toxite is a guaranteed product unless in direct connection therewith it is explained that by "guarantee" it is meant that the purchase price paid therefor will be refunded. (Jan. 10, 1938.)

02006. Plated Silverware, Etc.—Opportunities, Prices, Free Products, and Lottery Devices.—H. Meinhardt & Co., a corporation, 18 E. Kinzie St., Chicago, Ill., vendor-advertiser, was engaged in selling sales stimulator cards and plated silverware through agents whom it obtains through advertisements, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That its sales stimulator plan is new or is different from all other plans;

(b) That to become its agent assures one of steady income;

(c) That steady repeat orders require no effort;

(d) That orders automatically repeat;

(e) That its sales plan tops all sales records;

(f) That its plan is the biggest trade stimulator ever presented;

(g) That the opportunity of becoming its agent is a lifetime opportunity for creating a big profitable income;

(h) That the silverware used with its plan has a retail value of \$2.75 or any other value in excess of the retail price for which it is regularly sold;

(i) That its agents can average ten orders daily or any other number not shown by reliable records to be the average number of orders received daily by its agents under normal conditions.

(j) That any product is free, when in fact the price is included in the purchase price of other articles sold.

The respondent further agreed to cease and desist from distributing to, or representing that it will distribute to, any purchaser of its sales stimulator and silverware, cards, tickets, device, or plan to be used in conducting a lottery for the disposal of said silverware. (Jan. 11, 1938.)

02007. Food Supplement—Qualities, Composition, and Business Status.—Teru Matsuoka, an individual trading and doing business as Pro-Vita Food Laboratory, and Matsuoka Food Laboratory, 117 N. San Pedro St., Los Angeles, Calif., was engaged in selling a food supplement designated Pro-Vita, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Pro-Vita will restore health;

(b) That Pro-Vita is of value in the treatment or correction of sex weakness, nervousness, sleeplessness, general run-down condition, or any other infirmity of the human body;

- (c) That Pro-Vita builds body cells or tissues or contains substances required for the growth of tissues and organs or the repair of cells;
- (d) That Pro-Vita will banish disease or correct diet deficiency;
- (e) That Pro-Vita is the drugless way to health;
- (f) That Pro-Vita contains all the elements the human body needs;
- (g) That Pro-Vita is a discovery of modern science;
- (h) That Pro-Vita has a high content of vitamins or contains gland essences;
- (i) That Pro-Vita constitutes a method of supplying the body with the food elements that are often lacking in the ordinary diet;
- (j) That Pro-Vita furnishes elements which are needed to make new blood;
- (k) That Pro-Vita helps digestion;
- (l) That Pro-Vita goes to the seat of the trouble and corrects lowered vitality;
- (m) That Pro-Vita restores the stomach to a healthy, normal, or vigorous state;
- (n) That Pro-Vita will cleanse the blood of impurities and body toxins, or the tissues of accumulated waste;
- (o) That Pro-Vita assists in banishing aches, pains, dizziness, flatulency, headaches, lack of vitality, torpidity of the liver, or the inactivity of the kidneys.
- (p) That Pro-Vita will restore the blood to vitalized, life-giving healthfulness;
- (q) That Pro-Vita supplies all the elements which the system needs to build up the body to fight tuberculosis.

It is further agreed that the respondent will cease and desist from representing directly or otherwise through the use of a trade name containing the word "laboratory" or in any other manner that she maintains a laboratory or that Pro-Vita is prepared in a laboratory. (Jan. 5, 1938.)

02008. Mushroom Spawn—Guarantee, Earnings, Etc.—A. T. Lelles, an individual, operating under the trade name of Washington Mushroom Industries, 2019 Second Ave., Seattle, Wash., vendor-advertiser, was engaged in selling Mushroom Spawn, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's mushroom spawn is "guaranteed" unless the conditions of such "guarantee" are stated in an equally conspicuous manner in direct connection therewith;
- (b) That the average price per pound is any amount unless supported by reliable statistics;
- (c) That inferentially or otherwise by use of the words "We supply materials" or any other words of similar import or meaning that the respondent supplies materials without cost unless and until such is a fact.

The respondent further agreed—

1. Not to make unmodified representations or claims of earnings in excess of the average earnings of persons purchasing spawn from him, achieved under normal conditions in the due course of business;
2. 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 purchasing spawn from him, under normal conditions in the due course of business;

3. 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 purchasing spawn from him, under normal conditions in the due course of business;

4. 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. (Jan. 14, 1938.)

02009. Medicinal Preparation—Qualities and Safety.—T. Stern, L. Rich, and B. Stern, a copartnership, doing business under the trade name of S-X Products Co., 827 Irving Park Blvd., Chicago, Ill., vendor-advertiser, was engaged in selling a preparation recommended for the restoration of physical and sexual powers to both men and women, designated S-X Tablets, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That S-X Tablets—

1. Renew the youth of either men or women;
2. Help restore youthful ability, ambition, and popularity to either men or women;
3. Wake up the glands of either men or women; or
4. Enable men or women to enjoy All the pleasures of life;

(b) That S-X Tablets are sure and/or harmless;

(c) That S-X Tablets—

1. Enable either men or women to hold on to youth;
2. Offer either men or women the means to live a normal, zestful life;
3. Offer either men or women the means to maintain the sex attraction of vigorous, physical health;
4. Offer either men or women the means to keep up the pleasant marital duties which every human being enjoys and wants;
5. Protects manhood;
6. Protects womanhood;
7. Give a new lease on the greatest joys of life;
8. Have helped many men and women who have felt that they were slipping;
9. Have made marriages, that seemed destined for the divorce courts, happy again;
10. Give a new feeling of vigor and strength to men and women who felt their manhood and womanhood was leaving them;
11. Stimulate vigor and the ability to perform pleasurable physical functions;
12. Make less likely the prospect of "growing old before your time";
13. Bring glorious power to both young and old;
14. Have helped many who thought they were down and out; or
15. Will cure the most stubborn cases of glandular trouble;

(d) That S-X Tablets are a competent remedy in the treatment of backaches, failing memory, loss of concentration power, lack of enjoyment in marriage relations, sluggishness, nervousness, or fretfulness;

(e) That S-X Tablets are a competent remedy in the treatment of symptoms of "Change of Life," loss of pep and vigor, or lack of desire for activity. (Jan. 17, 1938.)

02010. Medicinal Preparations—Qualities and Ailments.—Blackburn Products Co., a corporation, Dayton, Ohio, vendor-advertiser, was engaged in selling certain medicinal preparations including Sulpherb Tablets, Balmwort Tablets, Casca Royal Pills, Su-Thol Tablets, and Cadomene Tablets, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Sulpherb Tablets constitute a competent treatment or an effective remedy for pimples, unless limited to the relief of pimples due to improper elimination, or that such a treatment will induce the "destruction" of pimples, or will "eradicate" pimples;

(b) That Cadomene Tablets form a competent treatment for anemia, unless limited to simple or nutritional anemia;

(c) That Cadomene Tablets are of value in the treatment of Amenorrhoea, unless clearly limited to Amenorrhoea due to simple or nutritional anemia, and provided such explanation further states that in cases not known definitely to be due to such anemia, this treatment might not be of value and a physician should be consulted;

(d) That Cadomene Tablets enrich the blood, tone up the nerves and/or strengthen the system generally, unless clearly limited to those cases in which such conditions are caused by simple or nutritional anemia;

(e) That Cadomene Tablets are "the most quickly effective" and/or "most scientific formula" for anemia, or for any other condition;

(f) That Cadomene Tablets are a competent treatment for a "run-down condition of the general system" or for "loss of flesh," unless limited to those cases which are caused by some specified condition for which these tablets are known to be effective;

(g) That Blackburn's Casca Royal Pills constitute a competent treatment for "habitual constipation," or for "constipation," unless limited to the relief of constipation;

(h) That the use of Cadomene Tablets restores debility of the tissues;

(i) That Cadomene Tablets are of value in the treatment of epilepsy;

(j) That Sulpherb Tablets constitute a competent treatment for "impure" blood, or are the "newest" or "most effective" remedy for any specified condition;

(k) That Sulpherb Tablets are of any substantial value in the treatment of tonsillitis;

(l) That Balmwort Tablets constitute a competent treatment for cystitis;

(m) That Balmwort Tablets stimulate diseased mucous membrane, or cause a normal secretion of mucous;

(n) That Balmwort Tablets will render the urine acid;

(o) That the prevailing cause of nervous troubles is impoverished blood;

(p) That Cadomene Tablets are a competent treatment for diseases or conditions caused by anemia, unless clearly limited to specified conditions due to or aggravated by simple or nutritional anemia, and for which such a combination of medicinal agents have been proven effective, according to reliable scientific opinion;

(q) That Su-Thol Tablets are a competent treatment for colds or neuralgia, unless expressly limited to the relief of pain incident to such conditions;

(r) That any of respondent's products will get "rid" of pimples or of any other condition;

(s) That Sulpherb Tablets will keep the blood pure;

(t) That Sulpherb Tablets—

1. Cleanse the system;
2. Clear the complexion;
3. Keep one well and happy; or
4. Keep one free from pimples;

(u) That Sulpherb Tablets are a competent treatment for torpid liver, biliousness, skin disorders, kidney disorders; and/or skin diseases;

(v) That Blackburn's Casca Royal Pills are effective in the treatment of biliousness, sour stomach, torpid liver, coated tongue, headache, and/or languor, unless limited to the relief of such conditions to the extent that they are caused or aggravated by constipation;

(w) That Balmwort Tablets are an effective remedy for—

1. "Backache,"
2. "Kidney irregularities," or
3. "Bladder distress";

(x) That Balmwort Tablets constitute a competent remedy for—

1. Bloodshot eyes;
2. Scanty dark urine;
3. Rheumatic twinges;
4. Dizziness;
5. Aching joints;
6. Swollen ankles; or
7. Lack of energy. (Jan. 20, 1938.)

02011. **Vibratherm—Qualities and Guarantee.**—The Vitaphore Appliances, Inc., a corporation, South Bend, Ind., vendor-advertiser, was engaged in selling a device designated Vibratherm, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Vibratherm produces a tonic effect on the entire nervous system immediately;

(b) That a feeling of relief and well being comes to the patient with the first treatment with the Vibratherm;

(c) That the Vibratherm—

1. Gives almost immediate relief to sufferers from prostatic disorders;

or

2. Removes all congestion and irritation due to prostatic disorders;

(d) That the Vibratherm—

1. Relieves hemorrhoids;
2. Causes the absorption of the blood filling the hemorrhoidal protrusions; or
3. Completely relieves all swelling and pain due to hemorrhoids;

(e) That the Vibratherm—

1. Is a competent remedy in the treatment of constipation; or
2. Will establish normal peristalsis of the rectal muscles and normal bowel function;

(f) That the Vibratherm is a competent remedy in the treatment of bladder irritation, etc.;

(g) That the Vibratherm is a competent remedy in the treatment of lumbago, sciatica, backache, leg ache, aching feet, or that it relieves congestion about the great nerve trunks;

(h) That the Vibratherm is a competent remedy in the treatment of female disorders, leucorrhoea, vaginitis, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, cramps, painful menstruation, etc.;

(i) That the use of the Vibratherm will prevent one from growing old prematurely;

(j) That the Vibratherm is practically superseding all other methods of treatment in the field of prostatic and rectal disorders;

(k) That the Vibratherm is "guaranteed" to bring relief;

(l) That the Vibratherm delivers to the affected areas five distinct healing treatments in one instrument; heat, infra-red rays, oscillation, massage, and dilation;

(m) That treatment with the Vibratherm—

1. Will bring complete relief from suffering;
2. Will restore the prostate gland to normal function; or
3. Will make aged men feel years younger;

(n) That the use of the Vibratherm will positively and permanently correct a large majority of cases of piles;

(o) That the Vibratherm—

1. Gives one "pep"; or
2. Relieves impotency;

(p) That the Vibratherm will enable one to "regain your health". (Jan. 21, 1938.)

02012. Hair and Scalp Treatments—Qualities.—G. Claude Shiffer, an individual, Shiffer Laboratories, Inc. a corporation, and Charles E. Shiffer, an individual, operating under the trade name of Shiffer System of Hair and Scalp Treatments, 711 Park Building, Cleveland, Ohio, vendor-advertiser, was engaged in selling treatments for the hair and scalp, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondents, or either of them, can promise every reader that—

1. "Except in rare cases, such as alopecia arcata, hair can be regrown";
2. Respondents can "save your hair," unless expressly limited to conditions that can be corrected to avoid the excessive falling of hair;
3. Respondents can enable the reader to retain the hair he has and add to its thickness, unless expressly limited to conditions that can be corrected to avoid the excessive falling of hair;
4. Respondents' treatments will correct the cause of thinning hair, unless expressly limited to conditions that can be corrected to avoid the excessive falling of hair;
5. Shiffer can prevent baldness, unless expressly limited to conditions that can be corrected to avoid the excessive falling of hair;
6. Treatment by Shiffer will correct his scalp disorder, unless expressly limited to conditions that can be corrected to avoid the excessive falling of hair;
7. Treatment by Shiffer will enable one to have a healthy growth and replacement of hair;
8. Shiffer treatment will normalize glandular activity;

(b) That the Shiffer Home Treatment will "stop"—

1. Baldness,
2. Falling hair, unless limited to excessive falling hair; or
3. Dandruff;

(c) That the scalp chart, when submitted by a prospective customer, enables respondents, or either of them, to analyze the scalp or hair condition of the individual as accurately as would a personal examination. (Jan. 25, 1938.)

02013. Wearing Apparel—Price, Free Products, Nature of Manufacture, Quality, Composition, Etc.—Mary V. Kent, an individual operating under the trade name of The Kingtex Co., 1076 Bergen St., Brooklyn, N. Y., vendor-advertiser, was engaged in selling shirts, ties, lingerie and other wearing apparel, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Representing that certain men's ties sold by respondent to agents for 10 cents each, retail for 35 cents or any other price greater than that at which they are regularly sold;

(b) Representing that respondent sells to her salespersons or agents hose, shirts, and ties at a price of 3½ cents, unless each of the items included is sold for that price;

(c) Representing that respondent's salespersons or agents "Risk nothing" when engaging in business relations with her;

(d) Representing that respondent furnishes her salespersons and agents with complete sales outfit, including samples of shirts, ties, underwear, hose, and lingerie at her own expense and without cost to her salespersons and agents;

(e) Using the word "fashioned", either by itself or in conjunction with any other word or words, as a name for or to describe a stocking, unless said stocking is shaped in the knitting by the process known as "narrowing" or "widening", which involves the transfer of loops or stitches from one needle to another and the dropping or adding of needles in the knitting operation;

(f) Using the word "fashioned," either by itself or in conjunction with any other word or words, as a name for, or to describe, a stocking only part of which is actually shaped in the knitting by the process known as "narrowing" or "widening," which involves the dropping or adding of needles in the knitting operation, unless said word "fashioned" is qualified or limited in such a way as to apply specifically to the part of the stocking thus shaped;

(g) Representing that any of her garments are made of materials woven with a specified number of threads per inch, unless said specified number of threads represents the actual count per inch of the fabric one way and not the "total" of the count of the fabric per inch each way;

(h) Representing that the beauty, quality, or tailoring of her shirts rival garments imported from abroad which sell for treble the price of respondent's garments;

(i) Representing that certain of her hose are manufactured from imported Egyptian lisle, unless and until the lisle used in said hose is actually imported from Egypt;

(j) Representing that any of her garments are knitted or made from genuine pure silk, or silk, unless and until the thread used in said garments is the thread manufactured from the cocoon of the silkworm;

(k) Representing that respondent's hose is reinforced with "manufactured" silk unless and until the thread used in said reinforcement is made from the cocoon of the silkworm;

(l) Representing that certain of respondent's garments are "full, Government Size";

(m) Representing that any of respondent's hose are manufactured with a specified number of "threads" to the inch, when in truth and in fact such number is actually the number of "strands" of which the threads are composed;

(n) Representing that any of respondent's hose are

(1) Snag-proof;

(2) Run-proof. (Jan. 25, 1938.)

02014. Medicinal Preparation—Qualities.—Haruki Fujikawa, an individual operating under the trade name of College Pharmacy, 2631 King St., Honolulu, Hawaii, vendor-advertiser, was engaged in selling a medicinal preparation designated Icho-No-Tomo, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product is an effective treatment for stomach-ache, heartburn, or indigestion, unless limited to temporary relief in cases due to gastric hyperacidity;

(b) That respondent's product will cure stomach or bowel ills;

(c) That respondent's product is a remedy for all kinds of stomach pains;

(d) That respondent's product will give complete relief or comfort;

(e) That respondent's product is a complete treatment for excess acid, unless limited to hyperacidity of the stomach. (Jan. 31, 1938.)

02015. Food Supplement—Qualities and Safety.—Therapy, Ltd., a California corporation, 333 S. Fair Oak Ave., Pasadena, Calif., vendor-advertiser, was engaged in selling a certain supplemental food product designated Theradiet, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Theradiet—

1. Enables one to reduce weight without nerves or respiratory or pulmonary trouble;

2. Enables one to reduce weight, unless limited to nutritional obesity;

3. Enables one to reduce to the "desired weight," without loss of energy, unless limited to nutritional obesity;

4. Melts out fat;

5. Tones up the skin so that it is firm;

6. Feeds the nerves or fattens them;

7. Improves the heart, stomach, kidneys, or skin;

8. Is a new revolutionary reducing method;

(b) That one's mineral needs are provided by only a teaspoonful of Theradiet three times a day;

(c) That ordinary table vegetables do not contain the necessary minerals for nutrition;

(d) That Theradiet, because it is a natural method, or for any other reason, will cure the disease of overweight, unless limited to nutritional obesity;

(e) That through Theradiet one may reduce safely, comfortably or pleasantly without a diet;

(f) That if a person wants to reduce one's hips without taking too much flesh from the face one's troubles are at an end;

(g) That the scientists of Therapy, Ltd. have discovered that any form of nutritional obesity can be brought back to normal and general health improved;

(h) That today any man or woman, who wants to get rid of excess flesh, can do so in their own home with perfect safety;

(i) That scientists of Therapy, Ltd. discovered a system of weight reducing that calls for any specified loss of weight within any specified time;

(j) That through Theradiet the whole nervous system is brought back to normal balance so that one sleeps better, or is less irritable;

(k) That by following the diet which accompanies Theradiet one will be able to diminish weight and increase pep and energy, unless limited to nutritional obesity;

(l) That the "average" diet is "generally" deficient in organic minerals and vitamins;

(m) That to drink a spoonful of Theradiet in a glass of fruit juice over a period of time will cause pounds to roll off;

(n) That the Theradiet way is the safest and most scientific way to be slim;

(o) That by reducing with Theradiet one does not have sagging skin or wrinkles. (Jan. 28, 1938.)

20216. Medicinal Preparation—Qualities, Size, and Business Status.—
Ross Dyar, an individual trading and doing business as World's Medicine Co., Post Office Box 291, Indianapolis, Ind., vendor-advertiser, was engaged in selling a medicinal preparation designated World's Tonic, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That World's Tonic—

1. Is a weight builder or will cause one to gain weight;
2. Is a vermifuge or is of value in the dispelling of tape worms or other parasites;
3. Acts as a food to the body, or is of value in the treatment of anemia, diseases of the liver, kidneys, stomach, bladder, bowels or digestive system;
4. Will restore weak people to strength;
5. Is of value in the treatment of high blood pressure or blood and skin troubles;
6. Is of value in preventing child-bed wetting;
7. Will aid nature in cleaning poisons from the system;
8. Is a treatment for catarrh or is of value in relieving the symptoms of catarrh;
9. Combats catarrh at its source or will rid the system of catarrh;
10. Is a remedy for lazy, flabby or otherwise imperfect colons;
11. Can only do good;
12. Triumphs in obstinate cases;
13. Brings new, abundant and glorious health, pep and energy when all else has failed;
14. Has made tens of thousands of people happy in health;
15. Will cleanse and invigorate the system;
16. Has removed over 10,000 or any other number of monsters or tape worms;
17. Is a discovery;
18. Is of value in the treatment of rheumatism;

19. Is a life saving medicine;
20. Is the most remarkable medicine of the age;
21. Cleans up the system, purifies the blood or relieves congestion;
22. Helps to put into the system strengthening elements which we need for health;
23. Will re-invigorate the organs of the body or cause them to function properly;
24. Is of value in the treatment of gall stones or symptoms of gall stones;
25. Removes the cause of gall stones;
26. Will furnish iron for the blood;
27. Is an entirely different medicine;
28. Is a new medicine to cure ailments and afflictions;
29. Invigorates nerves, glands or muscles;
30. Is the secret of radiant health and beauty;
31. Is of value in the treatment of appendicitis or the symptoms thereof;
32. Is of value in strengthening one's system against catching colds;
33. Puts pep into one from the first dose;
34. Helps to restore tone to the entire body;
35. Is a restorative;
36. Is a magic restorer;
37. Is a medicine for weak people;
38. Will give one back lost pep and vigor;
39. Gives almost instant relief;
40. Is a nerve medicine;

(b) That the World's Medicine Company is one of the biggest medicine companies in the world;

(c) That if one wants to get well he should get started taking World's Tonic;

(d) That nearly every person over 25 years of age needs World's Tonic;

(e) That scientists are puzzled over the strange powers which World's Tonic appears to possess;

(f) That at the first sign of kidney trouble, bladder trouble, sour stomach, pains in the back or abdomen, loss of weight, or when tiring easily, World's Tonic should be taken;

(g) That one may enrich the blood with World's Tonic, and that dyspepsia, indigestion, loss of appetite, and neuralgia will be done away with;

(h) That the realization by the people that there is a new medicine called World's Tonic will mean fewer doctors' bills and funerals;

(i) That the discovery of World's Tonic was the combined efforts of some of the greatest scientists and doctors of the world;

(j) That years of research and vast fortunes were spent in developing World's Tonic;

(k) That one may be a he-man by taking World's Tonic;

(l) That World's Tonic will make a person 100 percent vigorous, full of pep with a sound stomach and rich, vigor-making blood.

It is further agreed that the respondent will cease and desist from representing, directly or otherwise, that he has in his employ scientists or that his scientists have made discoveries. (Jan. 28, 1938.)

02017. Poultry Feeds and Mash—Composition, Qualities, Testimonials, Etc.—Nutrena Mills, Inc. (a corporation), 35 Ewing St., Kansas City, Kans., vendor-advertiser, was engaged in selling poultry feed and

mashes designated by the trade name Nutrena, and including Nutrena Chick Mash Pellets, Nutrena All-Mash Egg Pellets, Nutrena Turkey Pellets, and Nutrena Growing Mash Pellets, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Nutrena Chick Mash Pellets contain the correct balance and blend of all vitamins, minerals, and nutritional food;
- (b) That Nutrena pellets "insure" sound bone structure, proper feathering, early maturity, or resistance to disease;
- (c) That Nutrena Chick Mash Pellets constitute the "best" feed that human ingenuity, modern equipment, and years of experience can produce;
- (d) That Nutrena Chick Mash Pellets are "chemically correct";
- (e) That Nutrena All-Mash Pellets produce more winter eggs than any other feed;
- (f) That eggs are produced at lowest cost by the use of Nutrena feeds;
- (g) That the use of Nutrena All-Mash Egg Pellets will result in more eggs on less feed, under all conditions;
- (h) That Nutrena makes hens shell out eggs to maximum capacity the year round;
- (i) That Nutrena All-Mash Egg Pellets have an unequalled record of performance;
- (j) That the Nutrena All-Mash Egg Pellet way of feeding is the only absolutely correct way to feed;
- (k) That Nutrena feeds are the safest to use or the standard of purity;
- (l) That Nutrena feeds prevent waste;
- (m) That Nutrena feeds save 10 to 20 pounds per hundred, unless such statement is supported by competent, reliable tests, and the statement clearly explains the feed with which comparison is made;
- (n) That this feed achieves specified results at less cost than "any other feed;"
- (o) That respondent can assure growth of chickens to the weight of 3 pounds in 9 weeks;
- (p) That Nutrena feeds will solve all feed problems of poultry raisers;
- (q) That a ration which includes Nutrena feeds is the best that can be produced on the farm;
- (r) That Nutrena feeds contain just what it takes to maintain health, vitality, and to make eggs at less cost;
- (s) That Nutrena fed hens are, in every case, healthy;
- (t) That Nutrena all-mash egg pellets is the safe, sure, and/or natural method of feeding;
- (u) That Nutrena feeds are more sanitary or are more easily digested, unless clearly and specifically explained as to the exact feed with which comparison is intended;
- (v) That Nutrena is "the" biologically nutritious chick mash;
- (w) That Nutrena feed raises more and better chicks on less feed at less expense, unless such statement clearly and specifically names the feed with which compared;
- (x) That Nutrena chick mash contains an excess of life-giving vitamins;
- (y) That Nutrena is the first to offer a biologically tested feed;
- (z) That Nutrena Turkey Pellets are the simplest, safest, and/or easiest known feeding method;

(aa) That poultrymen are of the opinion that Nutrena Chick Mash Pellets are more sanitary, dependable, and nutritive than any other feed;

(bb) That no other feed contains the growth producing vitamins and minerals;

(cc) That chicks are safer when fed Nutrena;

(dd) That Nutrena feeds are the first in history that have been proved by laboratory tests and practical use;

(ee) That Nutrena Chick Mash is the most economical feed to use;

(ff) That no other feed equals Nutrena in feeding chicks during the first 8 weeks;

(gg) That Nutrena Turkey Starting Pellets have been proven to contain vitamins A, B, D, and/or G in excess of the amounts necessary to meet the nutritional requirements of turkeys;

(hh) That feeding Nutrena Turkey Starting Pellets removes the last feeding doubt in the minds of turkey raisers and/or assures the success of such efforts;

(ii) That Nutrena Growing Mash Pellets puts more size, builds more bone, muscle, blood, and feathers and/or brings pullets into laying earlier.

The respondent further agreed to cease and desist from making any claim or statement in the nature of a comparison unless the basis of the comparison is clearly stated.

The respondent further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement, unless such statement has been accurately and thoroughly verified and an explanation is included to the effect that similar results cannot be expected by every user. (Jan. 28, 1938.)

02018. Medicinal Preparation—Safety, Guarantee, and Qualities.—Pynsol Laboratories, Inc., a corporation, 105 W. Madison St., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Re-Du, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Re-Du—

1. Is a safe, harmless method of reducing; or

2. Will make one look and/or feel 20 years younger;

(b) That Re-Du will "mold" or "help mold" your figure;

(c) That satisfactory results are guaranteed in 30 days, or at all;

(d) That Re-Du is the only one safe and sure way to develop the graceful figure which fashion dictates;

(e) That Re-Du will help you to regain a more symmetrical figure;

(f) That Re-Du will help attain that shapeliness of a well-formed body;

(g) That Re-Du—

1. Is the very best preparation on the market today; or

2. Slenderizes scientifically, safely and without any ill after effects;

(h) That it is impossible for Re-Du to disturb the digestive processes;

(i) That a person taking Re-Du will actually "see your fat disappear in a natural manner";

(j) That Re-Du will reduce a fat or obese person without dieting, discomfort, starvation, strenuous exercises, painful massaging, rolling on the floor, using rolling devices, impairment of health, etc. (Jan. 31, 1938.)

02019. Watches and Diamond Rings—Source or Origin.—Loftis Jewelry Co., a corporation, 34 N. State St., Chicago, Ill., vendor-advertiser, was engaged in selling watches and diamond rings and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That they are now selling the "Howard Watch;"
- (b) That they import their diamonds directly from the mines of South Africa. (Jan. 31, 1938.)

02020. Girdles and Brassieres—Qualities, Safety, Nature, Imported, and Special Offers.—Corset & Brassiere Trade Centre, Inc., a corporation, 255 Fifth Ave., New York, N. Y., vendor-advertiser, was engaged in selling elastic and rubber girdles and brassieres, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) Representing that respondent's rubber or elastic girdles and brassieres
 1. Will reduce the size of one's hips, waist or diaphragm;
 2. Make fat disappear from the human body;
 3. Provide a safe, sure or quick way of reducing;
 4. Enable one to reduce without resorting to exercise or dieting;
- (b) Designating its rubber or elastic brassieres as "reducing brassieres;"
- (c) Representing that the materials used in its garments are "French Imported," unless and until said garments are manufactured from material actually imported from France;
- (d) Representing that certain garments are offered at a specially reduced price for a limited number of days, and are sold only one to a customer, when in truth and in fact the price of the garments so offered is the regular price of said garments, and there is no limitation as to time of purchase or the number of garments a customer may purchase at the price advertised. (Jan. 31, 1938.)

02021. Coffee—Competitive Products and Qualities.—Steele-Wedeles Co., a corporation, Dearborn Street Bridge, Chicago, Ill., vendor-advertiser, was engaged in selling Savoy Coffee packed in vacuum tins, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That a pound of Savoy Coffee will make one and one-half times as many cups of coffee as a pound of ordinary coffee;
- (b) That coffee packed in containers other than vacuum tins will lose 65 percent of its flavor within nine days, or any other definite percentage of its flavor within any specified time. (Jan. 31, 1938.)

02022. Medicinal Preparation—Qualities and Ailments.—Lewis-Howe Co., a corporation, 4th and Spruce Sts., St. Louis, Mo., vendor-advertiser, was engaged in selling a medicinal preparation designated NR Tablets, and agreed in soliciting the sale of and selling said

product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product is a "corrective" or that it will "rid" the user of any ailment or from using any other representations that indicate permanent results may be expected;

(b) That colds are caused by sluggish bowels;

(c) That respondents' product will be of benefit in cases of chronic constipation, unless limited to temporary relief;

(d) That respondent's product is substantially different from other laxatives. (Feb. 1, 1938.)

02023. Wall Cleaner and Brushes—Qualities, Nature, Trade Name, Guarantee, Limited Offer, Free Product, and Earnings.—The Kristee Manufacturing Co., a corporation, Akron, Ohio, vendor-advertiser, was engaged in selling products designated Wall Cleaner, Chemo-Vac Brush and Electric Brush, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Chemo-Vac brush cleans clothes like "magic";

(b) That the product is a "dry cleaning" clothes brush unless qualified to indicate that it is not a dry cleaning brush as the term dry cleaning is generally understood;

(c) Inferentially or otherwise by use of the word "Vac" as a part of the trade name for the Chemo-Vac brush or in any other manner that the product is a vacuum brush or that it has a vacuum effect;

(d) That the Chemo-Vac brush has a unique vacuum feature;

(e) That the Chemo-Vac brush "banishes old style clothes brushes forever";

(f) That there has never been anything to approach the Chemo-Vac in efficiency, ease of use or economy;

(g) That the Chemo-Vac brush is "one hundred times" more effective than the whisk broom;

(h) That respondent guarantees profits to its agents;

(i) That any offer is limited or for any period of time unless a definite time limit is set and all offers to purchase under the terms of the offer received after the expiration date thereof are refused;

(j) That any article is "free" unless given without the payment of money or the rendering of a service or when the price thereof is included in the purchase price of other articles;

(k) That the "Electric" brush "raises no dust";

(l) That the "Electric" brush makes bristle brushes and whisk brooms obsolete;

(m) That the "Electric" brush resembles a vacuum cleaner or that the results gained by its use are achieved in the same manner as results are achieved by using a vacuum cleaner;

(n) That by use of the Wall Cleaner wall paper will last longer unless limited to deferring the replacement of wall paper;

(o) That by use of the Wall Cleaner wall paper will be kept free of dust, smoke or disease germs.

Respondent further agreed:

1. Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time sales persons or dealers achieved under normal conditions in the due course of business;

2. 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 sales persons or dealers under normal conditions in the due course of business;

3. 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 sales persons or dealers under normal conditions in the due course of business; and

4. 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. 3, 1938.)

02024. Medicinal Preparation—Qualities and Trade Name.—Delettretz, Inc., a corporation, 21-09 Borden Ave., Long Island City, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Delettretz Eyelash Grower, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product will make the lashes long or restore their color;

(b) That this preparation will check a tendency to thinning lashes and brows, unless expressly limited to those conditions wherein such a preparation is recognized as a competent treatment.

Respondent further agreed in soliciting the sale of said commodity in interstate commerce, to cease and desist from using the word "grower" as any part of the trade name to designate said product, or from making any other representation which would in any manner indicate that this product will be of value in inducing the growth of eyelashes. (Feb. 3, 1938.)

02025. Skin Treatments—Qualities, Etc.—Pauline Palmer, Inc., a corporation, 1014 Armour Boulevard, Kansas City, Mo., vendor-advertiser, was engaged in selling a treatment for wrinkles, crows feet, double chin, age marks, etc., designated the Palmer Method, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Palmer System of Treatment—

1. Makes old faces young;

2. Makes men look 10 to 15 years younger;

3. Keeps wrinkles away;

4. Erases age lines, unless qualified to exclude cases in which such results cannot be reasonably expected;

5. Lifts sagging muscles;

6. Fills up hollows;

7. Is nature's way of "face lifting";

8. Banishes wrinkles, scrawny neck, "crow's feet", double chin, and other marks of age; or

9. Causes wrinkles and age lines to vanish without drugs, cosmetics, beauty parlor aids, or facial surgery;

(b) That the Pauline Palmer System of Facial Exercises is designed not only to correct, but to prevent sagging cheek muscles, lines at the corner of eyes, lines under eyes, hollow cheeks, double chin, crepy neck, drooping mouth, hollow or sunken eyes, lines in front and back of ears, bad complexion, lines on forehead, frowning lines, fat face, sad expression, withered and wrinkled neck, eyelides drooping and lined, lines from nose to mouth, wrinkles anywhere on face and neck on both men and women;

(c) That, by inference or otherwise, the Pauline Palmer System of Facial Exercises was connected directly or indirectly with Ninon de L'Encles, "the woman who never grew old";

(d) That the Pauline Palmer System of Facial Exercises will:

1. Make a man's appearance half his age;
2. Make sunken cheeks, at 50, full and round at 72;
3. Make a drooping mouth, at 50, as firm and muscular as when 25 at the age of 72;
4. Make the throat muscles regain their former strength and roundness;
5. Make folds of loose skin disappear, unless qualified to exclude cases in which such results cannot be reasonably expected; or
6. Make deep lines, crossing and recrossing the back of the neck, disappear, unless qualified to exclude cases in which such results cannot be reasonably expected;

(e) That the Pauline Palmer System of Facial Exercises:

1. Make wrinkles disappear;
2. Make sunken cheeks fill out;
3. Add more sparkle to the eyes;
4. Make the complexion incomparable;
5. Make double chins vanish;
6. Make faces more plump;
7. Make age lines disappear; or
8. Remodels the face. (Feb. 4, 1938.)

02026. Medicinal Preparation—Qualities and Composition.—Brewer & Co., Inc., a corporation, 12 East Worcester, Mass., vendor-advertiser, was engaged in selling a medicinal preparation designated Sun Glow Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Brewer's Sun Glow Tablets—

1. Have just the combination one needs to build strength and prevent colds;
2. Shorten the duration of a cold;
3. Lessen the severity of a cold;
4. Are most effective in helping to check colds;
5. Alone will give the results one needs;
6. Banish tired, rundown feeling or give one a new lease on life;
7. Contain exactly what one needs to build up his body strength and energy;
8. Will enable one to avoid colds and illness;

(b) That each of Brewer's Sun Glow Tablets has the same amount of Vitamin A and Vitamin D as a "big spoonful" of Cod Liver Oil;

(c) That Brewer's Sun Glow Tablets will restore one's old "zip" and "pep" and eliminate that worn-out feeling. (Feb. 8, 1938.)

02027. Medicinal Preparation—Qualities.—The Histeon Corp., a corporation, 415 W. Pershing Road, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Histeon, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Histeon is a revolutionary product;

(b) That Histeon will give revolutionary new relief, or relief in a radically different way to hay fever sufferers;

(c) That Histeon works on the poisons in the blood;

(d) That Histeon will keep every trace of hay fever suffering cleared away for the whole season;

(e) That Histeon gives lasting relief;

(f) That Histeon is a direct relief;

(g) That Histeon works like magic;

(h) That Hay Fever sufferers who know about Histeon do not have a "tough time";

(i) That Histeon is turning ideas about hay fever relief upside down;

(j) That Histeon is a new kind of hay fever relief;

(k) That Histeon is the fastest acting cold remedy;

(l) That Histeon will relieve "other miseries" unless in direct connection therewith such statement is qualified to show the therapeutic limitation of the product. (Feb. 10, 1938.)

02028. Beverage—Qualities, Indorsements, and Trade or Corporate Name.—American Maté Import Corp., a corporation, 685 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a variety of Yerba Maté, a South American Tea designated Maté Del Morro, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of Maté Del Morro will cause one to regain health and strength.

(b) Maté Del Morro is a "health-restorer," or that it is "health-sustaining" or "health inducing";

(c) That Maté Del Morro has nourishing food value;

(d) That Maté Del Morro aids in fighting infection, strengthening and benefiting the digestive organs, heart, nerves, and brain;

(e) That Maté Del Morro has no effect on the nervous system and can be taken before retiring without fear of insomnia;

(f) That Maté Del Morro constitutes a competent treatment or an effective remedy for

(1) Arthritis

(2) Rheumatism

(3) Kidney disease

(g) That doctors recommend it to convalescents, unless such representation is qualified to indicate the locality in which it is so recommended by a substantial number of doctors;

(h) That Maté Del Morro will "banish" fatigue and depression;

(i) That Maté Del Morro has helped thousands who were run down;

(j) That the President of the United States or any government official indorses the use of Maté;

(k) That the use of Maté Del Morro will cause one to gain beauty, charm or otherwise:

Respondent further agreed to cease and desist from using the word "Import" as a part of its corporate or trade name and from otherwise representing that the aforesaid product is imported by respondent, unless and until the product is actually imported by the respondent. (Feb. 10, 1938.)

02029. **Medicinal Preparation—Qualities.**—John Hilgers, an individual doing business under the trade name of J. Hilgers & Co., Dept. 153, Binghamton, N. Y., vendor-advertiser, was engaged in selling a preparation designated Rex Hunters Condition Powders, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product provides *all* the natural blood correctives that dogs of all breeds need for their systems;

(b) That respondent's product is one that will end, as used in a sense of finality, all conditions that cause scratching, loose coat, nervousness, listlessness, poor appetite, eczema, and a host of other ailments; or that its use will make the dog healthy, unless limited to results expected from the administration of condition powders;

(c) That respondent's product will "cleanse" the blood of dogs, "correct" internal congestions of their livers or kidneys, "restore" health, or that it is a remedy for eczema or gout, unless limited to its effect as a tonic and reconstructive, which may relieve the symptoms of such conditions;

(d) That respondent's product will benefit all the vital organs of the dog's body, unless limited to its general benefits as a blood tonic and reconstructive to improve the dog's general well-being. (Feb. 11, 1938.)

02030. **Gasoline—Qualities.**—Yale Oil Corp., a corporation, 800 First Ave. North, Billings, Mont., vendor-advertiser, was engaged in selling Litening Gasoline, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That kerosene type, kerosenish ends, or valueless ends of kerosene are completely refined out of Litening gasoline;

(b) That with Litening gasoline one gets 5 to 10% more gas per gallon;

(c) That every drop of Litening gasoline goes into the production of power;

(d) That with Litening gasoline you get more gallons of useful power than shows on the fuel pump indicator;

(e) That Litening gasoline gives 5 to 10% more true explosive elements;

(f) That every drop of Litening gasoline vaporizes perfectly. (Feb. 7, 1938.)

02031. **Medicinal Preparation—Qualities and Composition.**—Paul Tomko, an individual doing business under the trade name of Garlic Tablet Co., 110 W. 40th St., New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Garlic Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's product is an effective remedy or will relieve:
 - High blood pressure,
 - Indigestion,
 - Flatulence,
 - Colic,
 - Bronchitis,
 - Intestinal disorders;
- (b) That respondent's product is fortified with the essential body building minerals;
- (c) That respondent's product will reduce high blood pressure. (Feb. 7, 1938.)

02032. **Cleansing Preparation—Guarantee and Qualities.**—G. L. Wiggins, an individual operating under the trade name of The Lifol Co., 213 So. Boston St., Tulsa, Okla., vendor-advertiser, was engaged in selling a cleansing preparation designated Wiggins SOS, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Wiggins SOS is "guaranteed" to achieve any particular results;
- (b) That Wiggins SOS—
 1. Will rid the scalp of dandruff;
 2. Causes dandruff to vanish;
 3. Liquefies dandruff instantly;
 4. Will cause dandruff to go;
 5. Frees the scalp of dandruff,
- or any other statement which infers that this product is a competent treatment or an effective remedy for dandruff, or any claim beyond the removal of the dandruff;
- (c) That this product will stop itching of the scalp;
- (d) That dandruff will cause damage which in turn may cause baldness;
- (e) That any results achieved by the use of this preparation are "magical";
- (f) That every progressive barber, beautician, and/or druggist will recommend Wiggins SOS;
- (g) That everyone who keeps his scalp free from dandruff will have healthy, beautiful hair. (Feb. 11, 1938.)

02033. **Men's Clothing—Free Product, Composition, and Trade Names.**—J. B. Cumming-Brown Co., Inc., a corporation, Rome, Ga., vendor-advertiser, was engaged in selling men's clothing, and agreed in

soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any article is given "free" when in truth and in fact, the offer thereof is conditioned upon the performance of any service for the advertiser;

(b) That any of the suits sold by respondent are "Wool," "All Wool," "Woolen," "Melton," or "Worsted," unless the cloth from which they are made is composed entirely of woolen threads;

(c) By the use of such trade names as "Highland Twist," "Aberdeen Woolen," "Glasgow Worsted," or "Dundee Overcoating," that certain materials are of Scotch origin unless they are in fact imported from Scotland. (Feb. 11, 1938.)

20234. **Lettering—Composition.**—Barth Fusco, an individual, trading as Metropolitan Window Letter Co., 1699 Lexington Ave., New York, N. Y., vendor-advertiser, was engaged in Window Sign Lettering, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) From the use in his advertisements and advertising matter of the words "Gold" or "Silver" either alone or in conjunction with any other word or words or in any way so as to import or imply or which may have a capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are made or composed of gold in whole or in part or are made or composed of silver in whole or in part when such is not the fact, and from making any other claims or assertions of like import. Nothing herein, however, shall prevent the use of the words "gold" or "silver" to indicate the color of the respondent's products where such use is not in violation of this agreement as aforesaid. (Feb. 11, 1938.)

20235. **Electrical Devices—Qualities, Tested or Approved, Earnings, Etc.**—Trindl Products, Ltd., a corporation, 2227 Calumet Ave., Chicago, Ill., vendor-advertiser, was engaged in selling two electrical devices designated Trindl Arc Welder and Trindl Converter, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Trindl Welder produces enough heat to cause metals to run like water;

(b) That this device mends broken parts so that they are stronger than they were before, or that such welds are stronger than the metal itself, or that such welds will never break.

(c) That the Trindl Welder will do almost any job that welders costing \$150.00 or more will do, or that it will weld at all, unless such claim is limited to the welding of light materials to the extent established by competent, reliable, scientific evidence;

(d) That the Trindl Arc Welder works off any ordinary light socket, unless it is clearly and distinctly explained that a converter is also required for such attachment;

(e) That the Trindl Arc Welder has been tested or approved by the Automotive Test Laboratories of America, or that the device has been tested or approved by anyone unless it has in fact been so tested and approved by an accredited, reputable laboratory;

(f) That the Trindl Converter makes the welder a full professional size; or any other terminology stating or implying that it increases the capacity of the welder, or enables it to weld larger, heavier materials;

(g) That there are no devices sold in competition with respondent's products.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(h) 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;

(i) 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;

(j) 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. (Feb. 15, 1938.)

02036. Cereal Concentrate—Qualities and Composition.—Vitab Products, Inc., a corporation, 1259 Sixty-fifth St., Oakland, Calif., vendor-advertiser, was engaged in selling a cereal concentrate designated Vitab Cereal Concentrate, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vitab vitamin B "creates" appetite;

(b) That the mineral salts in the ingredients of Vitab are essential to bone and teeth structure during child growth;

(c) That respondent's product contains calcium which is needed for strong teeth and sturdy bones;

(d) That vitamin B is not widely distributed in natural foodstuffs, and that which is ordinarily considered as well-balanced diet is in all probability, deficient in vitamin B;

(e) That the amount of vitamin B in fruits and vegetables is very minute, and the increasing consumption of these foods does not increase the vitamin B intake. (Feb. 15, 1938.)

02037. Shampoo—Qualities, Ailments, and Guarantee.—F. W. Fitch Co., a corporation, Fifteenth and Walnut St., Des Moines, Iowa, vendor-advertiser, was engaged in selling a shampoo designated Fitch's Dandruff Remover Shampoo, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That dandruff clogs the "pores";

(b) That "dandruff" fills the hair follicles, unless explained that when used in connection with such claims, "dandruff" denotes such exfoliation as may take place within the follicle wall between the follicle wall and the hair root;

(c) That the hair "follicles" will become clogged or that the hair will die unless the skin is kept free from dandruff and foreign matter;

(d) That respondent's product will prevent clogging of the hair "follicles";

(e) That beautiful or healthy hair is "assured" by use of respondent's product or that it "will" keep the hair healthy;

(f) That any number or percentage of cases of baldness is due to any condition or circumstance;

(g) That dandruff, dirt, or foreign matter stifles the hair "follicles";

(h) That baldness can be avoided if the scalp is kept free from dandruff, dirt, or foreign matter, unless limited to such types of baldness as may be caused by dandruff, dirt, or foreign matter;

(i) That the product will "end" dandruff or that dandruff will "end" the hair, or that the product will "rid" the hair or scalp of dandruff;

(j) That dandruff is a cause of baldness;

(k) That skin blemishes or skin eruptions are traceable to dandruff;

(l) That the scalp is made up of "pores";

(m) That ordinary soap shampoos cannot dissolve dandruff or that they leave a curd deposit or that by their use scalp accumulations are increased;

(n) That dry or "itching" scalp or falling hair is due to dandruff;

(o) That the product will give vitality to lifeless hair;

(p) That the product will prevent falling hair or baldness, unless limited to excessive falling of hair and such types of baldness as may be caused by dandruff, dirt, or foreign matter;

(q) That Lloyd's of London back Fitch's guarantee to remove dandruff with the first application. (Feb. 16, 1933.)

02038. Office Equipment—Guarantee, Size, Earnings, Etc.—The Pruitt Corp., a corporation, 172 N. LaSalle St., Chicago, Ill., vendor-advertiser, was engaged in selling office equipment and a booklet entitled "Office Valuation Equipment Book", and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any article is "guaranteed" unless the complete terms thereof are stated in direct connection therewith in an equally conspicuous manner;

(b) That respondent is the largest dealer in rebuilt office machines and supplies in the world, or the largest firm of its kind in this country;

(c) That respondent's agents do "no selling," or that there is "nothing to sell," or that respondent desires that its agents "buy only";

(d) That respondent advances or furnishes the money for buying or in any other manner, representing or implying that respondent's agents are furnished with money to purchase the articles, and without stating in direct connection therewith in an equally conspicuous manner that the respondent makes direct payment to the owner for the purchased articles;

(e) That the respondent does not want to sell its agents anything;

(f) That the respondent's agent take or assume no risk.

The respondent further agreed:

1. Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time agents achieved under normal conditions in the due course of business;

2. 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 agents under normal conditions in the due course of business;

3. Not to represent or hold out as maximum earnings by the use of such expression 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 agents under normal conditions in the due course of business; and

4. 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. 16, 1938.)

02039. **Roofing Materials—Qualities, Etc.**—Wm. Cameron & Co., a corporation, Waco, Tex., vendor-advertiser, was engaged in selling roofing materials designated Flintkote and Richardson Roofing, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Flintkote and Richardson roofing materials make a roof that lasts four times as long as an ordinary roof;

(b) That Flintkote and Richardson roofing materials make a roof that lasts a lifetime;

(c) That a roof made with Flintkote and Richardson shingles has four times the life of an ordinary roof;

(d) That the remarkable and exclusive Supersaturation Process and the 4 to 1 Stabilized Asphalt Coating used on Flintkote and Richardson roofing materials—

1. Quadruples the life of a roof;

2. Makes "roofing dollars" go four times as far;

3. Gives the service of four ordinary roofs;

4. Increases the life of a roof 300 to 400 percent; or

5. Saves money through lowered insurance rates;

(e) That the Supersaturation Process is an exclusive Flintkote and Richardson process. (Feb. 16, 1938.)

02040. **Medicinal Preparations—Ailments, Qualities, and Trade Name.**—Gall-Flo Laboratories, Inc., a corporation, 1382 W. Third St., Cleveland, Ohio, vendor-advertiser, was engaged in selling certain medicinal preparations designated Gall-Flo Improved and Gall-Flo Laxative Tablets, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any physical ailment results from any other physical ailment unless such is a fact;

(b) Inferentially or otherwise, that the use of "Gall-Flo Improved" will prevent:

1. Gallstones;

2. Necessity for operation;

(c) That "Gall-Flo Improved" is a competent treatment or an effective remedy for constipation, unless limited to the temporary relief thereof;

(d) That "Gall-Flo Improved" is a competent treatment or an effective remedy for:

1. Stomach gases or pains;

2. Belching;

3. Gall-bladder trouble;

4. Liver trouble;

5. Nausea;
6. Bloating;
7. Indigestion;
8. Tired or worn out feeling;
9. Muddy or yellow skin color;
10. Gall colic;
11. Jaundice;
- (e) That "Gall-Flo Improved" promotes normal digestion in the intestines;
- (f) That "Gall-Flo Improved" is a "tested prescription";
- (g) That "Gall-Flo Improved" is a "digestive tonic";
- (h) That "Gall-Flo Improved" stimulates the natural functioning of the liver, gall bladder;
- (j) That "Gall-Flo Laxative Tablets" causes a movement in "nature's own gentle way";
- (k) That "Gall-Flo Laxative Tablets" will rid one of:
 1. Headaches;
 2. Nausea;
 3. Irritability;
- (l) That "Gall-Flo Laxative Tablets" is effective as a "guard against winter ills", or that it tones the "system."
- (m) That "Gall-Flo Laxative Tablets" stimulates the flow of bile, or that it "corrects" stomach, liver, or gall-bladder disorders;
- (i) That "Gall-Flo Laxative Tablets" is a "magic regulator" for constipation, or a competent treatment or an effective remedy for said condition, unless limited to the temporary relief thereof.

Respondent further agreed to cease and desist from using the words "Gall-Flo," or any similar words or words of similar meaning as a part of the trade name for either of its products. (Feb. 8, 1938.)

20241. Medicinal Preparation—Qualities and Composition.—Albert J. Kraus, an individual trading and doing business as United Sales and Manufacturing Co., 209 State St., Binghamton, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Ice-Mint, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Ice-Mint:
 1. Will overcome or heal piles;
 2. Is a remedy for piles;
 3. Is of value in the treatment of rectal soreness;
 4. "Heals" the affected parts or is a healing preparation;
 5. Makes feet feel fine or will end foot misery or give foot joy unless limited to tired burning feet;
 6. Is a foot remedy;
 7. Is of value in the removal of corns or callouses;
 8. Will prevent foot odors or will keep feet sweet and comfortable;
 9. Is the secret for fine healthy feet;
 10. Keeps one free from foot troubles;
 11. Will make rough, chapped, and red ugly hands soft, white, and beautiful.
 12. Contains nature's greatest beautifier;

13. Is replacing old style creams and lotions because its beautifying qualities are so quickly seen;

- (b) That summer chafing, pimples, rash, or skin irritations can be "overcome" by the use of Ice-Mint;
 - (c) That Ice-Mint is the proper treatment for any abrasion of the skin such as summer rash, pimples, chafing, cuts, or insect bites, unless limited to its cooling and soothing effect;
 - (d) That Ice-Mint is a purifying cream;
 - (e) That Ice-Mint is of value in the treatment of croup or catarrh;
 - (f) That Ice-Mint is a competent treatment for colds unless limited to easing the congestion of head colds;
 - (g) That Ice-Mint is of value in relieving the pain caused by muscular rheumatism or neuritis, unless limited to its cooling and soothing effect;
 - (h) That Ice-Mint acts as a tonic to the skin;
 - (i) That Ice-Mint has all the medication of an efficacious remedy;
 - (j) That Ice-Mint has value in the treatment of pimples or blackheads, unless limited to a cooling, soothing, or softening effect;
 - (k) That by the use of Ice-Mint one may have a beautiful skin or a clear complexion;
 - (l) That Ice-Mint will avoid or prevent infection;
 - (m) That Ice-Mint is of value in the treatment of or relief of headaches, unless limited to its use as a cooling, soothing application for simple headaches;
 - (n) That Ice-Mint is of value in the treatment of Eczema, unless limited to its cooling or soothing effect when applied externally;
 - (o) That Ice-Mint is of value in the treatment of sore throat or laryngitis, unless limited to its soothing, cooling, or congestion-easing effects when taken orally or inhaled;
 - (p) That Ice-Mint is of value in the treatment of or relief of lameness; unless limited to its cooling or soothing effects when applied externally in cases of athletic soreness or superficial muscular aches due to fatigue or exposure;
 - (q) That by using Ice-Mint one may stand all day or walk for miles without having his feet ache, burn, or perspire;
 - (r) That Ice-Mint will prevent new shoes from bothering one or will cause new shoes to feel like an old boot;
 - (s) That there is nothing better than Ice-Mint for the relief of foot troubles.
- (Feb. 19, 1938.)

02042. Hearing Aid Device—Qualities and Earnings.—Godsend Hearing Aid Co., a corporation, 4204 Davis Lane, Cincinnati, Ohio, vendor-advertiser, was engaged in selling products designated Godsend Hearing Aid and Amplifier, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the product will enable one to hear like normal;
- (b) That the product will overcome the obstacle of the advanced hearing defect of those totally deaf;
- (c) That without 400 percent amplification or any other percentage of amplification no other hearing device can be of the greatest assistance;
- (d) That respondent's amplifier affords 400 percent amplification or any other percentage thereof in excess of the actual percentage of amplification afforded;
- (e) That the product will benefit all hard of hearing persons;

(f) That the product alone or in combination with the amplifier will restore or bring back normal hearing;

(g) That the amplifier is an absolute necessity in cases of advanced impairment;

(h) That in the Godsend Hearing Aid alone the respondent has not sacrificed any feature which could possibly improve its hearing properties;

(i) That the product is a perfect hearing aid or it will enable one to hear perfectly;

(j) That the product or the amplifier or a combination thereof is unconditionally "guaranteed" unless the complete terms of the guarantee are clearly stated in direct connection therewith in an equally conspicuous manner;

(k) That the Godsend Hearing Aid is guaranteed to perform "as well as hearing aids selling at any price whatsoever";

(l) That nothing better or nothing more efficient can be made than respondent's product;

(m) That respondent's product will give strain-free power or that by use of the product there will be no distortion or no head noises.

The respondent further agreed:

1. Not to make any unmodified representations or claims of earnings in excess of the average earnings of respondent's active full time sales persons or dealers achieved under normal conditions in due course of business;

2. Not to represent or hold out as a chance or opportunity any amount in excess of what has actually been accomplished by one or more of respondent's sales persons or dealers under normal conditions in due course of business;

3. 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 sales persons or dealers under normal conditions in due course of business;

4. 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 at least one-fourth the size of the type used in printing such statement or representation of earnings. (Feb. 17, 1938.)

20243. **Matrimonial Pamphlets—Opportunities.**—Martin Rowan, an individual trading as Jane Fuller Club and Martin Rowan's Social Club, Box 1888M, Milwaukee, Wis., vendor-advertiser, was engaged in selling pamphlets containing social information, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That he will send Post Office addresses of women to those answering his advertisements, unless and until the respondent furnishes the complete Post Office addresses;

(b) That respondent will bring the same "ecstasy" to all that he may have brought to some;

(c) That the percentage of failures of marriages resulting from postal courtship is smaller than the percentage of failures of marriages resulting from conventional courtship;

(d) That all that is necessary for respondent to secure satisfactory results for one is for the respondent to be furnished with a clue as to one's wishes;

(e) That "there are many good ladies seeking for just such a gentleman as you." (Feb. 14, 1938.)

02044. Correspondence Course—Qualities and Government Use.—George E. Crandall and Ben C. Matthews, copartners, operating under the firm name of Dr. Crandall's Standard Institute, York, Penn., vendor-advertisers, were engaged in selling a Correspondence Course in Natural Therapeutics, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any number or percentage of people have turned from drugs and medicine to drugless methods for combating disease unless such statement is supported by reliable statistics;

(b) That the medical profession is full of humbug or pretense;

(c) That doctors dose the people with medicine which they do not believe in or use themselves;

(d) That the course has been "selected" by any branch of the Public Works Administration or otherwise representing or implying that the course is used or has been used or is approved or has been approved by any branch of the Federal Government;

(e) That the use of drugs is on the decline;

(f) Inferentially or otherwise that the method will be effective "after all other methods have been tried and failed";

(g) Inferentially or otherwise that the methods in respondents' course will be effective for—

1. Asthma,
2. Constipation,
3. Diabetes,
4. Ulcers,
5. Rheumatism,
6. Neuritis,
7. Varicose veins,
8. Tuberculosis,
9. Gall bladder disease;
10. Liver disease,
11. Arteriosclerosis,
12. Heart trouble,
13. Lues,
14. High blood pressure,
15. Nervous disturbances,
16. Goitre,
17. Overweight,
18. Digestive derangements,
19. Hemorrhoids,
20. Piles,
21. Acute indispositions and illness of any kind,
22. Female disorders,
23. Bright's disease,
24. Venereal diseases,
25. Catarrhal diseases,
26. Respiratory or intestinal troubles,
27. Hay fever,
28. Colitis.

(h) That the course will enable one to become a health "specialist."

The respondents further agreed to cease and desist from using the word "Standard" as a part of their trade name.

The respondents further agreed to cease and desist from using the word "Master" as part of the trade name for the course.

The respondents further agreed to cease and desist from representing that any student could earn any definite amount within any period of time unless the respondents had evidence that a substantial majority of their students were actually earning said amount.

The respondents further agreed to cease and desist from representing that they had instructors in the United States or in any foreign land where their students might secure practical instructions after completing their course unless and until respondents had a contract with such instructors to that effect. (Feb. 21, 1938.)

02045. Stock Feed Concentrate—Qualities and Composition.—Ward A. Marshall, an individual trading as Marshall Feed Co., Clay Center, Kans., vendor-advertiser, was engaged in selling a stock feed concentrate designated Syntha-Mixer, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's Syntha-Mixer is "guaranteed" to make a superior feed;
- (b) That Syntha-Mixer makes a "perfectly balanced" feed or contains "all" the necessary ingredients to make a "perfectly balanced" feed;
- (c) That Syntha-Mixer contains more vitamins than any other feed on the market;
- (d) That Syntha-Mixer is essential to health, production, or reproduction;
- (e) That Syntha-Mixer formula is the first to perfect a stabilized suspension of iodine;
- (f) That Syntha-Mixer is an "all vitamin" concentrate;
- (g) That Syntha-Mixer produces results not obtained by any other mixer on the market;
- (h) That the Clo-Trate in Syntha-Mixer supplies "all" the vitamin D needed, or that it "assures" high egg production, strong firm egg shells or well developed bones in chickens; or that the vitamins in Clo-Trate are more effective than in other similar products;
- (i) That iron is totally or substantially lacking in most feeds;
- (j) That the ingredients of Syntha-Mixer are "glandular activators";
- (k) That Syntha-Mixer is "life giving or life sustaining" unless limited to the nutritive or therapeutic value of its component ingredients. (Feb. 21, 1938.)

02046. Cosmetics—Qualities.—Lehn & Fink Products Corp., a corporation, Bloomfield, N. J., vendor-advertiser, was engaged in selling cosmetics designated Tussy Flozor, Tussy Eye Cream, Tussy Emulsified Cream, Tussy Rich Cream, Tussy Wind and Weather Lotion, Tussy Lip Pomade, and agreed in soliciting the sale of and selling

said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Tussy Flozor "revives" tired-looking or dull or lusterless hair;
- (b) That Tussy Flozor makes hair any shade lighter "instantly," or that it "brings back" sunlit beauty or "restores" copper gleam;
- (c) That Tussy Eye Cream prevents "that dry crepy look that makes eyelids old and wrinkled";
- (d) That Tussy Emulsified Cream lubricates the "tissues";
- (e) That Tussy Rich Cream will give "nourishment" to the skin or "combat" wrinkling;
- (f) That Tussy Wind & Weather Lotion is healing or penetrating;
- (g) That Tussy Rich Cream replenishes the natural oils of the skin;
- (h) That Tussy Rich Cream prevents or improves an undernourished condition of the skin;
- (i) That Tussy Rich Cream is healing or enriching to the skin;
- (j) That Tussy Emulsified Cleansing Cream is composed chiefly of vegetable oils;
- (k) That Tussy Rich Cream is effective for wrinkles;
- (l) That Tussy Emulsified Cleansing Cream will "rid" the pores of impurities or that its ingredients replenish the natural oils of the skin or that it is penetrating;
- (m) That Tussy Wind & Weather Lotion will "heal" the skin or end the effects of exposure;
- (n) That Tussy Lip Pomade is "healing";
- (o) That Tussy Flozor is "herbal", unless the amount of herbal ingredients is clearly stated in direct connection therewith and in an equally conspicuous manner;
- (p) That any of respondent's products will "prevent summer complexion." (Feb. 23, 1938.)

02047. Medicinal Preparations—Qualities.—No Wheez Corp., a corporation, 225½ N. Main St., St. Charles, Mo., vendor-advertiser, was engaged in selling medicinal preparations designated No Wheez Cough Syrup and No Wheez Asthma and Hay Fever Remedy, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's products will give "lasting" relief;
- (b) That respondent's products contain no narcotics or harmful ingredients;
- (c) That users of respondent's products will enjoy good health;
- (d) That respondent's products are unlike ordinary remedies;
- (e) That respondent's products are a startling discovery;
- (f) That respondent's products have been found effective in all kinds of cases;
- (g) That asthma yields to respondent's products or is relieved by them;
- (h) That respondent's products are harmless;
- (i) That respondent's products will prevent, stop, or check coughs, colds, chest colds, sore throat, or bronchial coughs or colds;
- (j) That respondent's products are effective remedies for sore throat, head colds, smoker's cough, chronic bronchial cough, bronchitis, or whooping cough;

(k) That respondent's products go deeper than merely soothing irritated membranes, or act directly on the source;

(l) That respondent's products stop coughs at the beginning;

(m) That respondent's products will cure colds or asthma, or rid the user of colds;

(n) That respondent's products will give results regardless of duration of the cold or how severe;

(o) That respondent's products were developed after scientific experimentation;

(p) That respondent's products have sent scores of apparently hopeless cases back to work;

(q) That respondent's products will restore health;

(r) That one or more bottles of respondent's products will cause the hay fever or asthma to go, or will cure or overcome asthma or hay fever.

The respondent further agreed to cease and desist from the use of the names "No Wheez Asthma and Hay Fever Remedy" and "No Wheez Cough Syrup" for the products so designated. (Feb. 23, 1938.)

02048. **Hair Removing Device—Qualities.**—J. O. Davis, an individual trading as Baby Touch Hair Remover Co., 2320 Olive St., St. Louis, Mo., vendor-advertiser, was engaged in selling a device designated Baby Touch Hair Remover, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of respondent's device restores youth and beauty to the skin;

(b) That the use of respondent's device will keep the skin as soft and smooth as a child's;

(c) That the use of respondent's device will retard the growth of the hair or cause the hair to become lighter in structure or color, or stunt the growth of the hair;

(d) That the use of respondent's device will gradually destroy the hair growth or eradicate the hair;

(e) That respondent's device does not irritate the skin;

(f) That through the use of respondent's device final riddance of unwanted hair is obtained;

(g) That there is no stubby regrowth of hair when respondent's device is used;

(h) That through the use of respondent's device the hair on the legs will vanish;

(i) That the use of respondent's device will lessen the strength of the hair roots;

(j) That continued use of respondent's device will keep skin free from hair growth;

(k) That respondent's device is used by over one million women, or any other number not substantiated by reliable records. (Feb. 24, 1938.)

02049. **Household Supplies, Cosmetics, Etc.—Free Goods, Prices, Composition.**—Morris Gordon and Moses Gordon, copartners doing business under the trade name of Family Supply Co., Miami Bldg., Fifth and

Elm Sts., Cincinnati, Ohio, vendor-advertisers, were engaged in selling household supplies, cosmetics, etc., and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Using the word "Free" as descriptive of alleged gift articles, when in fact such articles are not given free but are given as a consideration to a person or persons for services performed;

(b) Representing that respondents' prices are low or that customers may obtain respondents' merchandise at prices that are Big Bargains because of respondents' tremendous cash buying power;

(c) Representing that respondents' sales-persons earn various articles "at no cost," have "nothing to buy," or may fill or furnish their homes with beautiful things without cost or at the expense of respondents;

(d) Using the word "Gold" as part of the trade name for a razor not made entirely of gold;

(e) Representing that their Moth Tabs—

1. Are guaranteed to last four (4) months;
2. Rid the home of moths;
3. Provide a modern scientific method of eradicating the moth evil in any home;
4. May be placed wherever one keeps his clothes or bedding and his moth troubles are over;

(f) Using the word "antiseptic" as part of the trade name of their shaving cream;

(g) Using the word "Almond" as part of the trade name for a cream lotion containing a synthetic almond oil or cream, unless so indicated in type equally conspicuous with the type used in the trade name of said commodity;

(h) Representing that respondents' "Peroxide Cream" "penetrates" the skin;

(i) Representing that respondents' "Vanishing Cream" is absorbed by the pores;

(j) Representing that respondents' "Cold Cream Facial Soap" will keep the complexion clear. (Feb. 25, 1938.)

02050. Foot Device—Qualities.—C. H. Stemmons, individually and trading as C. H. Stemmons Mfg. Co., 417 East 13th St., Kansas City, Mo., vendor-advertiser, was engaged in selling a device designated Airflow Arch-Ezurs, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Representing that his devices are the greatest invention for foot sufferers of modern times;

(b) Representing that his devices—

1. End foot suffering after all else fails;
2. Relieve pain instantly;
3. Have massagic arch wings;
4. Bring quick relief to flat feet, weak arches, metatarsal pains, burning callouses, bunions, swollen ankles, and tired aching feet;
5. Are "the arch support with everything";
6. Provide perfect fit;
7. Provide triple support to the foot;
8. Hold bones, muscles, arches, and ligaments in place;

9. Provide comfort, relaxation, and ease with every step;
10. Provide the best corrective measure one can take;
11. Promote free, unrestricted movement of bones, muscles, and ligaments of the feet;
12. Quickly remove the pressure from sensitive nerves, tissues, and blood vessels;
13. Take the jolts and jars off the spine, increase circulation, and tone the muscles of the spine;
14. Bring joy, comfort, and happiness to every person, whether young or old;
15. Keep one from suffering with a dull ache in the lower part of their back or a tired ache in their neck and other parts of their body;
16. Give "insurance" against that tired, worn-out feeling;
17. Strengthen the foot structure by massagic exercise;
18. Are the answer to civilization's foot problems;
19. By means of their cushioned heels, allow the arterial blood to flow into the heel, feeding the lymphatic glands and the end nerves of the toes;
20. Strengthen the entire foot;
21. Provide everlasting foot relief;
22. Keep the feet young;
23. Relieve and correct three parts of the foot, which are the basic cause of all foot trouble, pain and anguish;
24. Insulate the foot from hot and cold pavements;
25. Prevent or correct foot troubles, and assist nature in toning muscles and correcting the malformation in the feet;
26. Provide nature's way of foot correction;
27. Restore muscles to their normal tone;
28. Are the most comfortable arch supporters on the market.

(c) Representing that with his devices foot relief is "guaranteed"; or that his devices provide more foot comfort than any other arch support on the market;

(d) Representing that the following ailments are necessarily due to fallen arches, namely:

1. Sweating of the feet;
2. Bunions;
3. Swollen ankles;
4. Tired feet;
5. Aching feet;
6. Pains in the back;
7. Aches in the neck and other parts of the body; and that respondent's devices can relieve the causes of said conditions;

(e) Representing that his devices cause an air suction in the shoes that will keep the feet always—

1. Dry and cool;
2. In a healthy condition;

(f) Representing that no other arch support on the market embodies all the scientific corrective features of respondent's devices;

(g) Representing that fatigue after long hours, or a dull ache at the back of the neck or a tired ache in the lower part of the back are symptoms of foot trouble and that respondent's devices can relieve or eliminate said symptoms;

(h) Representing that only respondent's devices have—

1. Massagic Arch-Wings;
2. Patented construction;

3. Most resilient Air-suction Metatarsal made;

4. Soft resilient shock absorbing heel cushions;

(i) Representing that his devices are offered at a special price for a limited period of time, when the price at which said devices are offered is the usual and regular selling price thereof. (Feb. 28, 1938.)

02051. Gasoline Dope—Qualities.—Harry E. Adams, an individual, operating under the trade name of Electro-Thermo Works, 607 E. Maywood Ave., Peoria, Ill., vendor-advertiser, was engaged in selling a gasoline dope designated Thydro-X, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Thydro-X will result in gasoline giving extra mileage;

(b) That Thydro-X is guaranteed to increase mileage from 25 percent to 50 percent;

(c) That Thydro-X will increase mileage from 16 to 22 miles per gallon;

(d) That Thydro-X is a mile increasing compound;

(e) That Thydro-X will save money on gasoline;

(f) That by using Thydro-X from \$4.50 to \$9.00 can be saved on every 100 gallons of gasoline;

(g) That the use of Thydro-X will result in a far better running motor;

(h) That Thydro-X will cause motors to start easier and with less choking resulting in a saving of oil;

(i) That Thydro-X makes gasoline of whatever grade cost less;

(j) That Thydro-X will remove or prevent carbon;

(k) That Thydro-X will cause motors to last longer with less repair bills due to carbon removing agency and high temperature lubricant, contained in such product;

(l) That by the use of Thydro-X cheap, low grade gasoline is quickly changed to high grade, with a saving of from three to six cents per gallon;

(m) That Thydro-X will greatly improve the performance of a motor;

(n) That the powerful gas from Thydro-X penetrates to every part where carbon is deposited, including parts from which it is impossible to remove the carbon without taking the engine down;

(o) That sticking valves are eliminated by the use of Thydro-X;

(p) That Thydro-X can be used in kerosene with the same convincing results as with gasoline.

The respondent further agreed to cease and desist from representing that the trial offer of Thydro-X is free so long as any charges, including postage, are made under such trial offer, or so long as the payment of the purchase price is required before shipment of the product under such trial offer.

The respondent further agreed to cease and desist from representing that any amount can be earned by a salesman in the sale of Thydro-X, if such amount is greater than can be actually earned by the average salesman under normal conditions, and in the due course of business.

The respondent further agreed to cease and desist from the use of any so-called Certificate and Seal of Approval awarded by the Auto-

tomotive Test Laboratories of America, or from any representation to the effect that Thydro-X has been tested or approved by any laboratory, unless such product has in fact been approved or accepted by an accredited testing laboratory. (Feb. 4, 1938.)

02052. **Termite Exterminator—Qualities.**—Vaccinol Products Corp., a corporation, 602 Randolph Bldg., Memphis, Tenn., vendor-advertiser, was engaged in selling a treatment for the control of termites designated Vaccinol, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vaccinol is an absolute exterminator, is permanent, gets rid of termites, completely penetrates every possible channel where termites might thrive, frees property of termites, or any other terminology which would import or imply that the said product is more than a palliative treatment effective for only a limited period of time;

(b) That respondent has been engaged in treating property for termites, by the use of Vaccinol or otherwise, for 15 years;

(c) That respondent or its product holds the highest efficiency rating in this country;

(d) That ground poisoning is ineffective;

(e) That Vaccinol imparts to wood any fire retarding properties. (Mar. 1, 1938.)

02053. **Tableware—Free Goods and Prices.**—Edward J. Harris, an individual doing business as Retail Business Stimulators, 417 South Dearborn St., Chicago, Ill., vendor-advertiser, was engaged in selling Tableware as business stimulators, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Directly or by reasonable implication, that respondent furnishes free outfits of silverware when the outfits so furnished do not include a set of silverware;

(b) That respondent's so-called silverware deal costs the merchant only 1¢ so long as the merchant is required to pay more than that amount;

(c) That any offer regularly made is a "special" offer;

(d) That any article is "free" unless such article is given without requiring the purchase of other articles or the rendering of other services;

(e) That the value of respondent's sets of silverware is any amount in excess of that for which they are regularly sold;

(f) That any set of silverware is a "complete" set unless it consists of a sufficient number and variety of pieces to the minimum requirements for a table service;

(g) That respondent "guarantees" commissions or income;

(h) That respondent offers the merchant a plan whereby he can secure cash sales of any definite amount or that the cost of respondent's plan is any amount less than the actual investment required;

(i) That respondent's plan sells on sight. (Mar. 1, 1938.)

02054. **Medicinal Preparation—Qualities.**—Berdye H. Sigel, individually and as Si-Noze Co. and Si-Noze Labs., 207 Arcade Bldg., Los

Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated Si-Noze, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Si-Noze will give either amazing or quick relief from sinus trouble, catarrh, or Hay Fever;

(b) That Si-Noze shrinks the nasal mucous membranes, releases accumulated discharges, stops sneezing, sniffing, or blowing, or restores normal breathing, unless such representations are limited to such benefits as may reasonably be expected in those conditions to result from its aid in temporarily shrinking the mucous membrane and the soothing and palliative action of the preparation;

(c) That one may give Si-Noze a test without risking a cent;

(d) That Si-Noze is an amazing treatment;

(e) That Si-Noze has done or will do more than give temporary palliative relief in the treatment of the pain or distress caused by sinus infection, catarrh, Hay Fever, or head colds;

(f) That Si-Noze causes drainage of the sinuses;

(g) That Si-Noze is the latest product of scientific or medical research.

The respondent further agreed to cease and desist from the use of the word "Labs." or in any other way representing that she maintained a laboratory where medical research was carried on. (Mar. 3, 1938.)

02055. Medicinal Preparation—Qualities and Government Use.—Cutter Laboratories, a corporation, 4th and Parker Sts., Berkeley, Calif., vendor-advertiser, was engaged in selling medicinal preparations designated Poisonok and Poisonivi, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's products, when taken internally by drops, "vaccinate" for an entire season;

(b) That respondent's products are used by any branch of the Government or any company, unless and until same is a fact. (Mar. 3, 1938.)

0332. Medicinal Preparations—Qualities.—E. E. Paddock, an individual trading as Dr. E. E. Paddock, P. O. Box 5805, Kansas City, Mo., vendor-advertiser, was engaged in selling medicinal preparations which purported to be a treatment for gall bladder irritations and a palliative treatment for the symptoms of gall stones, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That his products constitute a treatment of broad scope;

(b) That his treatment will prove that one's sickness need no longer take one's strength or be permanently injurious;

(c) That his treatment will produce a condition helpful to the restoration of normal functioning of the organs involved or will aid in repairing harm

already done, unless in direct connection therewith it is stated that such benefits would not result in cases where malignancy is the cause of the complaint or in some cases where gallstones are the cause of the complaint;

(d) That by reading his booklet one will be aided in deciding whether one wants to be improved in health or to continue in sickness;

(e) That because his medicines may have helped others they should help any one else;

(f) That the symptoms of gall bladder irritations and the symptoms of gallstones are practically the same.

It was understood and agreed that this stipulation was supplemental to and in no way changed the terms of Stipulation No. 0332, and upon the acceptance and approval of this stipulation by the Commission, the terms of both became of full force and effect. (Mar. 4, 1938.)

02056. Toilet Preparations—Free Goods and Qualities.—Roban Laboratories, Inc., a corporation, Middleburg, Va., vendor-advertiser, was engaged in selling Roban C24 Cleansing Cream, Roban N36 Tissue Cream, and Roban Skin Freshener, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any article is "free" when the price thereof is included in the purchase price of other articles, or unless said article is given without the payment of money or the rendering of a service;

(b) That Roban's Skin Freshener is a skin "tonic";

(c) That either of the preparations "smooths away lines";

(d) That any of the preparations is "nature's" aid to youth, or that by the use of any of the products the skin or the complexion will be more youthful, or that any of the products will keep the skin youthful or young, or restore youthful firmness;

(e) That any of the products will "feed" the skin;

(f) That the products penetrate into the pores, or tone up the pores, or close the pores to impurities;

(g) That the products are "nourishing," or that they contain "nourishing" oils, or that they "nourish" the skin;

(h) That Roban N36 rejuvenates or lubricates the tissues;

(i) That Roban C24 stimulates the skin, or tones the tissues or renews youthful vigor;

(j) That Roban N36 replaces or stimulates the flow of natural oils in the skin;

(k) That Roban C24 "breaks up those tiny crystals of perspiration on your skin that magnify and concentrate the rays of the sun";

(l) That the products alone or in combination "smooth years away" from the face;

(m) That the products alone or in combination will remove or smooth away wrinkles or lines;

(n) That Roban C24 will "correct" dry skin, or overoiliness, or refreshen or invigorate undernourished skin;

(o) That respondent owns, maintains, or operates a branch in Vienna, Paris, or any foreign city or country when such is not a fact.

The respondent further agreed to cease and desist from using the word "Laboratories" as a part of its trade name, or from representing in any other manner that it maintained, owned, or operated a laboratory wherein research tests concerning the products were made by a competent scientist, unless and until such was a fact. (Mar. 7, 1938.)

02057. **Medicinal Preparations—Qualities.**—Clara Stanton, an individual trading as Clara Stanton, Druggist to Women, 313 Fourteenth St., Denver, Colo., vendor-advertiser, was engaged in selling preparations designated Anti-Fat Tablets and Bust Developing Cream, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's cream will nourish or develop the bust;
- (b) That through the use of respondent's tablets one may "peel off pounds";
- (c) That respondent's tablets safely reduce excess weight without diet or exercise unless qualified to indicate that reasonable diet and exercise are recommended;
- (d) That users of respondent's tablets reduce from 10 to 15 pounds in two months or any definite figure or time;
- (e) That respondent's tablets "get rid of" waste or fat, or, will "keep the body free of waste";
- (f) That respondent's tablets are safe or harmless unless such statements specifically exclude persons who have a marked sensitivity to iodine or who have a marked hyperplasia of the thyroid; and such statements are also accompanied by a warning against variance of the dosage or continuance of the use of the tablets beyond the time for which they are prescribed.

The respondent further agreed to cease and desist from designating any of her products as Bust Developing Cream, or Triple Strength Anti-Fat Tablets. (Mar. 7, 1938.)

02058. **Toothpaste—Qualities.**—Dr. Johann Strasska, Inc., Ltd., a corporation, 1016 W. Eighth St., Los Angeles, Calif., vendor-advertiser, was engaged in selling a toothpaste designated Strasska Toothpaste, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Strasska Toothpaste tones and stimulates gums;
- (b) That Strasska Toothpaste will give one perfect white teeth, or firm, healthy gums;
- (c) That Strasska Toothpaste will protect the teeth;
- (d) That Strasska Toothpaste cleans not only the outer surfaces but down in the crevasses and between the teeth;
- (e) That Strasska Toothpaste is rich in penetrating oils;
- (f) That Strasska Toothpaste neutralizes acids;
- (g) That Strasska Toothpaste is concentrated or penetrating;
- (h) That Strasska Toothpaste sweetens the breath for hours;
- (i) That Strasska Toothpaste polishes by improving the natural lustre of the enamel;

- (j) That Strasska Toothpaste is the original Hollywood dentifrice;
- (k) That Strasska Toothpaste is a beauty treatment;
- (l) That Strasska Toothpaste is the most efficient cleanser known to the dental profession, or is the most effective toothpaste one can use;
- (m) That Strasska Toothpaste gives a magic touch to teeth;
- (n) That Strasska Toothpaste is a purifying or super dentifrice;
- (o) That Strasska Toothpaste will restore the natural whiteness to teeth.

It was understood and agreed by the parties hereto that this stipulation was not in lieu of, but was supplemental to, stipulation No. 1843, theretofore executed by the respondent, Dr. Johann Strasska, Inc., Ltd., as Dr. Johann Strasska Laboratories, Inc., Ltd., and accepted and approved by the Commission on October 12, 1936. (Mar. 7, 1938.)

02059. Medicinal Preparation—Qualities.—Fratelli Branca & Co., Inc., a corporation, 12 Desbrosses St., New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Fernet-Branca, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Fernet-Branca will relieve stomach "disorders," or regulate the functioning of the stomach or intestines, or is a "regulator";
- (b) That Fernet-Branca is the "best" remedy for overfulness of the stomach or indigestion or is incomparable, irreplaceable, or unique as a digestive aid;
- (c) That the use of Fernet-Branca will give the body resistance to inclemency of the weather;
- (d) That the regular or constant use of Fernet-Branca will relieve indigestion or improve the digestion or health;
- (e) That Fernet-Branca is guaranteed as a regulator or is a regulator of the stomach or bowels;
- (f) That Fernet-Branca will "perfect" the digestion;
- (g) That the use of Fernet-Branca will guard against stomach ailments or relieve "a bad stomach" or "relieve insomnia";
- (h) That Fernet-Branca will give relief to those who digest their food badly, or overcomes difficult or poor digestion;
- (i) That the use of Fernet-Branca will make or keep one "healthy," or will promote, maintain, or improve the "health," or enable one to regain health;
- (j) That no remedy is quicker or more effective than Fernet-Branca;
- (k) That Fernet-Branca is a unique stomachic or the only one of its kind;
- (l) That Fernet-Branca is a proven remedy for stomach troubles, or gives instant relief. (Mar. 8, 1938.)

02060. Machine—Earnings and Opportunities.—Brass Products, Inc., a corporation, 226 North Clinton St., Chicago, Ill., vendor-advertiser, was engaged in selling Wizard Coil Cleaning Machines, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) Making unmodified representations or claims of earnings in excess of the average earnings which purchasers of respondent's machines have achieved under normal conditions in the due course of business;

(b) Representing or holding out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of the purchasers of respondent's machines under normal conditions in the due course of business;

(c) Representing or holding 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 the purchasers of respondent's machines under normal conditions in the due course of business.

The respondent hereby further agreed in soliciting the sale of its product in interstate commerce that in future advertising where a modifying word or phrase was used in direct connection with a specific claim or representation of earnings, such word or phrase would 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. (Mar. 9, 1938.)

02061. **Cosmetics—Qualities.**—Enoch Morgan's Sons Co., a corporation, 439 West St., New York, N. Y., vendor-advertiser, was engaged in selling cosmetics designated Sapolio Powder and Sapolio Toilet Soap, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Sapolio Powder protects the skin;
- (b) That Sapolio Toilet Soap is a penetrating soap;
- (c) That Sapolio Toilet Soap will invigorate or stimulate the skin, or will cut below the surface thereof;
- (d) That Sapolio Toilet Soap prevents chapping;
- (e) That Sapolio Toilet Soap has a revitalizing action;
- (f) That Sapolio Toilet Soap is absolutely neutral or soothing;
- (g) That Sapolio Toilet Soap will remove stubborn stains or hidden discolorations. (Mar. 9, 1938.)

02062. **Building Materials—Qualities and Disparaging Competitive Products.**—Johns-Manville Corp., a corporation, 22 E. Fortieth St., New York, N. Y., was engaged in manufacturing Johns-Manville Asbestos Cement Shingles, Johns-Manville Asbestos Cement Roofing Shingles and Johns-Manville Rock Wool Home Insulation, and Johns-Manville Sales Corp., a corporation, 22 E. Fortieth St., New York, N. Y., was engaged in selling these products and Johns-Manville Steeltex, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the use of Johns-Manville Steeltex will entirely eliminate the cracking and/or falling of plaster;
- (b) That the use of Johns-Manville Rock Wool Home Insulation will cause rooms to be "warm, cozy, and easy to heat";
- (c) That competing products of substantially the same composition as those Johns-Manville products which contribute the three-fold insulation or protection

claimed for Triple-Insulated houses or competing products possessing the same properties as those Johns-Manville products will not accomplish the same results as those claimed for Johns-Manville Triple-Insulated houses;

(d) That any one of two or more identical houses depicted in an advertisement possesses characteristics or qualities superior to those of other houses so depicted;

(e) That Johns-Manville Rock Wool Home Insulation is superior to or more effective than competing Rock Wool Insulations of the same thickness, density, and thermal efficiency;

(f) That Johns-Manville Rock Wool Home Insulation provides "complete" protection against heat or cold. (Mar. 10, 1938.)

20263. Building Material—Unique Nature and Government Approval.—Grace Brothers, Ltd., a corporation, Honolulu, Hawaii, vendor-advertisers, were engaged in selling building material designated Acoustipulp, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product has "the most" intensified power to absorb or control sound;

(b) That the product provides "the best" in acoustic value;

(c) That the product will not shrink;

(d) That the product has acoustical or physical properties superior to any other material;

(e) That the product affords "the maximum" of sound absorption, control, or insulation;

(f) That the product has a higher coefficient of sound absorption than any other material in use;

(g) That the product is fire-resistant or proof against disease germs.

The respondent further agreed not to publish any communication or any excerpt therefrom received from any governmental agency or a representative thereof when the respondent had no permission to do so, or from otherwise representing directly or indirectly that the product had been or was approved by such governmental agency. (Mar. 11, 1938.)

20264. Hair Dressing Preparation—Qualities.—Frank A. Whetzel, Mrs. Juanita Williamson, Herbert S. Whetzel, William Whetzel, Victor Whetzel, Charles Whetzel, John Whetzel, Juanita Whetzel, and Mary Whetzel, partners trading as Sasa Distributors, 834 East Burnside St., Portland, Oreg., vendor-advertisers, were engaged in selling a hair dressing preparation designated as Sasa Hair Tonic and Shampoo, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondents' product will "kill" or has "killed" scalp or hair troubles;

(b) That the use of Sasa will do the heretofore impossible in conditioning the hair or removing dandruff;

(c) That Sasa will restore the hair, or grow hair or renew the hair growth;

(d) That Sasa is an adequate remedy or competent treatment for dandruff unless limited to its action in removing the loose scales of dandruff or will rid the hair of dandruff. That Sasa is a competent treatment or adequate remedy for falling hair, eczema or itchy scalp;

(e) That Sasa will "rid" the scalp of any ailment, or "arrest" scalp ailments;

(f) That one cannot have dandruff if he uses Sasa, or that the use of Sasa is a sure way to rid the scalp of dandruff;

(g) That Sasa is "guaranteed" to clean up, stop or eliminate dandruff, falling hair, eczema or itchy scalp;

(h) That Sasa will kill the dandruff germ;

(i) That Sasa arrests scalp ailments;

(j) That Sasa will heal eczema or has healed cases of long standing eczema;

(k) That Sasa will loosen dirt which is not affected by other shampoos.

The respondents further agreed that as officers or directors of any corporation then existing or about to be formed, they would not publish any claims or assertions contrary to the terms of this stipulation. (Mar. 11, 1938.)

02065. Starch—Qualities.—Corn Products Refining Co., a corporation, 17 Battery Place, New York, vendor-advertiser, was engaged in selling a starch designated Linit, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of Linit in the bath makes the skin soft or smooth, unless limited to smoothness resulting from the starch adhering to the skin;

(b) That the use of Linit in the bath relaxes the nerves;

(c) That the use of Linit in the bath will result in skin charm or beauty or feminine loveliness;

(d) That the use of Linit protects the hands against the effects of dishwashing or prevents reddening or coarseness, or preserves the whiteness of the skin;

(e) That Linit lubricates the skin;

(f) That the use of Linit will lift the facial muscles;

(g) That the use of Linit is a recognized beauty secret;

(h) That the use of Linit in the bath will give women beautiful bodies or skin;

(i) That the use of Linit gives instant or lasting results in beautifying the skin. (Mar. 11, 1938.)

02066. Cosmetics and Face Mask—Qualities and Free Goods.—Marta Quiros, an individual operating under the trade name of Reyna Marie, 522 Fifth Ave., New York, N. Y., vendor-advertiser, was engaged in selling two skin creams and a cloth device designated Reyna Contour Cream, Reyna Marie Gland Cream and Moldette, and agreed in soliciting the sale of and selling said products in interstate

commerce to cease and desist from representing directly or otherwise:

(a) That Moldette will—

1. Mold the contours;
2. Reduce double chin;
3. Do a face lifting job;
4. Permit the pores to function;
5. Remold drooping muscles into firmness and beauty, or otherwise;
6. Help to fill out hollowed cheeks;
7. Banish old-age lines;
8. Correct drooping corners of the mouth;
9. Eliminate the effect of fatigue and nervous strain;
10. Banish double chin;
11. Eliminate tell-tale lines;
12. Be the equivalent of a face-lifting job;
13. Restore the lovely lines and/or graceful facial contours of youth;

or making any other representation promising or implying that this product will have any appreciable effect in reforming or altering the shape or structure of the face, neck, skin, or muscles;

(b) That anything is given free when in truth and in fact the price thereof is included in that of any other article, or when the recipient is required to make any payment or perform any service before he is entitled to receive the gift;

(c) That there is no competition in the sale of Moldette or that every woman is a sure buyer;

(d) That Reyna Contour Cream—

1. Keeps the skin young and smooth;
2. Nourishes underlying cells and/or tissues;
3. Overcomes sallowness;
4. Banishes crepy throat;
5. Will give one a "clear" skin;
6. Will remove lines from the eyes, forehead and/or around the mouth;
7. Causes lines to fade away;
8. Will normalize the pores;
9. Restores youthful freshness to the face, throat, and/or eyes;

(e) That any skin cream sold by respondent will rejuvenate the glands, or have any effect whatsoever on the glands, or by direct statement or reasonable implication, that it—

1. Causes the body glands to increase their secretions;
2. Prevents a decrease in the activity of the cells beneath the surface of the skin;
3. Will maintain the contour of the face, by any means;
4. Prevents wrinkles, or a flabby condition, or a dull, lifeless appearance;
5. Penetrates the outer skin and/or reaches the cell structure beneath;
6. Will supply a stimulant to cell growth;
7. Supplies nourishment to the cells; or
8. Causes cells to resume the activity of youth, or builds up the tissues, or corrects lines, wrinkles, and/or crows-feet, and/or restores vitality to aging tissues.

The respondent further agreed to cease and desist from the use in the trade name of any of her products, of the words "Contour," "gland" and "Rejuvenating." (Mar. 7, 1938.)

02067. **Course of Instructions—Qualities.**—International Charm Institute, Inc., a corporation, 30 Rockefeller Plaza, New York, N. Y., vendor-advertiser, was engaged in selling a course of instructions, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That by following respondent's method women can win and hold the love of the men they want;

(b) That by following respondent's method women will have power over men;

(c) That by following respondent's method men are helpless in the hands of women;

(d) That by following respondent's method a woman can win and hold the love of the man she wants—even in competition with women far more attractive.

(e) That respondent's method can develop a hidden power, can make one glamorous and irresistible;

(f) That respondent's method is an amazing secret;

(g) That respondent's method offers the vital knowledge every woman should have for happiness;

(h) That by following respondent's method you can win a man's interest instantly on meeting him;

(i) That by following respondent's method women can make men's intentions "serious";

(j) That by following respondent's method women can increase their power of attraction, and become more glamorous and interesting to men;

(k) That by following respondent's course of instructions a woman will be able to marry the man she wants;

(l) That any reduction in price is special so long as that price is the one regularly charged for the course;

(m) That any offer is limited unless all acceptances received after the expiration of the time specified are refused. (Mar. 14, 1938.)

02068. **Welding Device—Qualities.**—L. D. Leach, an individual trading as LeJay Manufacturing Co., 1406 West Lake St., Minneapolis, Minn., vendor-advertiser, was engaged in selling a device designated LeJay Electric Arc Welder, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product will "weld" any metal;

(b) That the product is made for use anywhere welding is done;

(c) That the product affords "intense" heat unless qualified to indicate that the product affords only the heat equivalent to the energy stored in the battery.

The respondent further agreed to cease and desist from using the expression "deal direct with the factory" unless such expression was only used in direct connection with such articles as were actually

manufactured in a factory owned, controlled, or operated by the respondent.

The respondent further agreed to cease and desist from using the words "electric arc welder" alone or in combination as a part of the trade name for the product or from otherwise representing or implying in any manner that an electric arc weld could be made with the product. (Mar. 14, 1938.)

02069. Medicinal Preparation—Qualities.—J. J. Goudchaux, an individual trading as Service Drug Co., 453 Orleans St., Beaumont, Tex., vendor-advertiser, was engaged in selling a medicinal preparation designated Shur Shot Ointment, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's ointment "works like magic";
- (b) That respondent's ointment penetrates into the pores; or penetrates deeply;
- (c) That respondent's ointment kills the cause of athlete's foot or destroys the parasites that cause itching;
- (d) That respondent's product gives instant relief from ringworm, athlete's foot, eczema, tetter, itch, or other skin diseases unless limited to the relief from the discomforts caused by these conditions;
- (e) That respondent's ointment has been known for years as the quickest relief for ringworm, itch, tetter, or similar conditions or is a "tried and true remedy";
- (f) That the use of respondent's product is promptly followed by healing or that "It stops Itch immediately";
- (g) That respondent's ointment is effective in all fungus skin eruptions;
- (h) That respondent's product will prevent athlete's foot;
- (i) That respondent's product will promote "rapid healing" or will bring healthy skin growth after a few days use or at all. (Mar. 14, 1938.)

02070. Merchandise—Earnings and Free Goods.—The Halvorfold Co., a corporation operating under the trade name of Merchandisers, 605 W. Washington Blvd., Chicago, Ill., vendor-advertiser, was engaged in selling a Mystery Secret Money Pocket Belt, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's agents earn an average net profit of \$10-\$15 daily;
- (b) That any article is given free so long as the offer thereof is conditioned upon the payment of any money or the performance of any service or the purchase of any other article;
- (c) That profits or sales are "guaranteed";
- (d) That thieves "cannot find" the secret money pocket contained in respondent's belt, or that money is carried in "absolute safety".

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

- (e) 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;

(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 salespersons or dealers under normal conditions in the due course of business;

(g) 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. (Mar. 14, 1938.)

02071. Medicinal Preparation—Qualities.—Part Laboratory Co., Inc., San Antonio, Tex., vendor-advertiser, was engaged in selling a medicinal preparation designated Mintone, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Mintone will relieve insomnia;

(b) That Mintone will relieve cuts or bruises unless limited to the relief of superficial cuts and bruises;

(c) That Mintone is healing or will heal unless limited to the promotion of healing of conditions due to superficial causes;

(d) That Mintone "protects" the body from mosquitoes, chigger, or redbugs;

(e) That Mintone combines all the benefits of all or many other comparable preparations offered for similar purposes;

(f) That Mintone is an effective remedy or competent treatment for athlete's foot unless limited to a relief of the discomforts of that disorder;

(g) That Mintone will penetrate the skin or will penetrate to heal from the inside outward or at all;

(h) That Mintone will "penetrate the soreness" or penetrate to relieve sprains. (Mar. 15, 1938.)

02072. Corn Pads and Plasters—Qualities, Unique Nature, Opportunities, Free Goods.—The Jung Arch Brace Co., a corporation trading as The Foot-Aid Mfg. Co., Puritan Bldg., Cincinnati, Ohio, vendor-advertiser, was engaged in selling corn pads and plasters, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Foot-Aid Corn Pads—

1. "End" corns; (unless constant use is explained)

2. "Completely" relieve painful corns "immediately";

(b) That there is nothing as good as Foot-Aid Corn Plasters;

(c) That Foot-Aid Corn Plasters are far better or the most outstanding treatment for corns ever known;

(d) That the respondent's sales plan offers to agents or salespersons an unusual opportunity, that it leads to financial independence, or that by its use—

1. Profits are big right from the start;

2. A permanent, profitable dealer business is established;

3. Profits to distributors will exceed any definite or specified sum each year;

(e) That Foot-Aid Corn Plasters or Pads are the world's finest quality;

(f) That the materials in Foot-Aid Corn Pads or Plasters are finer than the materials used in other similar products;

(g) That any package or coupon is "free," or that any offer is a "Free offer"

so long as the articles mentioned are included in the price of the goods required to be paid for.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(h) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active fulltime salespersons or dealers achieved under normal conditions in the due course of business;

(i) 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;

(j) 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 agreed to cease and desist from designating or describing its refund agreement as an insurance policy when not fully explained, and from otherwise representing in his advertising that the efficacy of his product was insured. (Mar. 16, 1938.)

02073. Hair Tonic—Qualities.—Chesebrough Mfg. Co., Consolidated, a corporation, 17 State St., New York, N. Y., vendor-advertiser, was engaged in selling a hair tonic designated Vaseline Hair Tonic, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Vaseline Hair Tonic will "correct" dry scalp, replenish natural scalp oils, or that it will be of any effect in treating a dry scalp beyond the temporary lubrication of the surface of the scalp;

(b) That this product is a competent treatment for dandruff unless expressly limited to the action of Vaseline Hair Tonic in removing the loose scales of dandruff and helping to prevent the appearance of such loose scales when used regularly in accordance with directions;

(c) That this preparation will enable one to have plenty of good healthy hair, or making any other statement importing or implying that it will grow hair, or promote the growth of new hair, or that it has any effect on the quantity of the hair except as its application by massage may aid in the retention of hair;

(d) That the application of Vaseline Hair Tonic would impart new life and health to the hair unless expressly limited to the effect of the massage with which the product is applied;

(e) That Vaseline Hair Tonic keeps the pores open and clean or that such action would have any tendency to prevent dandruff;

(f) That this product checks falling hair, unless limited to the effect of massage in tending to reduce the excessive falling of hair;

(g) That wetting the hair removes the protecting natural oil, or that washing one's hair in the course of a shower is one of the worst things which can be done to the hair, or making any other statement which would import or imply that water is harmful to the hair unless limited to excessive saturation without any drying;

(h) That Vaseline Hair Tonic, with or without massage, will keep the scalp clean and/or healthy unless limited to aiding in producing such results;

(i) That this product would "penetrate" the scalp, through the pores or otherwise, or making any other statement importing or implying that it reaches any further than the superficial layers of the scalp;

(j) That dandruff is caused by a germ infection. (Mar. 17, 1938.)

02074. **Battery Charging Devices—Qualities and Opportunities.**—Commonwealth Mfg. Corp., a corporation, 4208 Davis Lane, Cincinnati, Ohio, vendor-advertiser, was engaged in selling devices for use in charging batteries designated Wonder Battery Charger and Wonder Rectifier Bulb, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's Wonder Battery Charger will charge—

1. Twelve (12) batteries;
2. Twelve (12) batteries in eighteen (18) hours;
3. Twelve (12) batteries efficiently;

(b) That respondent's Wonder Battery Charger is—

1. A powerful efficient machine;
2. Built on a new scientific principle;
3. Dependable and trouble-free;
4. A professional charger;
5. Fully guaranteed in every way;

(c) That respondent's Wonder Battery Charger features a close, accurate charging control with super-accurate ammeter;

(d) That Wonder Battery Charger is sold "complete" for \$19.75, or any other price so long as the purchase of other equipment is necessary in order to operate the charger;

(e) That respondent has applied for a patent for a new principle featured only in its Wonder Battery Charger;

(f) That respondent's Wonder Battery Charger features many refinements in design and construction usually found only in higher priced chargers;

(g) That respondent's Wonder 8-Ampere Rectifier Bulb offers the following advantages over other devices used for the same purpose;

1. Costs less to operate;
2. Provides rectified current of purer quality;
3. Will charge 1 to 12 batteries;

(h) That respondent's Wonder Battery Charger offers one—

1. A new way to really big money;
2. An opportunity to earn cash profits as high as 800%;
3. An opportunity to make profits the first week;

(i) That respondent's Wonder Battery Charger will enable an operator to give customers one-day charging service at minimum current cost;

(j) That respondent's Wonder Battery Charger offers garages, service stations, repair shops, tire and accessory shops—large and small establishments—the opportunity to share in the huge profits of battery-charging service at many times less than the cost of old fashioned chargers;

(k) That respondent's Wonder Battery Charger offers bus lines, fleet owners, fire and police departments, and amusement parks, at insignificant cost, the means of saving hundreds of dollars yearly on battery-charging expenses.

The respondent further agreed in soliciting the sale of its products in interstate commerce, to cease and desist from the use in its adver-

tising literature or otherwise of a Certificate of Merit of the Automotive Test Laboratories of America, Chicago, Ill. (Mar. 17, 1938.)

02075. Booklets—Qualifications, Value, and Qualities.—R. A. Nelson, an individual trading as Robert Nelson Enterprises, and Nelson Enterprises, 198 S. Third St., Columbus, Ohio, vendor-advertiser, was engaged in selling booklets on Hypnotism, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise, by use of such terms as "Dr. Ali-Bey," "Dr. Alibey," "Effendi of Egypt," "Oriental," alone or in combination, or by the use of any other word or words alone or in combination, that the author of any of his books on hypnotism is a doctor of any science or a person of Egyptian or Oriental title or respect, or that any of said discourses is of Egyptian or Oriental authorship or relates an Egyptian or Oriental method of hypnotism, unless and until such is a fact;

(b) That the value of any of his discourses on hypnotism is any amount greater than the actual value thereof;

(c) That any of the methods contained in any of his books on hypnotism is a "secret" method;

(d) That any of his methods of hypnotism will enable one to produce tests and experiments in hypnotism in a "genuine" manner. (Mar. 17, 1938.)

02076. Medicinal Preparation—Qualities and Dealer Owning Laboratory.—William Tulford Brown, an individual operating under the trade names of Health Laboratories, and Health Products Co., P. O. Box 651, Sacramento, Calif., vendor-advertiser, was engaged in selling a product consisting essentially of dried seaweed and designated NEU-LIFE, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Neu-Life contains any characteristics or qualities, or can achieve any specified results, except such as may be ascribed properly to its iodine content, as established by competent reputable scientific authority;

(b) That Neu-Life will be of any value in any condition except those caused by or associated with a deficiency of iodine;

(c) That, due to its iodine content or otherwise, this product will rebuild nerves, rejuvenate the body, restore bodily vigor, restore health, overcome mineral starvation, affect the glands generally, overcome malnutrition, reduce body weight, improve eyesight, help each case according to its needs, constitute a "body builder," restore the color of the hair, revitalize the body, enrich the blood, be of benefit to the functioning of the brain, furnish stamina and endurance, halt premature old age, or impart the spark of youth.

The respondent further agreed to cease and desist from the use of the word "Laboratories" as a part of his trade name or otherwise in such a way as to import or imply that he owned, operated or controlled a laboratory. (Mar. 18, 1938.)

02077. Merchandise—Qualities, Prices, and Special Offers.—Mina Taylor, an individual, trading as Lewis Reducing Belt Co., 433 Elizabeth

Ave., Newark, N. J., vendor-advertiser, was engaged in selling an abdominal belt designated Lewis Reducing Belt, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That by the use of respondent's abdominal belt
 1. The waist line melts away, or went;
 2. The fat disappears like magic, or the surplus flesh is gone;
 3. Any specified or estimated number of persons have obtained results, or received benefits;
 4. One's appearance is changed immediately;
 5. The waist can be reduced by any definite amount or within any definite time;
- (b) That wearers of the respondent's abdominal belt look better, have an invigorated feeling, or enjoy freedom from
 1. Gas;
 2. Indigestion;
 3. Headaches;
 4. Shortness of breath;
- (c) That permanent reduction comes from wearing respondent's abdominal belt over a longer period;
- (d) That by the use of the Lewis method one can reduce that protruding mid-section from the first day, or look or feel younger;
- (e) That the Lewis method will
 1. Increase one's endurance;
 2. Give an erect athletic carriage;
 3. Reduce that "bay-window";
 4. Make one appear slimmer;
- (f) That respondent's abdominal belt
 1. Does the work itself;
 2. Is an innovation in reducing;
 3. Produces effective, efficient, or sure results;
 4. Gives one a new feeling of vitality, invigoration or pep;
- (g) The respondent's abdominal belt offers the advantages of
 1. Loss of pounds;
 2. Less fatigue;
 3. New freedom of action;
 4. Lighter step;
 5. Better health;
 6. Better chances in business or social life;
- (h) That any results from the use of the respondent's abdominal belt are "guaranteed";
- (i) That any offer is a "Free Trial Offer," or that it costs nothing to try it when payment for the article is required before delivery;
- (j) That any price at which the respondent's abdominal belt is regularly sold is a special, low, or introductory price.

The respondent further agreed to cease and desist from the use of the word "Reducing" as a part of her trade name or as a part of the name of said abdominal belt. (Mar. 18, 1938.)

02078. Medicinal Preparations—Qualities.—The Dixie-Rub Co., a corporation, Concord, N. C., vendor-advertiser, was engaged in selling

medicinal preparations designated Dixie-Rub and Dixie-Rub, Jr., and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Dixie Rub Jr. gives relief from sore joints and muscles, sprains, bruises, and sore, aching feet;

(b) That Dixie Rub Jr. causes pain to vanish or that its oils penetrate to or reach the troubled spot;

(c) That by using Dixie Rub Jr. one can rub away the pain from sprains;

(d) That Dixie Rub Jr. is an amazing discovery that warms, stimulates, or penetrates;

(e) That the pencil offered by respondent as a premium is the only pencil of its kind in the world;

(f) That Dixie-Rub Jr. works like magic;

(g) That Dixie Rub Jr. is unexcelled for bruises, sprains, stiffness, muscle-soreness, swellings, athlete's foot, and other pains;

(h) That by rubbing Dixie Rub Jr. on the back of the neck it will bring sleep and comfort;

(i) That Dixie Rub Jr. is a competent remedy for common ringworm of the toes sometimes called athlete's foot, for colds, and for pneumonia;

(j) That Dixie Rub heals and reduces enlarged glands and other blemishes in animals;

(k) That Dixie-Rub is an effective treatment for Lameness of All Kinds, Thrush, Bowed Tendons, Swellings of all Kinds, Quarter Cracks, Heel Cracks, Enlarged Glands, Big Knees, Distemper, Strangles, Pneumonia, Pleurisy, Fluor, in animals.

(l) That either of respondent's products is a germicide. (Mar. 21, 1938.)

02079. Cosmetics—Qualities.—Charles S. Bradley, Mrs. Charles S. Bradley, copartners trading as Mrs. C. S. Bradley, 5108 Chown Ave., Minneapolis, Minn., vendor-advertisers, were engaged in selling cosmetics designated Mrs. Bradley's Face Wash, Facial Salve and Wild Rose Cold Cream, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That "Mrs. Bradleys' Face Wash"—

1. Will clear the skin or complexion, unless, in conjunction therewith, it is indicated that it will not do so in all cases and under all circumstances;

2. Will prevent wrinkles, oiliness, and/or aging of the skin;

3. Will remove blackheads;

4. Will remove or is a competent treatment for mother patches;

5. Will remove or is a competent treatment for pimples, unless such claims are qualified so as to clearly indicate that its value in such conditions is confined to pimples due to external causes and existing in the outer layers of the skin;

(b) That Facial Salve and "Mrs. Bradley's Face Wash" are "natural" beauty aids;

(c) That Facial Salve heals;

(d) That Wild Rose Cold Cream is capable of building tissue, or that "it works wonders while you sleep." (Mar. 21, 1938.)

02080. Medicinal Preparation—Qualities.—Dr. Leonhardt Co., a corporation, 327 Washington St., Buffalo, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Hen-Roib (formerly designated Hem-Roid), and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Hen-Roib will—

1. "End" piles;
2. "Banish" piles;
3. Give "lasting relief";
4. Cause piles to "go";
5. Give "permanent" relief;
6. "Rid" one of pile misery;

or from otherwise representing that the benefits produced by Hen-Roib will be permanent or that any condition relieved by Hen-Roib will not recur;

(b) That Hen-Roib "heals" or "restores," except as the remedy assists Nature in such direction;

(c) That Hen-Roib is "guaranteed," unless distinctly limited to a guarantee of refund of the purchase price in the event of dissatisfaction;

(d) That Hen-Roib constitutes a competent treatment or an effective remedy for piles, unless limited to its value as an internal palliative treatment for attacks of piles caused or aggravated by acute hepatic congestion; or that piles are always caused or aggravated by the latter;

(e) By direct statement or by reasonable inference that surgery cannot relieve piles;

(f) That Hen-Roib is successful in even "the most stubborn cases." (Mar. 22, 1933.)

02081. Medicinal Preparation—Qualities.—W. C. Pollard, A. L. Riaff, and L. M. Jensen, partners, trading as Neo Vim Co., 497 North High St., Columbus, Ohio, vendor-advertisers were engaged in selling a medicinal preparation designated as Neo-Vim Tonic, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of respondents' product will enable one to sleep, and sleep well;

(b) That respondents' product will relieve or is a competent remedy for rheumatic pains, back and leg pains, headache, nervousness, or loss of energy, or "tired" kidneys;

(c) That respondents' product will relieve "that tired, run-down condition";

(d) That respondents' product will restore "pep," or will build better health, unless limited to improving the appetite;

(e) That respondents' product is "scientifically appraised";

(f) That respondents' product will "rid the system" of waste matter, or help the "system" throw off waste matter;

(g) That respondents' product will enable one to regain strength, restore a good complexion and to keep it, or keep the user in "good condition";

(h) That respondents' product will increase the bile salt in the "system,"

unless limited to increasing the secretion of bile from the liver, or that it is a competent treatment for a "sluggish system." (Mar. 23, 1938.)

02082. **Antiseptic—Qualities.**—Skol Co., Inc., 17 East 42nd St., New York, N. Y., vendor-advertiser, was engaged in selling an antiseptic preparation designated Skol, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Skol Antiseptic keeps the skin looking as lovely and unblemished as when one first stepped out of the shade;

(b) That Skol Antiseptic—

1. Is "totally" different in ingredients and effect;
2. Relieves sunburn by a new scientific light control "principle";
3. Takes the pain out of burns "quicker than anything you have ever tried";
4. Is the new "Swedish" antiseptic and germicide;
5. "Penetrates" or "penetrates deep"; or
6. Relieves "all types" of burns, except when limited to minor burns;

(c) That Skol Antiseptic promptly relieves burns from stoves, flatirons, matches, electric appliances and scalding from hot foods and liquids, except when limited to minor burns;

(d) That Skol Antiseptic contains the only known stable solution of "tannic acid";

(e) That Skol Antiseptic will be found an excellent treatment to strengthen and aid in the healing of bleeding and tender gums, except when limited to minor causes. (Mar. 24, 1938.)

02083. **Toothpaste—Qualities.**—Iodent Chemical Co., Inc., a corporation, 1535 Sixth St., Detroit, Mich., vendor-advertiser, was engaged in selling a toothpaste designated Iodent Toothpaste, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product will remove all stubborn discolorations;

(b) That respondent's product will restore teeth to their original brilliance and beauty;

(c) That respondent's product has the polishing factor enabling the teeth to retain their original brilliancy 24 hours a day;

(d) That respondent's product will prevent exposed surfaces from the accumulation of dirt or harmful materials. (Mar. 25, 1938.)

02084. **Food Preparation—Qualities and Indorsements.**—New York Research Corp., a corporation, 302 Eastern Parkway, New York, N. Y., vendor-advertiser, was engaged in selling a food preparation designated Melvite, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of Melvite eliminates sleepless nights, or is a competent treatment for insomnia, or that it will do more than induce sleep when taken as a hot beverage at bedtime;

(b) That Melvite is a food discovery;

(c) That the Lecithin in Melvite is recommended by European doctors for sleepless and nervous patients;

(d) That Lecithin is a "Life-Substance," or contains a unique-working ingredient;

(e) That the use of Melvite for one month or at all will result in restful sleep, steady nerves, or health;

(f) That the bodies of Melvite users fill out with solid flesh or gain strengthened vitality unless limited to the benefits derived from the nutritive value of the ingredients plus the nutritive properties and value of the glass of milk in which it is taken;

(g) That the addition of Melvite to the diet will give one calm or serene nerves; enable one to immediately fall asleep, or enable one to awake rested or strong every morning;

(h) That Melvite feeds the nerves or gives quick strength to nerves or muscles. (Mar. 25, 1938.)

02085. **Hair Dressing Preparation—Qualities.**—Edward J. Roloff and Mrs. Georgia O. Roloff, copartners trading as Georgia O. George Laboratories, 3400 Wilshire Blvd., Los Angeles, Calif., vendors-advertisers, were engaged in selling a hair dressing preparation designated Hair-A-Gain, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondents' product will restore color to grey hair or will restore natural color to faded hair;

(b) That respondents' product will restore health to the hair;

(c) That respondents' product will stimulate the hair growth or that "millions" use it for that purpose;

(d) That respondents' product will "correct" dandruff;

(e) That respondents' product will regulate dry or oily scalps.

Respondents further agreed to cease and desist from using the word "Laboratories" in their trade name unless and until they actually maintained a place where scientific investigations were conducted by a competent scientist.

Respondents further agreed to cease and desist from the use of the trade name "Hair-A-Gain" for the product so designated unless in direct connection therewith it was also stated that the product would not grow hair. (Mar. 25, 1938.)

02086. **Accessory Foods—Qualities.**—Harold Hain, an individual operating under the trade name of Hain Pure Food Co., 602 Mateo St., Los Angeles, Calif., vendor-advertiser, was engaged in selling accessory foods designated specifically as—Accessory Food Type "R" (Reducing Food), Accessory Food Type "L" (Laxative Food), Accessory Food Type "A" (Anti-Anaemia Food), Accessory Food Type "G" (Gland Food), Accessory Food Type "S" (Skin Food), Accessory Food Type "N" (Nerve Food), Accessory Food Type "D" (Anti-Diabetic), and agreed in soliciting the sale of and selling said prod-

ucts in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That any of respondent's products is a "reducing food," or will
1. Accomplish a reduction in the weight of the user, or
 2. Correct the fundamental causes of excess weight, or
 3. Turn food eaten into energy rather than into fat;
- (b) That any product sold by respondent will overcome obesity, or restore glands to normal condition;
- (c) That Type "R" or any other of respondent's products, nourishes and vitalizes every organ in the body;
- (d) That Type "R" accelerates the entire process of assimilation and elimination;
- (e) That Accessory Food Type "L" is a competent treatment or an effective remedy for constipation;
- (f) That Accessory Food Type "A" is an "Anti-Anaemia Food" or that it constitutes a competent treatment or an effective remedy for anemia;
- (g) That Accessory Food Type "A":
1. Will replenish, enrich, and purify the blood stream, or
 2. That one teaspoonful contains the active food principle of more than 400 teaspoonsful of fresh, raw vegetables;
- (h) That Accessory Food Type "G" is a food for the glands, or
1. Will eliminate the poisons of fatigue, or
 2. Will increase endurance and vigor, or
 3. Is a vitalizer or normalizer, or
 4. Will increase capacity for physical or mental effort;
- (i) That the type of obesity or its cause can be determined by observation of physical qualities or external symptoms;
- (j) That certain individuals must first gain weight before they can lose it;
- (k) That Accessory Food Type "S" is a "skin food," or is a blood cleanser;
- (l) That Accessory Food Type "N" is a "nerve food";
- (m) That Accessory Food Type "D" is an "Anti-Diabetic," or that it contributes to the strength of the pancreas;
- (n) That any of respondent's food products furnish elements not furnished by the average dietary, or that persons not receiving adequate amounts of all the necessary vitamins and minerals from their ordinary diet would be able to supply such deficiencies by consuming the "Hain Accessory Foods" in accordance with directions. (Mar. 25, 1938.)

02087. Food Products—Qualities, Composition, and Medical Indorsements.—Mildred M. Lager, an individual trading as House of Better Living, 1207 West Sixth St., Los Angeles, Calif., vendor-advertiser, was engaged in selling food products designated Vegeminerals and Oil of Garlic, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Vegeminerals constitute a dietary treatment for anemia, malnutrition, run-down condition, arthritis, nerve or blood disorders;
- (b) That Vegeminerals are "new ideas in health";

(c) That all the properties in 52 fruits and vegetables are found in Vegeminerals, or that Vegeminerals contain any number of vegetables or fruits in excess of those actually included in the formulas;

(d) That the use of Vegeminerals #3 is an aid in the treatment of colitis or is a dependable remedy for constipation, or the best remedy for constipation, or that the okra contained therein "will aid in 'overcoming' constipation";

(e) That the system cannot utilize vitamins unless they are taken with minerals;

(f) That Vegeminerals supply "ample" phosphorous metabolism;

(g) That Oil of Garlic is the best aid for high blood pressure;

(h) That doctors advise or prescribe Oil of Garlic Capsules to ward off colds;

(i) That garlic is an intestinal antiseptic or normalizes the system, or is the latest discovery of science for this purpose;

(j) That garlic is an excellent source of organic sulphur, or combats colon troubles, or that garlic is a competent treatment for arthritis;

(k) That doctors are getting "surprising results" with Oil of Garlic, or that doctors say one should use them for "all colon troubles";

(l) That Oil of Garlic will "keep the colon the way it should be." (Mar. 28, 1938.)

02088. Food Product—A. M. A. Acceptance, Composition, and Qualities.—Prince Macaroni Mfg. Co., a corporation, 207 Commercial St. Boston, Mass., vendor-advertiser, was engaged in selling a food product designated Veta-Roni, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Veta-Roni has been accepted by the American Medical Association;

(b) That Veta-Roni is full of "the" vitamins which are non-acid producing; or from otherwise implying that Veta-Roni will not produce acid;

(c) That by trying Veta-Roni for a week you will see admirable results and the children will acquire vivacity and a good color;

(d) That by trying Veta-Roni one will be amazed at the way children develop strength and robustness;

(e) That Veta-Roni can be eaten by those who do not wish to put on weight or will cause one to lose weight or attain normal weight;

(f) That Veta-Roni contains vitamins A and D;

(g) That Veta-Roni is more valuable than milk;

(h) That Veta-Roni will help the ailments of babies, convalescents or persons in weak health;

(i) That Veta-Roni is of value in clearing one's complexion;

(j) That the American Medical Association or its Council on Foods did not hesitate an instant in accepting Veta-Roni;

(k) That Veta-Roni has fifty per cent less starch than macaroni, or any other comparisons not justified by the facts.

The respondent further agreed that in publishing statements comparing the protein content or nutritional value of Veta-Roni with that of any other food, such comparison would be based upon the protein content or nutritional value of that quantity of each of such foods as might reasonably be expected to be eaten by an average person at one meal. (Mar. 28, 1938.)

02089. Medicinal Preparation—Qualities and Relevant Facts.—C. R. Stokes, an individual trading as Robert Stokes, Charles Stokes, David Stokes, Joseph Stokes, Louis Stokes, H. H. Stokes, Adam Stokes, Henry Stokes, and H. K. Stokes, Mohawk, Fla., vendor-advertiser, was engaged in selling a preparation for the tobacco habit designated Angelico Root, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product is a tobacco "antidote" or an "antidote" for the tobacco habit;

(b) That the product is a stomach remedy;

(c) That the product will cure the tobacco habit;

(d) That the cigarette is a maker of invalids, criminals or fools, or that morons smoke cigarettes invariably;

(e) That tobacco:

1. Injures the heart, nerves, stomach or eyesight;
2. Dulls the sense of taste or hearing;
3. Is ruinous to the sexual system;
4. Dulls or impairs the sexual "appetite";
5. Causes sterility or impotence;
6. Makes one a puerile or pitiful wreck;
7. Is a poison to the "system";
8. Is a nerve wrecker or an irritant;
9. Produces insanity;
10. Causes blindness, cancer or high blood pressure;
11. Stimulates the adrenal glands;

(f) That use of the product will enable one to make the tobacco habit quit "you" or that by its use one will be through with tobacco forever, or that one "will" no longer have a desire for tobacco;

(g) That every package of cigarettes should bear a skull and cross bones or be labeled a deadly poison like rough on rats;

(h) That the cigarette smoker commits suicide on the installment plan;

(i) That cancer of the lips, tongue or stomach is on the increase as the habit of smoking is on the increase;

(j) That nicotine poisoning causes:

1. Arterial schlerosis;
2. General nervousness;
3. Excitability;
4. Excessive worry;
5. Attacks of dizziness;
6. High blood pressure;
7. Cancer;
8. Sleeplessness;
9. Loss of memory;
10. Defective eyesight;
11. Loss of sexual power;
12. General loss of mental activities;

(k) That in the burning of a cigarette paper a poison is formed which:

1. Has violent action on the nerve cells;

2. Produces a permanent or uncontrollable degeneration of the brain cells;

(l) That any component of tobacco smoke is a deadly poison when such is not a fact;

(m) That any medical college graduate applying to enter the Medical Department of the Army has been declined because of "tobacco heart";

(n) That any number or percentage of patients in any insane asylum are the victims of tobacco;

(o) That the boy who uses tobacco is or will be absolutely unable to draw a straight line;

(p) That the product is a competent treatment or an effective remedy for the tobacco habit unless limited to its aid in the treatment of said condition. (Mar. 29, 1938.)

02090. Medicinal Preparation—Qualities and History.—C. H. Mansfield and Melvin B. Mansfield, copartners trading and doing business under the trade name of The Inca Co., 810 West 6th St., Hollywood, Calif., vendors-advertisers, were engaged in selling a medicinal preparation designated Kel-Inca A and Kel-Inca B, sometimes designated Kel-Inca Scar Cream, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That said products bring hope of a smooth skin to replace scars or will prove helpful in preventing scars;

(b) That said products have been used successfully on nearly all types of scars;

(c) That from an ancient race has come a magic formula which is destined to bring happiness to men and women of the modern world;

(d) That the younger the scar tissue the more readily it will respond;

(e) That said products are creams for scars or are designed to aid in the elimination of scars;

(f) That one is offered the hope of ridding himself of much of the unsightliness of scars;

(g) That said products are beneficial to the skin wherever applied;

(h) That from the first application it begins its magical work and keeps it up with each succeeding application;

(i) That said products eat scars gradually;

(j) That after the use of said products the flesh resumes its normal functions and the skin its normal color;

(k) That said products are of value in the prevention or elimination of age signs;

(l) That until Kel-Inca was discovered no cream had ever accomplished the miracle of removing scars.

The respondents further agreed to cease and desist from the use of the word "President" in form letters or in any other way indicating that said business was incorporated.

It was agreed that the respondents would discontinue the use of the word "laboratory" as a part of a trade name or in any other way indicating that they maintained a laboratory wherein was carried on scientific research. (Mar. 29, 1938.)

02091. **Antiseptic—Qualities.**—Char-Tex, Inc., a corporation, 600 Stinson Blvd., Minneapolis, Minn., vendor-advertiser, was engaged in selling an antiseptic solution designated Char-Tex, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Char-Tex will stimulate the blood flow, or allay inflammation;
- (b) That Char-Tex has any analgesic or de-sensitizing properties;
- (c) That Char-Tex kills the germs or bacteria in the mouth or that by using Char-Tex one can effectively prevent disease caused by germs in the mouth. (Mar. 29, 1938.)

02092. **Toothpowder—Qualities and History.**—F. James Herman, an individual trading and doing business as Bear Crest Co., Box 5666, Metropolitan Station, Los Angeles, Calif., vendor-advertiser, was engaged in selling a preparation designated Pyreagos Tooth Powder, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Pyreagos Tooth Powder is a treatment for pyorrhea;
- (b) That Pyreagos Tooth Powder will harden gums or stop the spongy, bleeding condition of gums;
- (c) That Pyreagos Tooth Powder is insurance for clean teeth and healthy gums;
- (d) That three-fifths, or any other percentage not established by reliable statistics, of the people of the United States suffer from pyorrhea;
- (e) That Pyreagos Tooth Powder is a perfect tooth powder without a defect;
- (f) That Pyreagos Tooth Powder is made under the supervision of Pharmaceutical Chemists;
- (g) That Pyreagos Tooth Powder is a sterilizing, germicidal or healing agent;
- (h) That Pyreagos Tooth Powder contains only ingredients that insure clean, sound teeth and healthy gums;
- (i) That after being cleaned with Pyreagos Tooth Powder plates may be worn with the utmost ease and comfort;
- (j) That thousands have been grateful for the permanent relief afforded by Pyreagos Tooth Powder;
- (k) That Pyreagos Tooth Powder will cause teeth to become tight;
- (l) That it is unnecessary to have teeth extracted or that Pyreagos Tooth Powder will save the cost of dentistry. (Mar. 29, 1938.)

02093. **Hair Tonic—Qualities.**—Ar. Winarick, Inc., a corporation, 805 East 140th St., New York, N. Y., vendor-advertiser, was engaged in selling a hair tonic designated Jeris, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That germs generally kill hair or are a general cause of falling hair;
- (b) That Jeris penetrates the scalp pores, or seeps into the pores killing harmful germ life;
- (c) That Jeris "tones" the oil sacs;
- (d) That Jeris eliminates the germs which create inflamed or itching scalp, or prevents scalp disorders;

- (e) That Jervis eliminates dandruff unless limited to a temporary removal of the dandruff scales;
- (f) That Jervis encourages the growth of new hair;
- (g) Inferentially or directly, that Jervis overcomes dandruff, falling hair, irritated or inflamed scalp;
- (h) That Jervis corrects scalp disorders;
- (i) That Jervis is the "only" hair preparation which more than meets the government requirement for antiseptic strength;
- (j) That the use of Jervis will result in hair and scalp health;
- (k) That Jervis seeps into the pores killing dandruff germs or that dandruff is caused by an identified germ. (Mar. 30, 1938.)

02094. Men's Clothing—Source or Origin, Free Product, Nature of Manufacture, Earnings, etc.—Packard Shirt Mfg. Corp., a corporation, 1316 Plum St., Terre Haute, Ind., vendor-advertiser, was engaged in selling Shirts, Pants, Neckwear, Hosiery, etc., and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That anyone is its "factory representative" for any article not manufactured in a factory owned, controlled or operated by the respondent;
- (b) That respondent secures its materials from every corner of the world, or from otherwise representing or implying that its materials are imported from any geographical section, when such is not a fact;
- (c) That any article is "free" when the purchase price thereof is included in the price of another article, or when the rendering of a service or the payment of money is required;
- (d) That any article is "made to order" or "tailored," unless said article is made according to the individual measurements of the customer;
- (e) That any article sold by it comes "direct to the wearer" unless the said article is manufactured in a factory owned, controlled or operated by the respondent;
- (f) Inferentially or otherwise by use of the words "from our factory," or in any other manner that the respondent manufactures any article, unless said article is manufactured in a factory owned, controlled or operated by the respondent.

The respondent further stipulates and agrees:

1. 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;
2. 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;
3. 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
4. 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. (Mar. 30, 1938.)

20095. **Cosmetics—Source and Qualities.**—F. B. Mastin, Jr., an individual doing business under the trade name of Calmas Products, 1059 North Vine St., Hollywood, Calif., vendor-advertiser, was engaged in selling cosmetics designated Calmas French Face Conditioner, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's beauty treatment is—
1. A French treatment;
 2. A new European discovery;
 3. Used at European watering places or resorts, or brings the same benefits that millionaires enjoy abroad;
 4. Is imported from France or contains imported ingredients;
 5. Is based on latest scientific finds in cosmetic research;
- (b) That respondent's treatment will remove, remedy, eradicate, eliminate, reduce, correct, clear up, or clean up, wrinkles, blemishes, enlarged pores, pimples, puffiness, lines, blackheads, acne, aging, sallow skin, or is a competent or effective treatment for any or all of the above skin conditions;
- (c) That through the use of respondent's product—
1. One can regain the bloom of youth;
 2. Work wonders on signs of age;
 3. Help remove the years from one's appearance;
 4. Bring new life and beauty to the face and neck;
 5. Renew one's face;
 6. Make one look 10 years or any other number of years younger;
 7. Rejuvenate the face or neck;
 8. Obtain a lovely complexion;
- (d) That respondent's treatment beautifies women of all ages;
- (e) That results are guaranteed or proven or that success is guaranteed from the first treatment;
- (f) That respondent's product has been tested by expert chemists;
- (g) That the use of the wrong creams or cosmetics has in many cases been a cause of premature old age;
- (h) That vitamin F in respondent's cream can be absorbed through the skin or is of value in correcting or promoting the health of, or has any value in, the treatment of the skin;
- (i) That vitamin D in respondent's cream is of value in the treatment of wrinkles, pimples, blackheads, or any skin condition;
- (j) That respondent's cream or any ingredients except the vitamin D contained therein will penetrate to or is absorbed by the "underskin";
- (k) That respondent's treatment is a "face lifting without surgery";
- (l) That respondent's product is used by Hollywood moving picture stars;
- (m) That all ingredients used in respondent's products are described in the United States Pharmacopoeia;
- (n) That respondent's products will help restore essential or necessary elements to the skin;
- (o) That respondent gives "free" merchandise or a "free" gift to a limited number of women;
- (p) That respondent's treatment "strengthens skin tissues, stimulates or tightens sagging muscles";

(q) That respondent's treatment supplies Cholesterol, lecithin or vitamin F to the skin as readily as though they were supplied from within;

(r) That respondent's laxative tablets designated "Lally's Health Pellets" will bring health to the user, "keep you clean inside," or surely free the body of waste poisonous matters;

(s) That respondent's treatment is a safe and effective way to beauty;

(t) That the suggestions made in respondent's literature are "French Beauty Secrets."

The respondent further agreed to cease and desist from the use of the phrases, "French Beauty Film" and "French Satin Cream," unless in equally conspicuous type it was stated that the product was manufactured in the United States of America.

The respondent further agreed to cease and desist from the use of the word "Health" in the name of the product designated as "Lally's Health Pellets." (Apr. 1, 1938.)

02096. Medicinal Preparations—Qualities and Prices.—Saxet Health Products, Ltd., a corporation, 126 LaBrea Ave., Los Angeles, Calif., vendor-advertiser, was engaged in selling medicinal preparations designated Min-Vitamin, Saxet Nos. 1, 2, 3, and 4, Rheumalgia Balm, and Saxet Laxative and Bile Stimulant, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent can advise anyone relative to the cause or control of rheumatism;

(b) That any of respondent's preparations either alone or in combination is an effective treatment or competent remedy for rheumatism or associated ailments;

(c) That any of the respondent's preparations whether administered alone or in combination with each other will—

1. Enable one to obtain freedom from rheumatic aches and pains;

2. Rid one of rheumatism or its attendant aches and pains;

3. Provide one with new comfort and health;

4. Enable one to "get well" from rheumatism or its associated ailments;

(d) That any of respondent's preparations whether administered alone or in combination with each other will reach the source or eliminate the cause of rheumatism and its associated ailments;

(e) That Saxet Nos. 1, 2, 3, and 4 provide a competent and effective remedy or treatment for rheumatism, or associated ailments;

(f) That Saxet Laxative and Bile Stimulant will cleanse the "system" of poisons;

(g) That Saxet Rheumalgia Balm will afford relief from rheumatic pains;

(h) That Min-Vitamin supplies the human system with vitamins and minerals that effectively overcome physical defects or serve as an effective or competent treatment or remedy for any pathological conditions of the human body;

(i) That rheumatism or related ailments are caused by vitamin or mineral deficiency or that the administration of any known vitamins and/or minerals, or any combination of vitamins and/or minerals provides an adequate treatment therefor;

(j) That a run-down condition of the human body or chronic disease is frequently attributable to mineral or vitamin deficiency and that the administration of said vitamins and/or minerals provides an adequate or competent treatment for said ailments;

(k) That the administration of vitamins in excess of nutritional requirements will result in the stimulation of growth or added resistance to infection;

(l) That Vitamin B is the "nerve" vitamin;

(m) That the administration of Vitamins B and G will stimulate the appetite, and digestion or tend to correct intestinal sluggishness, unless limited to cases where there is a deficiency of said vitamins;

(n) That organically combined mineral elements are better utilized than those in inorganic combination;

(o) That respondent offers its preparations at the "special" price of \$2.50, when in truth and in fact, said price is the regular price at which said preparations are offered to the general purchasing public.

The respondent further agreed in soliciting the sale of its preparations in interstate commerce to cease and desist from representing by inference, or otherwise, that any of its preparations whether administered alone or in combination with each other would afford permanent benefits to persons using same in treating rheumatism or any other ailment.

The respondent hereby further agreed in soliciting the sale of its preparations in interstate commerce to cease and desist from using the word Rheumalgia as a part of the trade name for any of its said preparations. (Apr. 1, 1938.)

02097. *Cosmetics—Qualities.*—Alma Woodward Products Corp., a corporation, 420 Lexington Ave., New York, N. Y., vendor-advertiser, was engaged in selling a cosmetic designated 4-Action Satinmesh, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Satinmesh—

1. Opens the pores;
2. Cleanses the pores as they have never been cleansed before;
3. Leaves the pores ready to absorb oxygen;
4. Prevents blackheads;
5. "Extracts" dirt or impurities that creams, soap, and water never remove;
6. Protects against the sun;
7. Will give one a seductive skin beauty "quickly," or will show what it can do within a definite time;

(b) That Satinmesh closes pores, or will do more than decrease the size of enlarged pores;

(c) That Satinmesh is a new preparation or a deep pore cleanser;

(d) That the use of Satinmesh will "influence the nerve ends" so as to produce a quickening of the circulation;

(e) That the continuous use of Satinmesh bestows the pliability of youth;

(f) That the use of Satinmesh constitutes a "scientific" care of the skin. (Apr. 1, 1938.)

02098. **Water Heater—Free Product, Dealer as Manufacturer, Guarantees, and Earnings.**—Lux Visel, Inc., a corporation, trading as The Lux Co., Elkhart, Ind., vendor-advertiser, was engaged in selling a mechanical device designated Lux Electric Water Heater, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any article is "free" when the rendering of a service or the payment of money is required; or when the purchase price thereof is included in the price of other articles;

(b) Inferentially or otherwise by the use of such expressions as "Buy heaters direct from us," or any similar expression, or representing in any other manner that the respondent manufactures the product, unless and until the respondent owns, controls, or operates a factory wherein said product is manufactured;

(c) That any of its agents has averaged any number of sales within any period of time, unless such is a fact;

(d) That the product has no parts to get out of order;

(e) That the product is guaranteed unless the provisions of the guarantee are stated in direct connection therewith and in an equally conspicuous manner.

The respondent further agreed:

1. 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;

2. 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;

3. 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

4. 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, and at least one-fourth the size of the type used in printing such statement or representation of earnings. (Apr. 4, 1938.)

02099. **Medicinal Preparations—Qualities.**—Louis Podrofsky, an individual trading as Star Products Co., 201 E. Thirty-fifth St., Chicago, Ill., vendor-advertiser, was engaged in selling medicinal preparations designated Star Relief Compound, Star Foam Tablets, Perio-Pills, Star Tonic Tablets, Star Kon-Trol, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Directly or inferentially that either Star Foam Tablets, Star Relief Compound, or Perio-Pills can be depended upon as a contraceptive or an abortifacient;

(b) That either of said preparations is a competent or efficient remedy for menstrual disturbances, unnatural delay, or overdue, suppressed or stubborn periods;

(c) That Star Foam Tablets have a greater destroying power than carbolic acid;

(d) That every woman owes it to herself to use Star Foam Tablets;

(e) That the Star Foam Tablet creates a germ-destroying foam, or that such foam

1. Is searching or penetrating;
2. Reaches every tiny fold or crevice;
3. Kills every form of abnormal germ life;
4. Is said by physicians to be the furthest advance in vaginal therapy;

(f) That Star Foam Tablets are—

1. Non-toxic;
2. Non-poisonous;

(g) That continual use of Star Foam Tablets will not irritate the most delicate tissues or membranes;

(h) That Star Relief Compound is praised by women for its "safe" or "quick" action;

(i) That Star Relief Compound is powerful, or that it will produce a normal flow within any specified time;

(j) That Star Relief Compound can be taken at any time without feeling any ill effects;

(k) That users of Star Relief Compound have received, or reported relief after other, or higher priced remedies have failed;

(l) That Star Relief Compound will "end" delay worries, or that it is

1. A proven prescription;
2. A blessing for married women;
3. Safe;

(m) That Perio-Pills leave no after effect, or cause no pain;

(n) That Perio-Pills are so compounded as to be of special service in cases of long standing, or to those cases that will not yield to other, or milder, preparations;

(o) Directly or inferentially that Star Tonic Tablets constitute an effective aphrodisiac;

(p) That Star Tonic Tablets are of any therapeutic value of material benefit to those who—

1. Feel older than they are;
2. Suffer loss of vigor, sleeplessness, or inability to do things as well as they used to;
3. Feel as though their vital powers are weakened;
4. Are always too tired to be up and doing;
5. Feel discouraged, worn out, or blue;

(q) That the use of Star Tonic Tablets would have any beneficial effect on the blood;

(r) That by the use of Star Kon-trol premature climax embarrassment or disappointment can be always avoided, or that sexual control and "staying powers" can be assured;

(s) That Star Kon-trol "quickly" gives perfect or "sure" control;

(t) That any of said preparations is absolutely harmless. (Apr. 5, 1938.)

02100. Preparations for Hair and Increasing Weight—Qualities and Composition.—Edward H. Larson and Nelson J. McMahon, copartners, trading under the firm names of Tintz Co. and Tintz Shampoo Co.,

207 N. Michigan Ave., Chicago, Ill., vendors-advertisers, are engaged in selling preparations for the hair designated Tintz Blonde Liquid Shampoo, Tintz Titian Liquid Shampoo, Tintz Brunette Liquid Shampoo, Tintz Brown Liquid Shampoo, Tintz Jet Black Liquid Shampoo, Tintz Jet Black Cake Shampoo, Fortune Hair Grower and Straightener, Karasol, and a weight building preparation designated Vita-Rich, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Tintz Jet Black Cake Shampoo, Tintz Jet Black Liquid Shampoo, Tintz Brunette Liquid Shampoo, Tintz Titian Liquid Shampoo and/or Tintz Brown Liquid Shampoo are not dyes, or that any of respondents' shampoos will have any effect on the hair or scalp except such as may be due to cleansing and/or dyeing action;

(b) That Vita-Rich will increase body weight or have any other specific action, or that it will be of any value at all except to supplement a diet which may be deficient in vitamins A and D;

(c) That Karasol is a new discovery, or that it constitutes a competent treatment for dandruff, itching scalp, or hard, harsh, brittle hair; or that it penetrates to the roots of the hair or stimulates the scalp;

(d) That the product hereinbefore designated "Fortune Hair Grower and Straightener" contains no wax, or that it will straighten the hair unless it is explained that the waxed hair will remain straight if so arranged.

The respondents further agreed to cease and desist from the use of the words "Hair Grower" as a part of the trade name of any of its products, or any other terminology stating, importing, or implying that any of its products would grow hair. (Apr. 5, 1938.)

02101. Cosmetics, Medicines, and Lucky Goods—Qualities, Free Product, and Opportunities.—Lucky Heart Laboratories, Inc., a corporation, 388 Mulberry St., Memphis, Tenn., vendor-advertiser, was engaged in selling Lucky Heart Cosmetics, Medicines and Lucky Goods, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's Pomade, Temple Oil, or any of respondent's products will grow hair, accelerate the rate of or increase the hair growth;

(b) That respondent's perfumes will bring good luck to the user;

(c) That respondent's Bleaching Cream will:

1. Brighten or lighten dark skin unless limited to a temporary lightening of the skin;

2. Correct remedy or eradicate blotchy or muddy skin;

(d) That the first application of respondent's Bleaching Cream will make the skin 10, or any number of shades lighter or that through its use one may have as light skin as desired;

(e) That respondent's Talcum Powder will prevent body odors, or contains three times the "usual" amount of perfume or soothing ingredients;

(f) That respondent's Rose Bud Skin Bloom will give the skin new life, youth or will "prevent" dark, rough, or dry skin;

- (g) That respondent's Coconut Oil Shampoo will "prevent" scalp troubles;
- (h) That respondent's Nu-Glo "prevents" dandruff;
- (i) That respondent's skin ointment "removes," "eradicates," or "corrects" pimples, blemishes, blackheads, or dark splotches, or clears rough, bumpy, sal-low, or dark skin instantly or at all;
- (j) That respondent's deodorant "rids" the body of all offensive odors;
- (k) That respondent's Magic Brite will make pimples, blackheads, and blotches disappear;
- (l) That respondent's Shampoo Jelly kills dandruff, or produces hair growth, or soft hair;
- (m) That respondent's hair dressing preparations grow hair inches longer in four stages, or make skimpy, dull hair become long, silky or luxuriant or stop falling hair, prevent dandruff or falling hair; unless limited to the removal of dandruff or as an aid to retard an excessive falling or thinning of the hair;
- (n) That through the use of respondent's Hair Pomade thousands of short haired women now have long hair; or that through its use a new growth of hair will appear;
- (o) That respondent's products are superior to other products of a similar nature;
- (p) That respondent's Instant Pink Cream keeps the skin young;
- (q) That respondent's Vanishing Cream heals the skin, or makes the skin firm or beautiful, removes or prevents wrinkles, or never fails;
- (r) That respondent's Lemon Cream bleaches the skin, or sinks deep into the pores, or brings out dirt or impurities;
- (s) That respondent's Presso is a hair grower;
- (t) That respondent's Mystic Mojo will enable one to win or rule in love, or bring luck or love;
- (u) That respondent's Double Strength Cream gives the user light, smooth skin the first day;
- (v) That respondent's Fortune Telling and Dream Book will tell what is going to happen or give lucky numbers or signs;
- (w) That respondent pays any salaries to its agents; or that through the sale of respondent's products inexperienced persons can make big money the first day;
- (x) That respondent will pay persons to give away samples.

Respondent further agreed to cease and desist from representing that any articles were given "free" when the cost of same was included in the price of other articles whose purchase was required as a prerequisite to the free gift.

Respondent further agreed to cease and desist from the use of the term "Laboratories" in its trade name unless and until it maintained adequate equipment for the purpose of analyzing, testing and compounding the products prepared and sold by it.

The respondent further agreed to cease and desist from the use of the term "hair grower" in the designation of any of its products.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed

(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 of respondent's salespersons or dealers under normal conditions in the due course of business;

(b) Not to represent or hold out as maximum earnings by the use of such expression 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

(c) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation or 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. (Apr. 7, 1938.)

02102. Bath Cabinet—Qualities.—Petersime Incubator Co., a corporation, Gettysburg, Ohio, vendor-advertiser, was engaged in selling a device designated Petersime Electro-Thermo Bath Cabinet, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of Petersime Electro-Thermo Bath cabinet will:

1. Have any effect on body weight unless limited to temporary loss of weight;
2. Have any influence on metabolism;
3. Eliminate, cleanse, rid, purge, carry away, or dispose of poisons, toxins, or wastes that cannot be taken care of by the normal processes of elimination;
4. Will build up dynamic health, body tone, or put the system in the pink of condition;
5. Help thin people to build up;
6. Cause the skin to become soft and the limbs to take on added strength;
7. Purify and vitalize the life-giving stream;
8. Build up resistance to disease;
9. Insure against the ravages of acute as well as chronic diseases and ailments;
10. Extend life expectancy;
11. Compensate for lack of kidney function;
12. Cause the face and body to take on a new contour;
13. Provide better health;
14. Facilitate a healthy cellular condition;

(b) That the Petersime Electro-Thermo Bath Cabinet is a competent treatment for:

1. Colds,
2. Arthritis,
3. Neuritis,
4. Rheumatism,
5. Diabetes,
6. Gall trouble,
7. Lumbago,
8. Kidney trouble,
9. Gout,
10. Goitre,
11. Skin diseases,

12. Tumors,
13. Paralysis,
14. Sciatica,
15. High blood pressure,
16. Sleeplessness,
17. Liver trouble,
18. Obesity,
19. "Lumps." (Apr. 8, 1938.)

02103. **Insulating Materials—Qualities.**—Dant & Russell, Inc., a corporation, Porter Building, Portland, Ore., vendor-advertiser, was engaged in selling insulating materials designated Fir-Tex Building Board, Fir-Tex Firkote, Fir-Tex Insulating Lath, Fir-Tex Ivrykote, Fir-Tex Finish Plank, Fir-Tex Tile Board, and Fir-Tex Economy Board, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Fir-Tex Firkote Building Board will protect a home from dampness, provides walls that are moisture-proof, or otherwise importing or implying that the product is impervious to the passage of water vapor;

(b) That Fir-Tex Firkote Building Board will provide 100% insulation against heat, cold, noise, and the infiltration of wind, dust, and moisture;

(c) That Fir-Tex Firkote Building Board is necessary if air conditioning is installed;

(d) That Fir-Tex Firkote Building Board has 10% greater insulating value than other leading insulation materials;

(e) That Fir-Tex stops heat flow, prevents heat from escaping, prevents outdoor heat from penetrating a house, or from otherwise stating, importing or implying that the material is impervious to the passage of heat unless the context clearly states that such quality is relative and not absolute;

(f) That only Fir-Tex—

1. Possesses the 7 essentials of effective insulation;
2. Is made of natural wood fibres, without filler;
3. Is shredded mechanically, not broken down by the use of chemicals;
4. Is water-resistant throughout the board; or
5. Is manufactured without lamination;

(g) That Fir-Tex is vermin-proof or fire retardant;

(h) That the installation of Fir-Tex will reduce fuel bills 40 percent or will reduce fuel bills or the loss of heat by any stated amount or percentage, unless such figures have been established by competent factual evidence;

(i) That Fir-Tex Insulation insures cool summer days or warm winter nights;

(j) That the use of Fir-Tex as a plaster base prevents plaster cracking. (Apr. 11, 1938.)

02104. **Beverage—Qualities.**—Max Frank, Anna Frank, Sidney Frank, Manuel A. Frank, and Perry B. Frank, copartners, doing business under the trade name of J. Frank & Sons, 612 Moore St., Philadelphia, Pa., vendors-advertisers, were engaged in selling a beverage designated Sun-Up, and agreed in soliciting the sale of and

selling said product in interstate commerce to cease and desist from representing directly or otherwise.

(a) That Sun-Up—

1. Is great for that logey feeling after a gala evening;
2. Settles one's stomach;
3. Clears one's head;
4. Cures that leathery-tongue feeling after a big evening;
5. Counteracts acidity;
6. Keeps one fit;
7. Keeps one in condition;
8. Is an alkaline beverage;
9. Sweetens one's stomach;
10. Prevents that morning-after hangover;
11. Braces one up;
12. Eliminates hangovers;
13. Is slenderizing;
14. Aids digestion;
15. Keeps the digestive tract clear;
16. Is recommended by doctors as a morning bracer;
17. Is an all around fixer; or
18. Is alkalyzed;

(b) That the use of Sun-Up will make one more slender;

(c) That one may "alkalize" with Sun-Up. (Apr. 12, 1938.)

02105. Used Automobile Tires—Prices, History, and Special Offers—Major Motor Supply Co., Inc., a corporation, trading and doing business as Major Tire & Rubber Co., 63 and Morgan Sts., Chicago, Ill., vendor-advertiser, was engaged in selling used automobile tires, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That it has slashed tire prices or in any other way represented that its tires are sold at a price lower than a recognized or usual price for similar grade tires;

(b) That its tires are backed by 20 years' experience in the tire industry;

(c) That its tires, failing to give satisfactory service, are replaced at one-half the original cost;

(d) That an offer of a product or combination of products at a certain price is for a limited time, unless at the time such offer is made a definite period for the duration of such offer is determined after which the price therefor is increased. (Apr. 15, 1938.)

02106. Bandage, Pads, and Medicinal Preparations—Qualities.—Hadley-Sullivan, Inc., a corporation, 600 Griswold St., Detroit, Mich., vendor-advertiser, was engaged in selling a bandage, pads, and medicinal preparations designated Medi-Band, Medi-Soles, Callous Pads, Callous Relief Pads, Bunion Pads, Bunion Relief Pads, Corn Pads, and Medi-Lotion, and agreed in soliciting the sale of and selling said

products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of respondent's products is a competent treatment for or will remove corns unless limited specifically to hard corns;

(b) That any of respondent's products, either alone or in conjunction with one another, constitute a competent treatment for ingrowing toe nails;

(c) That any of respondent's products is an effective treatment for bunions, or that the application of any of them will cause a misplaced toe to straighten;

(d) That Medi-band will accelerate the normal rate of healing;

(e) By such phraseology as "sanitary," "guards against infection," or, "an excellent first-aid bandage," or otherwise, importing or implying that this Medi-band is sterile and safe to use under all conditions;

(f) That Medi-Soles constitute a competent treatment or an effective remedy for:

1. Athlete's foot,
2. Itching feet,
3. Burning feet,
4. Sweating feet, or
5. Odorous feet;

(g) That Medi-Soles will relieve all foot troubles, or will effectively treat all foot worries;

(h) That Medi-Soles regulate perspiration to normal;

(i) That Medicoband Callous Pads, Bunion Pads, or Corn Pads will not irritate the skin under the normal conditions of usage;

(j) That Medicoband Callous Relief Pads remove the pressure causing callouses on the ball of the foot;

(k) That Medicoband Corn Relief Pads will reduce inflammation;

(l) That Medi-Lotion is a foot conditioner or is a competent treatment or an effective remedy for tired, aching, burning feet, or that it can be relied upon to soften or strengthen the tissues of the skin. (Apr. 18, 1938.)

02107. Medicinal Preparations—Qualities.—J. W. Clifford, an individual trading as International Co. and Vitality Laboratories, 408 Manhattan Ave., New York City, vendor-advertiser, was engaged in selling medicinal preparations designated Vitamin E Capsules, Aphrodisiacs, and various Feminine Hygiene Products, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That either of respondent's products Lesta's Positive Double Strength Pills or Dupree Positive Double Strength Pills are double strength or positive acting or sure, safe or successful in difficult cases, or are a competent treatment for delayed menstruation or are abortifacients; or that results are guaranteed;

(b) That either Lesta's or Dupree Double Strength Pills are a standard treatment or are recommended by doctors, or have been used by Women of America for 35 or any other number of years;

(c) That the regular price of Dupree or Lesta's Double Strength Pills is \$5.00 or that \$2.00 is a confidential or cut-rate price;

(d) That Lesta's Double Strength Pills are internationally famous;

(e) That respondent's product "Preventosan" will prevent venereal disease, unless limited to its use under proper directions, as an aid in preventing syphilis in the male; or will assure freedom from infection of venereal disease;

(f) That Dupree Rectal Suppositories are a competent treatment, or effective remedy for piles, or are recognized as an effective remedy by the medical profession;

(g) That "Dupree Femi Tabs" will relieve menstrual pain or are nondepressant;

(h) That Dupree Antiseptic Douche Powder is antiseptic, harmless, or non-irritating;

(i) That Dupree Vaginal Jelly is a curative medicine, or that its use will prevent conception or venereal or other diseases;

(j) That respondent's Vagi-Cones are germicides;

(k) That respondent's Dupree Pills will end, delay or eliminate worry due to delayed menstruation;

(l) That respondent's Dupree Pills are recommended by physicians, or have been for years recommended by physicians; or are an accepted remedy for female disorders, or are a uterine toner, stimulator, or regulator;

(m) That respondent's Dupree Pills are an effective remedy or competent treatment for Ammenorrhea or Dysmenorrhea, or are recommended by physicians for treatment of these disorders;

(n) That respondent's Sex-O Wheat Germ Oil is an effective treatment for sexually run-down, weak, or depressed men or women;

(o) That respondent's Sex-O Wheat Germ Oil is prescribed by physicians, or is a new medical science discovery;

(p) That \$6.00 is the regular or ordinary price for the amount of Sex-O for which respondent charges \$2; or that the regular price of respondent's \$1.00 offer is \$2.00;

(q) That respondent's Wheat Germ Oil makes motherhood possible for women with functional sex deficiency or weakness, or will relieve habitual miscarriages or sex weakness;

(r) That hundreds of men and women previously sterile have become parents through the use of Wheat Germ vitamin E;

(s) That medical science has found lack of vitamin E in humans to be the cause of sex deficiency or sterility;

(t) That the addition of vitamin E to foods will result in fertility where sterility had hitherto existed;

(u) That respondent's Sex-O Capsules are builders of vital powers or vigor;

(v) That Wheat Germ Oil is the latest or greatest discovery of medical science for sex deficiency in males or females, or otherwise;

(w) That women desirous of motherhood will become pregnant if they take Wheat Germ Oil;

(x) That respondent's Youth Tabs will restore lost sexual power; give quick sex power, or are sex stimulators, or are prescribed by doctors;

(y) That respondent's Double Strength Youth Tabs are double strength;

(z) That respondent's Motherine Pellets are a newly discovered or scientific product, or that their use will enable childless women to become mothers.

Respondent further agreed to cease and desist from representing that he maintained or operated a laboratory, until such time as he should in fact operate a laboratory.

Respondent further agreed to cease and desist from representing that the prices charged for his various products were "cut prices", confidential prices, or were other than the regular price of said product. (Apr. 18, 1938.)

02108. **Feminine Hygiene Products—Qualities.**—B. Y.'s Laboratories, Inc., a corporation, 1829 West Seventh St., Los Angeles, Calif., vendor-advertiser, was engaged in selling Feminine Hygiene Products, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of respondent's preparations alone or in combination is a competent contraceptive or abortifacient;

(b) That the trend of modern medicine is the prevention, rather than the correction, of female problems;

(c) That the germ or sperm theory of disease or reproduction are proven facts;

(d) That preventative medicine is important to the health or happiness of womanhood in the marriage relationship;

(e) That any of the respondent's preparations is prescribed by physicians, or is free from danger;

(f) That B. Y.'s Formula No. 444—

1. Is a preventative, or meets the preventative trend in feminine hygiene;

2. Contains effective elements for the destruction of spermatozoa or bacteria;

3. Is free from the dangerous action or other products containing poisonous drugs;

4. Is in a dependable role or furnishes the acme of desirability in the feminine hygiene problem;

5. Imparts that sense of security which women have been seeking;

(g) That B. Y.'s Formula No. 18, either in capsules or liquid, is of any special benefit when used internally, or is systematic in its effects;

(h) That formula No. 18, in powder form, is the result of research or that it is effective where medicaments taken by mouth are contraindicated;

(i) That Formula No. 18, in either form—

1. Has proven to be effective;

2. Brings a solution to a health problem or produces healthful benefits;

3. Exerts hygienic action;

(j) That B. Y.'s Medicated Cones (Formula No. 224) is a competent or effective remedy in the treatment of diseases of the vaginal tract, or that it is an advance in medicine;

(k) That Formula No. 224 is an aid in correcting the causes of female discharges, irritations, or infections, or that it has proven to be such;

(l) That formula 88 (888)—

1. Is a tonic, or is composed of glandular elements of tonic value;

2. Serves to arouse or maintain the activity of the glands;

3. Has given results exceeding other or similar preparations;

(m) That any material benefits may be expected from the use of Formula 88 (888) when—

1. The mating urge wanes;

2. The skin begins to wrinkle;

3. The failure, fatigue, or decline of old age appear;

4. Development of the endocrin glands is delayed;

(n) That Formula 88 (888) is a competent or effective aphrodisiac.

Respondent further agreed to discontinue the use of the word "Laboratories" in its corporate and trade name until such time as it should in fact operate a laboratory. (Apr. 20, 1938.)

02109. Medicinal Preparations—Qualities.—E. R. Davis, an individual, trading and doing business as E. R. Davis Prescription Co., Bellingham, Wash., vendor-advertiser, was engaged in selling medicinal preparations designated Davis Formula No. 7895 and Vitamin A Concentrate, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That said products will cure asthma or are an asthma or hay fever remedy;
- (b) That said products are a discovery;
- (c) That said products are for the immediate relief of asthma;
- (d) That said products will prevent hay fever;
- (e) That said products have given relief, after all other treatments had failed;
- (f) That said products will free one from the agony of hay fever;
- (g) That said products will build up the mucous membrane of the nose or is a blood, nerve or mucous membrane treatment;
- (h) That most tablets and capsules irritate the stomach;
- (i) That asthma and hay fever should be treated through the blood and nervous system;
- (j) That by continuing the use of said products one may protect oneself from asthma and hay fever;
- (k) That asthma, hay fever, eczema and sick headaches are now considered members of one family and are in the blood stream;
- (l) That the vitamin "A" concentrate sold with said Davis Formula No. 7895 is 100 times the strength of cod liver oil. (Apr. 20, 1938.)

02110. Soft Drink Concentrate—Qualities.—Flavorex, Inc., a corporation, 57 East 11th St., New York, N. Y., vendor-advertiser, was engaged in selling a soft drink concentrate designated Step-Up, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Step-Up alkalizes the system, or any part of the system;
- (b) That the use of Step-Up will bring health;
- (c) That Step-Up is "good for over-indulgence";
- (d) That Step-Up is "energizing" or "re-energizing";
- (e) That the use of Step-Up will reduce excess acidity. (Apr. 20, 1938.)

02111. Medicinal Preparations—Qualities and Unique Nature.—Southwestern Drug Corp., a corporation, Dallas, Tex., vendor-advertiser, was engaged in selling certain medicinal preparations designated Red Arrow Nose and Throat Drops, Red Arrow Chestrub, Red Arrow Syrup White Pine Compound, Red Arrow Creosote Cough Syrup, Findley's Eye Bath, and Findley's Eye Drops, and agreed

in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That by the use of Red Arrow Nose and Throat Drops one may escape nose and throat ailments;

(b) That the ingredients in Red Arrow Nose and Throat Drops are perfectly harmless and may be used as frequently as desired;

(c) That Red Arrow Nose and Throat Drops contain the most effective ingredients that medical science has discovered for the prevention and treatment of colds;

(d) That Red Arrow Nose and Throat Drops are a preventive against infection, colds, influenza, grippe or similar ailments;

(e) That Red Arrow Nose and Throat Drops will relieve hoarseness or maintain the nose and throat membranes in a healthy condition;

(f) That Red Arrow Nose and Throat Drops are antiseptic;

(g) That chlorbutanol prevents irritating the tenderest membranes;

(h) That chlorbutanol is not usually found in nose and throat drops;

(i) That Red Arrow Nose and Throat Drops are a treatment for infected membranes;

(j) That Red Arrow Chestrub penetrates deeply into the pores, carrying with it healing medicaments to relieve congestion;

(k) That Red Arrow Chestrub is an ideal treatment for colds of the throat and chest;

(l) That Red Arrow Chestrub will reach the infected tissues of the Chest.

It was further agreed that the respondent would not use the name, Red Arrow Syrup White Pine Compound, unless and until the formula followed in compounding said product corresponded to the formula prescribed by recognized authorities on the subject.

It was also agreed that the respondent would not use the name Red Arrow Creosote Cough Syrup, unless in connection therewith it was stated that said product contained active ingredients other than creosote. (Apr. 21, 1938.)

02112. Hair Preparations—Qualities.—Paragon Distributing Corp., a corporation, also trading as Paragon Laboratories, Inc., Eterne Mfg. Corp. and Paragon Institute, 8 West 32nd St. New York, N. Y., vendor-advertiser, was engaged in selling preparations for the hair designated Eternol Tint Oil Shampoo and Paragon Hair Coloring, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Eternol Tint Oil Shampoo—

1. Leaves the hair in a natural state;
2. Leaves the hair in perfect condition;
3. Produces true "natural" hair shades;
4. Produces natural results;
5. Revitalizes the hair;

6. Is the "only" simple method of hair tinting that actually tints, cleanses and reconditions gray, faded, streaked, or sunbleached hair, all in one treatment that is hardly longer than an ordinary shampoo;

(b) That Paragon Hair Coloring—

1. Is the oldest rapid organic hair coloring on the market;
2. Tints the hair by duplicating nature's own method;
3. Places the color pigments inside the hair shaft; or colors the hair from within;
4. Does not coat the outer surface of the hair;
5. Leaves the hair as Nature made it;
6. Gives the hair the same lovely natural color it formerly had;
7. Re-colors the hair as Nature does;
8. Re-colors the hair naturally making it just as it was originally;
9. Restores bleached hair to its natural color;
10. Restores a true natural shade to hair that has lost its basic color, being either gray, faded or artificially bleached;
11. Maintains the same natural color through successive applications;
12. Cannot be detected;

(c) That either Eternal Tint Oil Shampoo or Paragon Hair Coloring is safe or harmless unless in direct connection with such statement and in equally conspicuous type there is also printed a warning that such product may be harmful to any person with a scalp disease, cut or abrasion, or who has previously suffered a dermatitis through use of a hair coloring or who may have an idiosyncrasy, allergy or hypersensitiveness to hair colorings. (Apr. 28, 1938.)

02113. Typewriters—Prices and Qualities.—Royal Typewriter Co., Inc., a corporation, 2 Park Ave., New York, N. Y., vendor-advertiser, was engaged in selling Royal Portable Typewriters, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That a purchaser can arrange to pay for a Royal Portable Typewriter by making monthly payments, unless it is explained that such procedure involves a carrying charge which increases the price at which the machine is advertised;

(b) That respondent's method of arranging deferred payments is either a "special" or a "low cost" plan;

(c) That the Royal Portable Typewriter will last the purchaser a lifetime;

(d) That a Royal Portable Typewriter will enable one to type smoothly and naturally even if he has never used a typewriter before;

(e) That respondent gives purchasers of Royal Portable Typewriters a home "course" in Touch Typewriting;

(f) That the keys on the Royal Portable Typewriter are rimless, unless such representations are confined to a model that in fact does have rimless keys;

(g) That the Royal is the only portable typewriter which has a genuine tabulator;

(h) That the Royal Portable Typewriter has everything found in any other portable typewriter;

(i) That using a Royal Portable Typewriter is a "sure" way to earn higher grades in school. (Apr. 28, 1938.)

0341. Massage Device—Qualities.—W. D. Smith and Thomas Baden, copartners, trading and doing business as Midwest Products Co., 702 S. Rose St., Kalamazoo, Mich., vendors-advertisers, were engaged in selling a device designated Prosager, and agreed in soliciting the

sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That with the Prosager one may obtain a better massage of the prostate than by the finger method used by doctors;
- (b) That the finger method of massage of the prostate is an "old" method;
- (c) That one who desires to enjoy life as a healthy man will no longer delay in getting a Prosager;
- (d) That by "ordering one today" or by obtaining a Prosager one may gain or retain health, vigor or happiness;
- (e) That the Prosager massages the afflicted part back towards normalcy and nature takes care of the rest, or will restore the organs back to normal activity;
- (f) That the Prosager will cause one to feel ten years younger, or as one did at twenty-five years of age, or any other age;
- (g) That the percentage of men past middle life who are troubled with ailments of the prostate or symptoms thereof is so high that it is impossible to estimate;
- (h) That thousands of men in every community suffer from prostate trouble, or symptoms thereof;
- (i) That the Prosager is fool-proof.

It was understood and agreed by the parties hereto that this stipulation was not in lieu of, but was supplemental to, stipulation No. 0341, executed by said respondents and accepted and approved by the Commission on September 12, 1932. (May 2, 1938.)

02114. Soaps—Qualities.—Lever Brothers Co., a corporation, Cambridge, Mass., vendor-advertiser, was engaged in selling certain soaps designated Lifebuoy Soap, Lux Flakes, and Lux Toilet Soap, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That any specified number of disease germs are spread by hands "alone";
- (b) That Lifebuoy Soap will improve the skin 100%, or any other definite percentage in any substantial number of cases;
- (c) That the skin of one who uses Lifebuoy Soap will not be dull or blotchy, unless limited to such conditions as are due to, or aggravated by, dirt, cosmetic residue, epithelial debris, or foreign materials;
- (d) That the special ingredient of Lifebuoy Soap makes the lather more penetrating;
- (e) That the product Lux Flakes puts new life into fabrics, or otherwise importing or implying that it improves the original quality of the fabrics;
- (f) That Lux Toilet Soap will keep the complexion "flawless";
- (g) That Lux Toilet Soap is "made especially" to guard against cosmetic skin;
- (h) That Lifebuoy Soap or Lux Toilet Soap can be relied upon to keep the skin "clear" unless limited to such conditions as are due to, or aggravated by, dirt, cosmetic residue, epithelial debris, or foreign materials. (May 11, 1938.)

02115. Medicinal Preparation—Qualities and Professional Use.—Otho C. Edwards, an individual doing business as Edwards Drug Co.,

Raleigh, N. C., vendor-advertiser, was engaged in selling a medicinal preparation designated Tina-Cide, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondent's product is "penetrating" or will "penetrate" the skin;
- (b) That respondent's product is used by leading hospitals;
- (c) That respondent's product will bring "complete" relief or "sure" relief;
- (d) That respondent's product will give the death blow to or kill ring-worm;
- (e) That respondent's product will stop sweating feet in one night, or at all;
- (f) That respondent's product is "guaranteed" to relieve athlete's foot or "similar skin irritations" or chafing;
- (g) That the use of respondent's product will assure healthy feet. (May 2, 1938.)

02116. **Cosmetics, Medicinal Preparations, and Incense—Qualities.**—Hindu Products Mfg. Corp., a corporation, 3453 S. Indiana Ave., Chicago, Ill., vendor-advertiser, was engaged in selling cosmetics, medicinal preparations and incense designated Hindu Bleach Cream, Tissue Building Cream, Turtle Oil Wrinkle Cream, Ranee Hair Grower, Coconut Oil, Temple Grower, Ranee Tetter Salve, Hair Straightener, Ranee Hair Oil, Hindu Balm, Hindu Herb Life Tonic, Sure Pep, Gland Tablets, Female Tonic, Liver Pills, Lucky Master Incense, Neeva Incense, and Dragon's Blood Incense, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the product designated as "Hindu Bleach Cream" will bleach the skin or will have any other effect on the skin except to make it appear lighter by depositing a white pigment on the surface;
- (b) That the preparation designated as "Tissue Building Cream" will have any effect at all on the muscles or will feed the tissues or prevent sagging;
- (c) That the cream known as "Turtle Oil Wrinkle Cream" will encourage smooth skin or prevent wrinkles;
- (d) That any of respondent's products will grow hair or constitute a competent treatment or an effective remedy for itching scalp or dandruff, or will stop falling hair or heal diseased scalps;
- (e) That the preparation designated "Hair Straightener" will have any effect other than to hold the hair as it is arranged, due to its grease content;
- (f) That the product known as "Tetter Salve" is a competent treatment or an effective remedy for tetter, eczema, itching or other scalp disorders;
- (g) That Hindu Balm is a competent treatment or an effective remedy for colds, catarrh, asthma, hay fever, sore throat, sore feet, or "many other things";
- (h) That any of respondent's products is guaranteed unless such guarantee is specifically limited to the return of the purchase price only;
- (i) That Hindu Herb Life Tonic is a "health restorer" or assures a healthy appetite, sound digestion, vim, vigor, or pep, or is a competent treatment for run-down systems, stomach, kidney, blood, liver and nerves;
- (j) That the product designated "Sure Pep" will restore lost manhood or awaken lost vitality or pep;

(k) That the preparation designated "Gland Tablets" will enable one to regain lost manhood or re-supply one with vitality, or have any effect on the glands;

(l) That the preparation known as "Female Tonic" will relieve "female sufferings," or will correct backaches, headaches or "other miseries";

(m) That the so-called "Liver Pills" will have any effect other than that of a laxative;

(n) That any product sold by respondent is "lucky" or contains any "lucky" ingredient.

The respondent further agreed to cease and desist from the use of the words "Lucky," "Tissue," "Hair Grower," or "Temple Grower" as a part of the trade name of any product; or of "Bleach Cream," "Wrinkle Cream," "Tetter Salve," "Gland Tablets," "Female Tonic" or "Liver Pills" as a part of the trade name of any product so designated in the foregoing advertising representations or of any product of substantially the same composition. (May 3, 1938.)

02117. *Cosmetics—Qualities.*—The Drackett Products Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling cosmetics designated Formula X-1, Formula X-2, and X-Ilator, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of said products alone or in combination—

1. Is a "complete" beauty treatment;
2. Penetrates down deep into the pores;
3. Penetrates or cleans deep within the skin;
4. Flushes out the lower layers of the skin;
5. Removes dirt, rubbed-in make-up, or oily secretions buried deep within the skin;
6. Leaves the skin as clean deep within as on the surface;
7. "Protects" one's complexion or skin;
8. Supplies natural oils, or contains toning oils;
9. "Prevents" blackheads;
10. Cleans more deeply than other cleaners;
11. Searches deep down below the surface;

(b) That by the use of any of said products alone or in combination—

1. Enlarged pores are freed of deep-down dirt, or rubbed-in make-up, or that a removal of pore impurities is effected;
2. Blackheads or enlarged pores cannot exist;
3. One need not have blackheads or enlarged pores;
4. Blackheads or enlarged pores "vanish";
5. The causes of enlarged pores or blackheads are removed;

(c) That the use of the device designated, X-ilorator, gives the skin its required daily "exercise." (May 3, 1938.)

0823. *Correspondence Instructions in Fingerprinting—Opportunities and Relevant Facts.*—T. G. Cooke, an individual trading as Institute of Applied Science, 1920 Sunnyside Ave., Chicago, Ill., vendor-advertiser, was engaged in selling correspondence instructions in finger-

printing and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That there is small chance for one to gain fingerprint training at his employer's expense, so long as it is the practice of certain established Bureaus to train their own personnel;
- (b) That "Any" man or woman of average intelligence can become a fingerprint expert by this or any other training;
- (c) That everyone who completes respondent's course of instruction is a practical operator or is competent to perform the duties of a fingerprint expert;
- (d) That we are on the threshold of compulsory fingerprinting of every citizen of the United States;
- (e) That industrial plants, department stores and business institutions are, in any substantial numbers, adopting the practice of fingerprinting employees;
- (f) That insurance companies will inevitably require the fingerprinting of all policy holders;
- (g) That the standing of the Institute of Applied Science is the student's "guarantee" of proficiency;
- (h) That the wide acquaintance of respondent assures graduates of preferred opportunity when big positions are open;
- (i) That a diploma issued by respondent "proves" that the holder is a trained man, or that employers are always especially on the lookout for holders of such diplomas;
- (j) That the diploma issued by respondent is to the Fingerprint Expert what a Johns Hopkins diploma is to a physician or a Harvard Law School diploma is to a lawyer;
- (k) That respondent can teach students how to earn big money because he has done so;
- (l) That one who enrolls in respondent's course will be qualified to earn \$150 per month six months' thereafter;
- (m) That everyone who completes respondent's course is an expert and can demand the pay of an expert;
- (n) That respondent is holding places open for prospective students;
- (o) That a little study every night will fit the student for a good paying position.

The respondent further agreed to cease and desist from stating, importing or implying, by the designation of any person as President or otherwise, that this respondent was a corporation.

It was also agreed that this supplemental stipulation as to the facts and agreement to cease and desist was to be taken and considered to be supplemental to a stipulation executed by this advertiser and accepted and approved by the Federal Trade Commission January 22, 1935, that said stipulation remained in full force and effect, and that the terms thereof were not affected in any way by this supplemental stipulation. (May 4, 1938.)

02118. **Playing Cards and Christmas Greeting Cards—Opportunities and Unique Nature.**—General Card Co., a corporation, 400 S. Peoria St., Chicago, Ill., vendor-advertiser, was engaged in selling certain playing cards and Christmas Greeting Cards, and agreed in soliciting

the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's Monogram Playing Cards are new and unique unless it is clearly explained that the statement refers to the designs and not to the practice of imprinting a monogram on playing cards;

(b) That selling playing cards by respondent's method is a new occupation;

(c) That initial cards are not sold in stores unless expressly limited to respondent's designs. (May 11, 1938.)

02119. Medicinal Preparation—Qualities and Unique Nature.—Allcock Mfg. Co., a corporation, Ossining, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Brandreth's Pills, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That constipation is the cause of the majority of sickness;

(b) That Brandreth's Pills protect the system against poisoning or restore vitality;

(c) That the use of Brandreth's Pills will result in a healthy skin;

(d) That sallow skin, pimples, lustreless eyes, wrinkles, or poor vitality are almost always, or generally, due to decomposition of waste in the colon;

(e) That Brandreth's Pills completely eliminate toxic waste matter;

(f) That Brandreth's Pills will help the digestive process;

(g) That Brandreth's Pills have merited approval by people all over the world;

(h) That Brandreth's Pills will end, "correct," or cure constipation or will bring health to users, or will correct acid stomach, gas, heartburn, bad breath, or insomnia;

(i) That no other laxative is so perfect as Brandreth's Pills;

(j) That Brandreth's Pills are not habit-forming or are the safest laxative known;

(k) That Brandreth's Pills are a competent treatment for constipation, unless limited to temporary relief due to their laxative action, or a competent treatment for gas, acid-stomach, bad breath, headaches, acid indigestion or sleeplessness;

(l) That Brandreth's Pills are a sure relief for constipation, billousness, or bowel pains;

(m) That Brandreth's Pills are harmless in all cases;

(n) That Brandreth's Pills have no equal in the treatment of constipation, gas, acid stomach, or bad breath. (May 4, 1938.)

02120. Insulants—Unique Nature and Qualities.—Dry-Zero Corp., a corporation, Merchandise Mart, Chicago, Ill., vendor-advertiser, was engaged in selling insulation materials of various types according to the nature of the use anticipated and designated Dry-Zero Pliable Slab, Dry-Zero Sealpad Insulation, Dry-Zero Blanket Insulation, Dry-Zero Standard Refrigerator Car Blanket, Dry-Zero Hi Speed Blanket, Dry-Zero Economy Ice Blanket, and agreed in soliciting the

sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Dry-Zero is without qualification the lightest form of insulation material;

(b) That moisture condensation does not occur in Dry Zero qualitatively as in other insulating materials, that its resistance to moisture is far greater than other insulants unless properly qualified, or that its absorption is 50% to 90% less or any other percentage unless the basis of comparison is clearly stated, and unless such percentage has been demonstrated by competent scientific tests;

c. That the insulating value of Dry-Zero depends for its efficiency and permanence solely upon the arrangement of the fibres rather than upon their structure. (May 13, 1938.)

02121. Medicinal Preparation—Qualities and Safety.—James F. Ballard, Inc., a corporation, 500 North Second St., St. Louis, Mo., vendor-advertiser, was engaged in selling a medicinal preparation designated White's Cream Vermifuge, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That loss of weight is a symptom of round or pin worms;

(b) That White's Cream Vermifuge is safe or can be relied upon to expel any type of worms other than large round worms and to reduce pin worm infestation;

(c) That White's Cream Vermifuge will tone the intestinal tract;

(d) That White's Cream Vermifuge will have no unfavorable effect on the child, even though there should be no worms. (May 13, 1938.)

02122. Medicinal Preparation—Qualities.—Banfi Products Corp., a corporation, 206 Spring St., New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Montecatini Crystals, and agreed in soliciting the sale of its products in interstate commerce to cease and desist from representing by statements made either in the English language or the equivalent of such statements in any foreign language, directly or otherwise:

That the product known as Montecatini Crystals has any therapeutic effect other than as a laxative or purgative in cases of temporary or occasional constipation; that the product does not constitute a drastic purge or does not induce irritation unless expressly limited to use according to directions; or that it is of any value in the treatment of any condition or symptom unless it is clearly explained that it is of value only when such condition or symptom can be relieved by a laxative or purgative and when it has been clearly established that such treatment is proper for such condition or symptom. (May 9, 1938.)

02123. Cough Drops—Qualities, Relevant Facts and Unique Nature.—Luden's, Inc., a corporation, Reading, Pa., vendor-advertiser, was engaged in selling a product designated Luden's Menthol Cough Drops, and agreed in soliciting the sale of and selling said product

in interstate commerce to cease and desist from representing directly or otherwise:

(a) That without qualification medical authorities say acidity is often the cause of a cold;

(b) When referring to the head or the throat that Luden's Menthol Cough Drops do more than assist in keeping one's head clear or protecting one's throat;

(c) That Luden's Menthol Cough Drops are now the only cough drops that contain menthol. (May 10, 1938.)

02124. Bread—Relevant Facts.—Cripe Baking Co., a corporation, doing business as Rainbo Bread Co., Twenty-third and Frederick Ave., St. Joseph, Mo., vendor-advertiser, was engaged in selling a product designated Rainbo Bread, and agreed in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That bread is necessary in a reducing diet to burn up fats and sweets;

(b) That one may grow thinner yet eat anything, if bread, because of its ability to burn up damaging fats, is included in the diet;

(c) That bread has a balancing effect on the diet. (May 10, 1938.)

02125. Hair Growing Device—Qualities.—Crosley Radio Corp., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a device designated Xervac, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

That Xervac will stop the falling of hair unless specifically limited to arresting the falling of an abnormal amount of hair, or will enable patients to regain normal, healthy hair, or that it constitutes a competent treatment for baldness, falling or lifeless hair, or that it achieves any effect at all on the hair or scalp, unless any of the said claims hereinbefore referred to are expressly limited to such specified conditions as may be remedied or improved by stimulating the blood circulation of the scalp; or that any specified number or percentage of patients will be benefited by the use of said device. (May 10, 1938.)

02126. Food—Qualities.—Horlick's Malted Milk Corp., a corporation, Racine, Wis., vendor-advertiser, was engaged in selling a food product designated Horlick's Malted Milk, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's product helps build resistance to colds, winter ailments or other infections unless limited to its use as a nourishing food;

(b) That respondent's product "controls normal weight";

(c) That respondent's product will put you back on your feet "quicker than anything else";

(d) That the use of respondent's product alone will reduce weight, without regard to caloric intake or unless limited to its use as a nourishing substitute for a heavier meal as part of a weight reducing plan or program. (May 11, 1938.)

02127. **Cosmetics—Qualities and History.**—Vandy, Inc., a corporation, formerly known as Dew Cosmetics, Inc., 136 W. Fifty-second St., New York, N. Y., vendor-advertiser, was engaged in selling cosmetics designated Dew Instant and Dew Ultra, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That either of respondent's products gives lasting protection against perspiration;

(b) That either of respondent's products is safe and gentle, or non-irritating;

(c) That either of respondent's products is the "original" instant deodorant. (May 11, 1938.)

02128. **Medicinal Preparation—Qualities.**—Consolidated Drug Trade Products, Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling medicinal preparations designated Malena Ointment and Malena Pills, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Malena Pills have any therapeutic effect in helping to clear up local skin conditions other than that of a laxative;

(b) That Malena Ointment, applied either alone or in conjunction with the use of Malena Pills, will "clear" the skin or help to "clear the skin," generally, or of eruptions or blemishes, or of any other symptom or condition;

(c) That Malena Ointment is of any benefit in helping to clear up local skin conditions except as the product inhibits the development of bacteria with which it comes in contact, softens and removes particles of desquamated epithelium and foreign matter adhering to the skin, softens the skin, and in conjunction with the massage with which it is applied, tends to remove accumulated deposits in the sweat ducts and hair follicles;

(d) That either or both of respondent's products will have any particular effect within any specified period of time;

(e) That these products, either alone or in combination, will "rid" the system of poisons, regulate the system, or have any other effect on the "system," unless specifically limited to the action of Malena Pills on the intestinal tract;

(f) That either of these products will "end" any condition or symptom. (May 11, 1938.)

02129. **Cosmetics—Nature and Qualities.**—National Toilet Co., a corporation trading as Sunclyme House, Paris, Tenn., vendor-advertiser, was engaged in selling cosmetics designated Sunclyme Lime and Lemon Cleansing Emollient, Sunclyme Papaya Skin Tone, Sunclyme Avocado Night Emollient, and Sunclyme Persian Lime Foundation Emollient, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's products are "fruit base" preparations;

(b) That Sunclyme Avocado Night Emollient will penetrate the skin;

(c) That Sunclyme Avocado Night Emollient "nourishes" the skin;

- (d) That the preparations contain no grease or are "grease free";
- (e) That Sunclyme Persian Lime Foundation Emollient is "made from" Persian limes or that said fruit is the active ingredient contained therein;
- (f) That Sunclyme Lime and Lemon Cleansing Emollient is "made from" limes or lemons, or that either of said fruits or a combination thereof is the active ingredient relied upon for results;
- (g) That Sunclyme Papaya Skin Tone will aid circulation or refine the pores;
- (h) That any of the preparations is "non-allergic" or "absolutely" sterile;
- (i) That any of the preparations penetrates the pores or "rids" the pores of waste, or that they will not clog the pores, or that they allow the pores to "breathe" naturally;
- (j) That any of the preparations contains "live organic components" or "vital reconstructive elements of the skin cells";
- (k) That any of the preparations is of value in the prevention of wrinkles, lines, blemishes, large pores, or blackheads;
- (l) That Sunclyme Avocado Night Emollient contains an oil that closely corresponds to the natural secretions of the skin;
- (m) That the skin of Persian limes contains an element that protects against the sun's ultraviolet rays;
- (n) That any of the preparations is a "natural" beauty aid or affords a "natural" means of beauty;
- (o) That any of the preparations will coax "youth" to the skin or cause one to have a "young" skin or a skin firm of contour or a "youthful" skin texture;
- (p) That Vitamin F is of benefit to the skin;
- (q) That either Sunclyme Avocado Night Emollient, Sunclyme Lime and Lemon Cleansing Emollient, or Sunclyme Persian Lime Foundation Emollient is water "soluble";
- (r) That any of the products will act on the underlying tissues of the skin;
- (s) That any of the products contains no dead chemicals or foreign substances;
- (t) That any of the products is "natural" or antiseptic;
- (u) That Sunclyme Papaya Skin Tone contains no alcohol except the amount found in the fruit;
- (v) That the products are made from the whole fruit or that they contain all of the elements of any of the fruits;
- (w) That by external application one will receive the same benefits from the fruit elements contained in the products as would be received through the digestive processes. (May 12, 1938.)

02130. *Cosmetic and Chin Strap—Qualities and Guarantees.*—Angelina Doty and J. D. Stockwell, copartners, operating under the trade names of Florentine Products Co. and Angelene Preussaer, 1204 W. Wisconsin Ave., Milwaukee, Wis., vendor-advertisers, were engaged in selling a cosmetic designated Youth Creme and a device designated Florentine Rejuvenating Mold, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That respondents' products, used either alone or in combination will eliminate lines or sagging muscles, or will restore life and youth to fallen muscles, or from making any other statement which would import or imply that either of these products will be of any appreciable benefit in the prevention or removal of lines or wrinkles, or will have any effect on the muscles;

(b) That either or both of respondents' products will enable the user thereof to keep her face or throat from aging, to retain youth, to look 35 at 50, or to alter her contour to its normal condition or otherwise;

(c) That these products are guaranteed unless it is clearly explained that the guarantee is limited to the refund of the purchase price, and unless all of the conditions which must be fulfilled in order to be entitled to such a refund are also stated in direct connection therewith;

(d) That respondents' creme is nourishing, that it will feed the skin, or that it will supply to the skin those qualities that time, weather and nervous strain take from the skin.

The respondents further agree to cease and desist from the use of the word "Youth" as a part of the trade name of any product advertised and sold by them, and of the word "Rejuvenating" in any way as relating to their products, as a part of the trade name or otherwise.

(May 17, 1938.)

02131. Correspondence Course—Qualities.—Paul J. Wolfe, an individual, Pittsburgh, Pa., and Kittanning, Pa. (P. O. Box 84), vendor-advertiser, was engaged in selling a correspondence course designated a Home Study Course in the Correction of Stammering and Stuttering, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That by use of the course, stuttering or stammering will be "corrected" or that it will enable one to "correct" one's speech afflictions, or to talk "clearly";

(b) That by use of the course one will have "unembarrassed" or "flawless" speech or be "free of all embarrassment" arising from speech disorders;

(c) That by use of the course one will be enabled to speak "naturally" or "as you should" or "without trouble" or "without speech disorders";

(d) That by use of the course stuttering or stammering will be cured;

(e) That use of the course will enable one to "rid" one's self of speech disorders;

(f) That by use of the course one will never stutter or stammer again;

(g) That less than 2 percent of stuttering and stammering casts result from physical or mental difficulties;

(h) That "only you can prevent yourself from obtaining a cure";

(i) That "neither heredity nor environment can keep you from errorless speech if you will make up your mind that you will talk freely";

(j) That any definite percentage of stammering or stuttering afflictions can be cured;

(k) That no disease of mind or body can thoroughly be understood without suffering the malady and curing one's self through self study;

(l) That there is no curable case of stammering or stuttering that respondent's course will not cure. (May 17, 1938.)

02132. Men's Clothes—Free Product and Earnings.—"Jim" Foster Clothes, Inc., a corporation, 2254 South Spaulding Ave., Chicago, Ill., vendor-advertiser, was engaged in selling Men's Tailor-Made Clothes, and agreed in soliciting the sale of and selling said product in inter-

state commerce to cease and desist from representing directly or otherwise:

(a) That any suits or overcoats are "free" to a salesperson so long as services or other valuable considerations are required before receiving such articles;

(b) That respondent's suits or overcoats are "guaranteed" where a simple warranty is intended;

(c) That the "Jim Foster Tailoring Line" enables a salesperson to sell clothing of a satisfactory quality at prices lower than the average.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(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 agreed, in its future advertising, not to publish figures of savings in prices, etc., which could not be definitely substantiated. (May 20, 1938.)

02133. Sign Letters—Composition, Free Product and Earnings.—G. E. Medland, an individual, trading as Modernistic Sign Letter Co., Y-3000 Lincoln Ave., Chicago, Ill., vendor-advertiser, was engaged in selling Sign Letters, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) From the use in his advertisements and advertising matter of the words "gold" or "silver," or any other word or words, or in any way, so as to import or imply, or which may have a capacity or tendency to confuse, mislead or deceive purchasers into the belief that said products are made or composed of gold, in whole or in part, or are made or composed of silver, in whole or in part, when such is not the fact;

(b) That any article is free when the price thereof is included in the purchase price of another article, or when the payment of money or the rendering of a service is required;

(c) That respondent's customers take no risk;

(d) That respondent's letters are nonfading;

(e) That the "U. S. Bureau of Statistics" or any Governmental Agency represents that, due to any condition, any number of new window signs should be put up at any time;

(f) That the respondent "furnishes everything to work with," or in any manner representing or implying that respondent furnishes material and equipment without charge.

The respondent further agreed:

1. 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.

2. 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;

3. Not to represent or hold out as maximum earnings by the use of such expression 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. (May 20, 1938.)

02134. **Firearms—Qualities and Unique Nature.**—Crosman Arms Co., Inc., a corporation, 418 St. Paul St., Rochester, N. Y., vendor-advertiser, was engaged in selling Pneumatic Rifles, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's rifles are more accurate than any firearm;

(b) That respondent's rifles are as accurate as powder rifles, unless limited to their accuracy for short distances;

(c) That respondent's rifle is "the most powerful," or "highest powered" pneumatic rifle in the world;

(d) That the Crosman rifle is "the only" high powered repeating pneumatic rifle in the world. (May 20, 1938.)

02135. **Sign Letters and Numbers—Composition, Free Product and Limited Offer.**—H. Alexander, an individual, trading as Staibrite Letter Co., 42 West 30th St., New York, N. Y., vendor-advertiser, was engaged in selling Sign Letters and Numbers, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) From the use in his advertisements and advertising matter of the words "gold" or "silver" or any other word or words, or in any way so as to import or imply or which may have a capacity or tendency to confuse, mislead or deceive purchasers into the belief that said products are made or composed of gold in whole or in part or are made or composed of silver in whole or in part, when such is not the fact;

(b) That respondent's products cannot possibly tarnish or are non-tarnishing;

(c) That any article is free when the price thereof is included in the purchase price of another article or when the payment of money or the rendering of a service is involved;

(d) That any offer is for a definite period of time unless such a period of time is set and all offers to purchaser under the terms thereof received after the expiration date are refused;

(e) That respondent's products are fadeproof. (May 23, 1938.)

02136. **Fuel—Qualities.**—Northwestern Fuel Co., a corporation, E. 1203 First National Bank Bldg., St. Paul, Minn., vendor-advertiser, was engaged in selling Chemacol Processed Coal, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That respondent's coal is dustless, or made dustless by the chemical with which it is treated;

(b) That Chemacol, the chemical with which respondent's coal is treated, acts as a catalytic agent, or causes gases to unite with oxygen, or provides a more intense heat from the coal, or converts more of the combustible gases into heat;

(c) That Chemacol, the chemical with which respondent's coal is treated, prevents gases from escaping up the chimney. (May 23, 1938.)

02137. Food Flavors, Medicinal Preparations, and Toilet Articles—Opportunities, Qualities, Free Product and Government Approval.—Clarence P. Smith, an individual trading as Mystol Mfg. Co., Glen Falls, N. Y., vendor-advertiser, was engaged in selling food flavors, medicinal preparations and toilet articles, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That no risk is involved in the starting offer;

(b) That purchasers, as agents or retailers, will become identified with a trade mark for the development of which a designated amount of money has been expended, unless in truth and in fact such sum has actually been expended by respondent to develop the particular and identical trade mark associated with respondent's products;

(c) That the merchandise offered for sale is of super quality or is sold at America's lowest prices;

(d) That no attempt is made to compete with respondent;

(e) That respondent is the originator of deals or combination offers;

(f) That any of the vanilla flavoring preparations improve with age;

(g) That Hot Spot Penetrating Liniment is efficacious for all aches and pains, or that its kerosene oil content is not inflammable;

(h) That Vanity Hand Lotion penetrates freely;

(i) Inferentially or otherwise, that the expenditure of any designated sum for the purchase of the basic ingredients of the preparation represents the total cost of that preparation unless in truth and in fact the purchase of additional ingredients is not required;

(j) That any of the completed preparations can be offered as free or that any of the basic ingredients or concentrates are free when such preparations, basic ingredients or concentrates are purchased in certain designated combinations or in certain designated amounts;

(k) That Nancy Kenne's Tropical Balm is a skin food or that it is capable of sterilizing;

(l) That the use of Nancy Kenne's Tropical Shampoo results in hair health or that it will keep the hair in a healthy condition unless it is indicated that it does so only to the extent that might be expected from its cleansing properties;

(m) That the use of Nancy Kenne's Tropical Shampoo will keep hair from falling or that it is an aid in stopping scalp itch unless these conditions are caused or aggravated by an accumulation of dust, dirt and other impurities which an ordinary shampoo would be expected to remove;

(n) That Wecobalm Nazal Drops will prevent a cold if taken at the sneezing stage or at all;

(o) That the medicinal ingredients of Mountain Valley Liniment will reach the seat of the pain;

(p) That the various formulae have been approved by any Government bureau or department. (May 24, 1938.)

02138. Toilet Preparation—Qualities and Safety.—White's Specific Toilet Co., a corporation, Nashville, Tenn., vendor-advertiser, is engaged in selling a toilet preparation designated White's Specific Face Cream, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That said product will remove pimples or blackheads;
- (b) That said product will remove skin discolorations, freckles, or tau, unless in direct connection therewith it is stated that any lessening of the conspicuousness of such discoloration, freckles or tau is only temporary;
- (c) That said product may be used without harm to the most delicate skin;
- (d) That said product will put one's skin in good condition;
- (e) That for one's skin to become irritated after using said product is proof the skin needs the preparation;
- (f) That continued use of said preparation will keep the skin in perfect condition;
- (g) That the oils in said preparation will be absorbed by the skin or have been selected for the purpose of being absorbed by the skin. (May 24, 1938.)

01034. Breakfast Food—A. M. A. Approval and Qualities.—Campbell Cereal Co., a corporation, Foshay Tower, Minneapolis, Minn., vendor-advertiser, was engaged in selling a breakfast food designated Malt-O-Meal, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Malt-O-Meal has been approved or accepted by or bears the seal of acceptance of the American Medical Association or in any other way indicating that said Association, other than its Council on Foods, has "accepted" said product;
- (b) That Malt-O-Meal contains or will give one 65 percent, or any other percentage not justified by facts accurately compiled by reliable authorities on the subject, more food energy value for the money than any other product or group of products;
- (c) That by purchasing or using a package of Malt-O-Meal one saves 16 cents, or any other sum.

It was understood by the parties hereto that this stipulation was supplemental to, and not in lieu of the stipulation executed by the Campbell Cereal Co., No. 01034, and accepted and approved by the Commission on December 23, 1935. (May 25, 1938.)

02139. Dishes, Rings—Free Goods.—Clyde Collins, Inc., a corporation, Front and McCall Sts., Memphis, Tenn., vendor-advertiser, was engaged in selling various "Household Deals," and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That a beautiful hand-painted Dinner Set is given "Free" so long as the recipient of said Dinner Set is required to purchase 12, or any other number, "Log Cabin Special Deals" before receiving the Dinner Set;

(b) That an 18-piece Dinner Set, hand-painted in the popular Blue Willow Pattern, is given "absolutely Free," or "Free" so long as the recipient of said Dinner Set is required to purchase 12, or any other number, "Log Cabin Special Deals" before receiving the Dinner Set;

(c) That a Baking Dish is given "Free" with "a gigantic four bottle deal", or any other "deal" wherein the recipient of said Baking Dish is required to purchase merchandise from respondent before receiving the Baking Dish;

(d) That a Genuine Diamond-Cut Ring is given away "Free" so long as the recipient of said Genuine Diamond-Cut Ring is required to "hand out popular gift packages with product needed right now for every home," or perform any other service for respondent, before receiving the Genuine Diamond-Cut Ring. (May 25, 1938.)

02140. **Antiseptic—Qualities and Tests.**—Norzel's Beauty Products Mfg. Co., Inc., a corporation, Syracuse, N. Y., vendor-advertiser, was engaged in selling an antiseptic designated I. G. Antiseptic, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of I. G. Antiseptic will prevent or protect against infection or sterilize wounds;

(b) That said preparation exerts a germicidal or healing action or that, by its use, infection is arrested before it starts;

(c) That dandruff is due to a germ;

(d) That said preparation will prevent germs from getting in when pores are open;

(e) That the use of said preparation is a "safe" or "sure" way of preventing claims for wave burns, hair dye infections, cuticle cuts or other nuisances, or to give protection to one's business prestige or prevent unfavorable publicity;

(f) That said preparation will germicide the scalp or restore cells or pores to normal healthy condition;

(g) That said preparation is effective in the treatment of burns, cuts, insect bites, sunburn, or skin eruptions;

(h) That said preparation, used as directed, will prevent "kick-backs," or that it will enter the pores and remove itching or soothe irritation from the use of hair dye;

(i) That said preparation before being put upon the market was tested for effectiveness or safety. (May 25, 1938.)

02141. **Automobiles—Free Goods and Prices.**—Graham-Paige Motors Corp., a corporation, Detroit, Mich., vendor-advertiser, was engaged in selling Graham Automobiles, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any article is free unless given without the payment of money or the rendering of a service or when the price thereof is included in the purchase price of other articles;

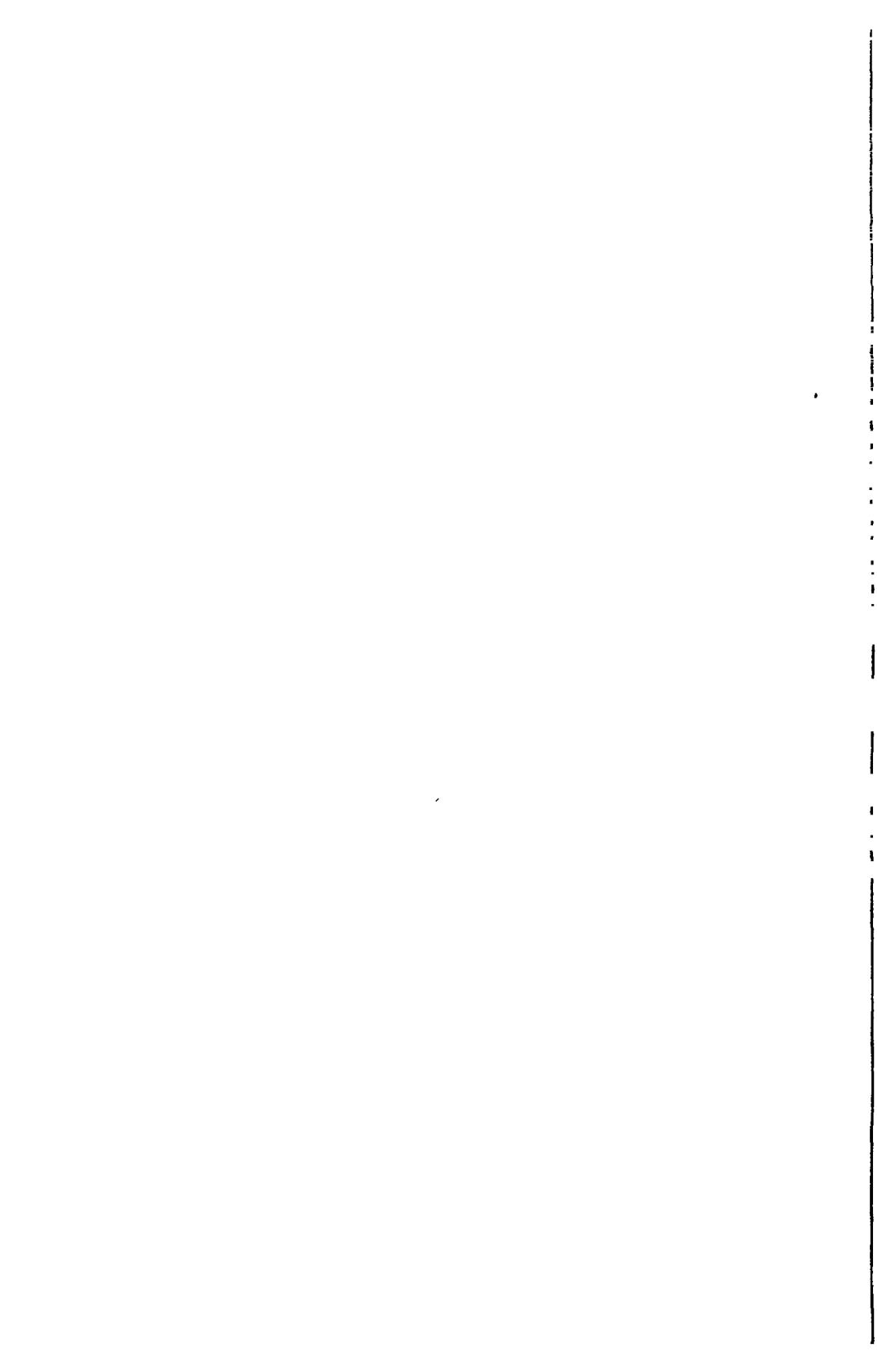
(b) That its automobiles have gone or will go faster than any car in America;

(c) That the Graham automobile is the official "U. S." Economy Champion or from otherwise representing or implying in any manner that any of the said automobiles have been so designated by any branch of the Government of the United States;

(d) That because of that particular type of oil filter with which its automobiles are equipped oil bills or changes are reduced any definite number or percentage.

The respondent further agreed to cease and desist from:

1. Representing that prices of cars published in valuation booklets are the "official" values;
2. Instructing dealers to represent that the valuations published in used car valuation booklets are anything more than the minimum price a prospective purchaser may expect to be allowed;
3. Instructing dealers to represent that they are giving bonuses on trade-in values of used cars unless such bonuses are bona-fide and given only in cases where a used car is in substantially better condition than the average car of the same make and model. (May 25, 1938.)



DECISIONS OF THE COURTS ¹

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

FEDERAL TRADE COMMISSION v. BARAGER-WEBSTER COMPANY ²

No. 6430

(Circuit Court of Appeals, Seventh Circuit. December 15, 1937)

On application by Commission for enforcement of its order in Docket 2506, 23 F. T. C. 199, directing respondent, its officers, etc., in connection with manufacture, sale, and distribution of candy and candy products, to cease and desist from use of lottery schemes as therein set forth, order affirmed per curiam.

On application for enforcement of order of Commission, order affirmed.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, *Mr. Henry C. Lank*, *Mr. P. C. Kolinski*, and *Mr. James W. Nichol*, Special Attorneys, all of Washington, D. C., for the Commission.

Before EVANS, SPARKS, and MAJOR, Circuit Judges.

PER CURIAM.

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, October 28, 1937, its application for the enforcement of an order to cease and desist issued by it against the respondent, under date of August 3, 1936, 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

¹ During the period covered by this volume, from December 1, 1937, to May 31, 1938, inclusive, there was also instituted suit in the matter of *U. S. v. Hamilton-Brown Shoe Co.*, in the District Court of the United States for the Eastern District of Missouri, at St. Louis, for approximately \$89,000 as penalties for failure of said company to file with the Commission, up to that time, certain information called for in questionnaires sent to the company in 1936. As briefly described in the Commission's Annual Report for 1938, at page 85, such proceeding was instituted under direction of the Attorney General under Section 10 of the Federal Trade Commission Act, and was settled on April 29, 1938, by imposition of a nominal penalty, due to certain mitigating circumstances and the fact that the company finally had furnished the Commission with all the information requested, was desired by the Commission in connection with its report on Agricultural Income (see said Annual Report at page 30).

² The court's per curiam decision is reported in 95 F. (2d) 1000.

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 its 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, 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 August 3, 1936, be and the same hereby is affirmed.

And it is hereby further ordered, adjudged and decreed, That the respondent, Barager-Webster Company, its officers, 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 and to retail dealers direct, candy so packed and assembled that sales of said 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 or retail dealers, packages or assortments of candy which are used or which are designed to 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 retail and wholesale dealers and jobbers assortments of candy together with a device commonly called a "push card" for use or which is designed to be used in distributing or selling said candy to the public at retail;

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a 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.

And it is hereby further ordered, adjudged and decreed, that the respondent, Barager-Webster Company, within 30 days after the

service upon it by the clerk of this court of a copy of this decree, shall file with the Federal Trade Com[100]mission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

FEDERAL TRADE COMMISSION *v.* SOL BLOCK AND SIDNEY BLUMENTHAL, INDIVIDUALLY, AND TRADING AS RITTENHOUSE CANDY COMPANY¹

No. 6643

(Circuit Court of Appeals, Third Circuit. January 5, 1938)

Decree affirming Commission's order in Docket 2071, 24 F. T. C. 253, directing respondents, their officers, etc., in connection with offer, 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 respondents, their officers, etc., to cease and desist.

On application for enforcement of Commission's order, affirming decree per curiam.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, *Mr. Henry C. Lank*, *Mr. P. C. Kolinski*, and *Mr. James W. Nichol*, Special Attorneys, all of Washington, D. C., for the Commission.

DECREE

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, November 24, 1937, its application for the enforcement of an order to cease and desist issued by it against the respondents under date of December 19, 1936, 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 respondents having subsequently filed their answer to said application for enforcement, in which answer respondents stated they were not willing to contest said application for enforcement or the proceedings based thereon, and in which answer said respondents consented that this court might, upon said

¹ Not reported in Federal Reporter.

application and respondents' 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 respondents, their representatives, agents 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 December 19, 1936, be and the same hereby is affirmed.

And it is hereby further ordered, adjudged, and decreed, That the respondents, Sol Block and Sidney Blumenthal, individually, and as copartners trading under the name and style of Rittenhouse Candy Co., their representatives, agents and employees, in the offering for sale, 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 which 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 assortments 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 punchboard, for use, or which may be used, in distributing said candy to the public at retail.

4. Furnishing to wholesale dealers and jobbers a device commonly called a punchboard, either with assortments of candy or separately, bearing a legend or legends or statements informing the consuming public that the candy is being sold by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

And it is hereby further ordered, adjudged, and decreed, That the respondents, Sol Block and Sidney Blumenthal, within 30 days after the service upon them by the clerk of this court of a copy of this decree, shall 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 decree.

FEDERAL TRADE COMMISSION v. CHASE CANDY
COMPANY¹

No. 408

(Circuit Court of Appeals, Eighth Circuit. January 20, 1938)

Decree affirming Commission's order in Docket 2562, 23 F. T. C. 780, directing respondent, its officers, etc., in connection with the offer, sale, and distribution of candy and candy products, to cease and desist from use of lottery schemes therein set forth, and adopting, as below set forth, provisions thereof in court's order directing respondent, its officers, etc., to cease and desist.

On application for enforcement of Commission's order, affirming decree per curiam.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, and *Mr. Henry C. Lank*, *Mr. P. C. Kolinski*, and *Mr. James W. Nichol*, Special Attorneys, all of Washington, D. C., for the Commission.

DECREE

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, December 11, 1937, its application for the enforcement of an order to cease and desist issued by it against the respondent, under date of November 7, 1936, 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 its 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 affirm-

¹ The court's per curiam decision is reported in 97 F. (2d) 1002.

ing said order to cease and desist and commanding respondent, its officers, 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 November 7, 1936, be and the same hereby is affirmed.

And it is hereby further ordered, adjudged, and decreed, That the respondent, Chase Candy Company, a corporation, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy and candy products, cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retailers, or 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 wholesale dealers and jobbers or retail dealers, 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 retail and wholesale dealers and jobbers assortments of candy together with a device commonly called a "push card" for use or which may be used in distribution of said candy to the public at retail.

4. Furnishing to wholesale dealers and jobbers and retail dealers a device commonly called a "push card," either with assortments of candy, or separately, and bearing a legend or legends or statements informing the purchaser that the candy is 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.

And it is hereby further ordered, adjudged, and decreed, That the respondent, Chase Candy Company, within 30 days after the service upon it by the clerk of this court of a copy 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.

FEDERAL TRADE COMMISSION *v.* A. McLEAN & SON
ET AL.¹

Nos. 5796, 5797

(Circuit Court of Appeals, Seventh Circuit. February 8, 1938)

CONTEMPT PROCEEDINGS—CIVIL—COMMISSION'S STANDING AS PRIVATE PARTY TO MAINTAIN.

The Federal Trade Commission, an agency of the Government, representing no private interest of its own, but acting solely in the public interest, has no such standing as a private party as enables it to maintain proceedings for civil contempt for violation of its orders.

PUBLIC INTEREST ALONE AS UNDERLYING COMMISSION'S ACTION.

Under the statute creating the Federal Trade Commission, the Commission acts in the public interest alone (Federal Trade Commission Act, Sec. 5, 15 U. S. C. A. Sec. 45).

CONTEMPT PROCEEDINGS—WHETHER CIVIL OR CRIMINAL—DEFENDANT'S RIGHT TO BE ADVISED AT INCEPTION.

The party against whom proceedings in contempt are attempted to be had is entitled to know from the outset whether the proceedings against him are civil or criminal in their nature.

CONTEMPT PROCEEDINGS—WHERE ANCILLARY TO ORDER ENFORCEMENT AND REIMBURSEMENT CLAIMS AS IN CIVIL—AS PRECLUDING CONTINUANCE AS FOR CRIMINAL.

Where the Federal Trade Commission filed contempt petitions as ancillary to original proceedings for enforcement of an order, thus indicating that it sought relief in civil proceedings, and filed a brief in support of that position, claiming relief as an injured party, to be reimbursed for costs incurred as a result of the violation of the order, stating that the proceeding was for civil contempt and was not punitive, it is not entitled to permission to continue prosecution of the proceedings as in criminal contempt, as the respondent and the court were entitled to know the theory on which it relied.

(The syllabus, with substituted captions, is taken from 94 F. (2d) 802)

On two original petitions by the Commission for rules to show cause why A. McLean & Son and M. J. Holloway & Co. should not be adjudged in contempt, motions to dismiss granted, and petitions dismissed.

Mr. W. T. Kelley, Mr. Martin A. Morrison, Mr. Henry C. Lank, and *Mr. James W. Nichol*, all of Washington, D. C., for petitioner.

Mr. Irvin H. Fathchild, of Chicago, Ill., for respondent.

Before EVANS and SPARKS, Circuit Judges, and LINDLEY, District Judge.

¹ Reported in 94 F. (2d) 802.

SPARKS, *Circuit Judge*.

The Federal Trade Commission has filed a petition for a rule against McLean & Son, a corporation, and one against M. J. Holloway & Co., a corporation, to show cause why each should not be adjudged in contempt of this court for violation of a decree entered by this court July 1, 1936. That decree was entered pursuant to application of the Commission for enforcement of its order against both respondents to cease and desist from certain practices theretofore found by the Commission to constitute unfair and forbidden methods of competition. See *Federal Trade Commission v. McLean and Son*, 84 F. (2d) 910.

[803] The petition presented in each case was filed under the same title and number as the original proceeding, and was filed as a part of that proceeding. The prayer of each petition is as follows:

"Wherefore, Federal Trade Commission prays that said (respondent) be ordered to show cause why it should not be adjudged in contempt of this court, in having so disobeyed said decree of this court so made and entered on the first day of July 1936."

Respondents filed answers in the nature of motions to dismiss the petitions for rule to show cause on the grounds that:

1. The object of the petitions for contempt is necessarily punitive and not compensatory, and accordingly should have been presented as an independent petition and not as supplemental proceedings in the original cause.

2. The petitions set forth only the pleader's conclusions in support of the charge, and not sufficient allegations of fact as to the subject matter alleged to violate the court's order.

3. The verification of the petitions is insufficient, not being by persons having personal knowledge of the facts, and purporting to be upon affiant's belief.

4. There was no contempt of the court's order, as indicated by certain facts set forth by respondents.

In reply to respondents' motions to dismiss, petitioner, the Commission, stated that its proceeding was one for civil contempt, and that it was a part of a proceeding based upon section 5 of the Federal Trade Commission Act (15 U. S. C. A. section 45) which provides for a civil proceeding only and for a decree in the nature of an injunction; that it was not punitive; that it was wholly remedial, being prosecuted in the public interest; and that it was ancillary to the main case and in aid of the enforcement of the decree of this court. It further urged that the assessment of a fine would not indicate that the proceeding was criminal since a fine is as much an incident of civil contempt as of criminal, the difference between the two being that in civil contempt the fine must bear a relation to the

injury sustained by the complaining party. In its petitions for rules to show cause, the Commission made no allegation of injury to itself and no request for fines payable to it in compensation for expense incurred as a result of respondents' alleged contempts. However, in its brief in opposition to the motions to dismiss, to show that it was entitled to such fines, it made the following statement:

"The Government, under the decree of this court, represents the interests of the Government and of the public. The Government has borne the expense of a nation-wide investigation to ascertain the facts which constitute the company's violations of the decree herein, and it pays all salaries and other expenses incident to the prosecution of this proceeding. The public is, as a matter of law, injured by such violations. The Government is entitled to a fine which bears a reasonable relation to all these injuries. The amount may not be calculated with accuracy, but the court may reasonably approximate it in fixing a fine in a substantial sum.

"The cash outlay required of the Government in its investigations and in the prosecution of the pending petition may not be ascertained with certainty; but it manifestly is a substantial sum.

"That violations of the decree injure the public may not be doubted or denied. Respondent's total sales are so great that such injuries to the public, when expressed in dollars, must be a substantial sum. A proceeding in civil contempt is ancillary to the case in which the decree was entered. It depends upon and is coexistent with the right to enforce such decree."

The Commission thus asserted its right, as a party injured by violation of a decree in its favor, to the remedy or relief afforded by means of civil contempt proceedings. As we studied the questions presented by the petitions and briefs filed prior to the hearing, and by the oral argument on hearing of the motions to dismiss, we concluded that the Commission was not entitled to the relief sought, by the means sought. It appeared that the question of the right of an administrative board, an agency of the Government, created principally for the purpose of regulating competition, to invoke rights customarily accorded to private litigants, had not previously been raised nor settled. Since the procedure followed was that employed in proceedings for civil contempt, according to the rules laid down in *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, and the Commission treated it as such in its petition and briefs, we concluded that the first question before us was whether the Commission was entitled to institute [804] proceedings for civil contempt as a part of its civil proceedings against the respondents which had culminated in an order of this court to enforce the cease and desist order of the Commission. Having found that the protection of private rights

was emphasized throughout the cases relating to contempt proceedings as their principal purpose,¹ we became convinced that the Commission, an agency of the Government, representing no private interest of its own, but acting solely in the public interest, had no such standing as a private party that it could utilize procedure intended to safeguard the rights and interests of private parties. That the Commission does act in the public interest alone we think there can be no question. Section 5 of the act creating it so provides (15 U. S. C. A. section 45). See also *Federal Trade Commission v. Klesner*, 280 U. S. 19; *Flynn and Emrich Co. v. Federal Trade Commission*, 52 F. (2d) 836.

The Commission now appears to acquiesce in the conclusion that civil contempt proceedings are not appropriate to the proceeding here involved, as indicated by a supplemental brief filed herein, seventeen days after hearing of the cause, wherein it urges its right to prosecute proceedings for criminal contempt in its own name. It now states: "Counsel for the Commission respectfully submit that the petition herein presents an element of civil contempt, although it also presents a larger and more important element of criminal contempt—a criminal element that goes to the inherent power of this Court to vindicate its own dignity and rightful power * * * The only practical change will be that the fine will be punitive, and there may be fine or imprisonment, or both, with no limits except the sound discretion of this Court."

In support of its contention that the court should now consider its petition as one for criminal contempt, the Commission relies upon four cases, each of which was prosecuted by it in its own name: *In the Matter of Leavitt*, reported in Statutes and Decisions pertaining to the Federal Trade Commission, page 582; a second proceeding against the same party, not reported; *Federal Trade Commission v. Hoboken White Lead and Color Works*, 67 F. (2d) 551; and *Federal Trade Commission v. Pacific States Paper Trade Ass'n.*, 88 F. (2d) 1009. We note that the Hoboken Works case does not appear to

¹ "The courts of the United States recognize that the process of contempt has two distinct aspects—one criminal, to punish disobedience; and the other remedial and civil to enforce a decree of the court, and to compensate private persons." *Krepik v. Couch Patents Co.*, 190 Fed. 565 at 569.

"An essential element of proceedings in the nature of civil contempt is that some private interest shall appear." *State v. Verage*, 177 Wis. 295 at 317.

"The punishment is to secure to the adverse party the right which the court has awarded to him." *Bessette v. Conkey*, 104 U. S. 324.

"Substantial benefit to a private party preponderating over that to the government is the distinguishing characteristic of a civil contempt." *Holloway v. Peoples' Water Co.*, 100 Kan. 414.

See also *In re Nevitt*, 117 Fed. 448; *Merchants' Stock and Grain Co. v. Board of Trade*, 187 Fed. 398.

have been prosecuted as a part of the original proceedings. No docket number is given in the published report. The question of the form of the proceedings does not appear to have been raised, and the court treated it as a proceeding for criminal contempt, and imposed a punitive fine. In the Pacific States Association case, it appears that a separate proceeding was had, as indicated by the fact that the original order was entered in cause No. 4217, while the fines for contempt were imposed in cause No. 8227. We consider this fact of importance for the reason that it has been generally held that the party against whom such proceedings are attempted to be had is entitled to know from the outset whether the proceedings against him are civil or criminal in their nature. The Court of Appeals for the Second Circuit discussed this in *McCann v. N. Y. Stock Exchange*, 80 F. (2d) 211, 214, an appeal from an order fining appellant for contempt of court. In reversing the order, the court said:

" * * * Nor can we affirm it as punishment for a criminal contempt. The lower federal courts have not been very clear about the proper practice in such applications since *Gompers v. Buck's Stove and Range Co.*, 221 [805] U. S. 418. It has been their custom to determine their character, whether civil or criminal, by resort to a number of elements, some purely formal, some substantial; such as the title of the proceeding, whether costs were demanded, whether the parties were examined, who conducted the prosecution. * * * The result of all this has been most unsatisfactory and has defeated its own purpose, which was to advise the respondent at the outset of the nature of the application * * *. Criminal prosecutions, that is, those which result in a punishment, vindictive as opposed to remedial, are prosecuted either by the United States or by the court to assert its authority * * *. But the judge may prefer to use the attorney of a party, who will indeed ordinarily be his only means of information when the contempt is not in his presence. There is no reason why he should not do so, and every reason why he should; but obviously the situation may in that event be equivocal, for the respondent will often find it hard to tell whether the prosecution is not a remedial move in the suit, undertaken on behalf of the client. This can be made plain if the judge enters an order in limine, directing the attorney to prosecute the respondent criminally on behalf of the court, and if the papers supporting the process contain a copy of this order or allege its contents correctly. We think that unless this is done the prosecution must be deemed to be civil and will support no other than a remedial punishment."

The Commission apparently has in mind this right of the respondents to be apprised of the nature of the proceedings against them

when it states: "A technical change of the case upon the docket of this court is all that respondent might reasonably ask, and it would be of no advantage to respondent. The parties would remain the same and the subject matter and rights and liabilities of the parties would remain the same." We cannot agree with this contention. There may be a very considerable difference between the incidents resultant upon a finding of contempt in a civil proceeding from those of a criminal proceeding. The Supreme Court said, in *U. S. v. Goldman*, 277 U. S. 229, "The only substantial difference between such a proceeding for criminal contempt and a criminal prosecution is that in the one the act complained of is the violation of a decree and in the other the violation of a law * * * "These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech * * *"

We think that not only the respondent, but also the court is entitled to know from the original petition and briefs in support thereof just what theory the petitioner relies upon for the relief sought in his petition. By filing the petitions here involved as ancillary to the original proceedings, the Commission indicated that it sought relief in civil proceedings. Thereafter when respondents filed their motions to dismiss, it filed its brief in support of that position, claiming relief as an injured party, to be reimbursed for costs incurred as a result of the violation of the order, stating, "This is a proceeding for 'civil contempt.' * * * It is not punitive. It is wholly remedial * * * (It) is ancillary to the main case and is in aid of the enforcement of the decree of this court made and entered therein." We are convinced that the Commission has no right now to demand permission to continue prosecution of the proceedings as in criminal contempt. Nor do the facts disclosed by the petitions for rule to show cause, and the suggestions filed in opposition thereto, show such deliberate intent to violate the order of the court that we feel impelled to prosecute a proceeding on our own motion to punish respondents for contempt of our order.

Respondents' motions to dismiss the petitions for rules to show cause why they should not be held in contempt for violations of the order of this court are granted, and the petitions are hereby dismissed.

FEDERAL TRADE COMMISSION v. FAIRYFOOT
PRODUCTS COMPANY¹

No. 5426

(Circuit Court of Appeals, Seventh Circuit. February 11, 1938)

CONTEMPT ADJUDICATIONS—COERCIVE, ETC., PREREQUISITES OF ORDER OR DECREE.

A court cannot adjudge one to be in contempt for violating court order or decree, unless it lawfully restrains alleged contemnor from doing acts complained of by its coercive force, acting directly on the person.

CONTEMPT ADJUDICATIONS—ORDER OF AFFIRMANCE AS NOT ENFORCEMENT DECREE EQUIVALENT.

A general order, affirming Federal Trade Commission's "cease and desist" order, is not equivalent to decree of enforcement, so that violation thereof does not constitute contempt of court (Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45).

ENFORCEMENT DECREES—AS PROPERLY INJUNCTIVE IN NATURE AND FORM, ETC.

A decree of enforcement of Federal Trade Commission's "cease and desist" order should be in general nature and form of injunction decree definitely fixing duties of party against whom such order was issued.

(The syllabus, with substituted captions, is taken from 94 F.
(2d) 844)

On petition by Commission for rule to show cause why Fairyfoot Products Company should not be adjudged in contempt for violating order or decree affirming cease and desist order of Commission, respondent's motion to dismiss sustained, and petition dismissed.

Mr. Harris F. Williams and *Mr. Robert C. Baumgartner*, both of Chicago, Ill., for Fairyfoot Products Co.

[845] *Mr. W. T. Kelley*, *Mr. Martin A. Morrison*, *Mr. Robert N. McMillen*, and *Mr. J. W. Nichol*, all of Washington, D. C., for Federal Trade Commission.

Before EVANS, MAJOR, and TREANOR, Circuit Judges.

TREANOR, *Circuit Judge*.

In cause No. 5426, entitled *Fairyfoot Products Co.*, a corporation, petitioner, v. *Federal Trade Commission*, respondent, the petitioner sought a review of a "cease and desist" order of the Federal Trade Commission. This court concluded that the "cease and desist" order was a proper one and stated its decision in the following language: "The order of the Commission is affirmed."²

¹ Reported in 94 F. (2d) 844.

² *Fairyfoot Products Co. v. Federal Trade Commission* (C. C. A. 7th Circuit), 80 F. (2d) 684.

The Federal Trade Commission now files its petition praying that a rule issue against the Fairyfoot Products Co. to show cause why it should not be adjudged in contempt for an alleged violation of the aforesaid order or decree.

The Fairyfoot Products Co., the respondent in the instant proceedings, has filed its motion to dismiss the petition for a rule to show cause and in support of its motion to dismiss urges the following grounds:

“(1) It is not shown or claimed that any order or decree of this honorable court has been violated.

“(2) The final order or decree entered by this court on December 23, 1935, was merely one of affirmance and not an order or decree of enforcement, and that affirmance was in accord with the opinion of this court, (*Fairyfoot Products Co. v. Federal Trade Commission*, 80 F. (2d) 684, at 687).”

It is elementary that a court is without power to adjudge one to be in contempt for violation of a court order or decree unless the alleged contemnor has violated a judicial decree, or order, which by its coercive force, acting directly upon the person, lawfully restrains the alleged contemnor from doing the acts complained of.

Under the terms of the Federal Trade Commission Act the circuit court of appeals possesses a twofold function. At the request of one against whom the “cease and desist” order has been directed it has the power to review the proceedings of the Commission to determine whether the order should be affirmed, modified, or set aside. The effect of affirmance is to adjudicate the validity of the order of the Commission and to decree its effectiveness in the sense that disobedience of it by the one against whom it is directed would constitute an unlawful act. But it does not follow that the unlawful act of disobedience can be made the basis of a contempt proceeding in this court, even though the order of affirmance of this court, in a sense, gives legal vitality to the order of the Federal Trade Commission. For the lawfulness of the order of the Commission derives ultimately from the Act of Congress and not from this court’s adjudication of its lawfulness.

Also by the terms of the Federal Trade Commission Act the circuit court of appeals has the power to enforce valid orders of the Commission. In respect to this power of enforcement the act does not purport to grant any new power to the Circuit Court of Appeals, but assumes the existence of the equity power of coercion and obviously contemplates the use of this power. Consequently, Federal courts have concluded that the decree of enforcement “should be along the

lines adopted by courts of equity generally in hearing suits for injunction."³

The language of authorization to the Commission to apply for enforcement of its order does not prescribe or authorize any particular type of enforcement procedure, and apparently it was the intention of Congress that the circuit court of appeals should utilize the usual practice adopted by courts of equity in hearing suits for injunction and formulating decrees therein.

Different circuit courts of appeals have had to decide what method of procedure should be followed after the Federal Trade Commission has entered an order with which it alleges the respondent is not complying; and when the respondent has had no opportunity to present evidence that it is not violating the order, and when no [846] proof has been taken before the Commission on that question.

In *Federal Trade Commission v. Standard Education Society*,⁴ the following facts appeared: The Federal Trade Commission after duly entering an order "to cease and desist" filed its petition in the Circuit Court of Appeals, Seventh Circuit, for an order of enforcement of the previously entered order. In the petition there was an allegation that the respondent had failed and neglected to obey the "cease and desist" order. The respondent answered with a denial that it had failed and neglected to obey the order and the petitioner moved to strike out all of the answer relating to such denial. It was the opinion of this court that it could not act upon the merits of the application for the enforcement of the Commission's order until it should be established as a fact that the respondent had failed or neglected "to obey such order of the Commission."⁵ Consequently, the motion to strike out was overruled for the reason that the answer of denial of failure and neglect to obey the Commission's order made a proper issue of fact. Yet it is clear from the provisions of section 5 of the Federal Trade Commission Act that the question of "failure or neglect to obey the order of the Commission" will not be an issue in a proceeding in this court based upon a petition by an aggrieved party to set aside an order to "cease and desist." In fact in the original proceedings in cause No. 5426 this court entered an order of

³ *L. B. Silver Co. v. Federal Trade Commission*, (C. C. A. 6) 292 Fed. 752; *Butterick Co. et al. v. Federal Trade Commission*, 4 F. (2d) 910 (certiorari denied 287 U. S. 602).

⁴ 14 F. (2d) 947 (C. C. A. 7); See also *Federal Trade Commission v. Balme* (C. C. A. 2) 23 F. (2d) 615. *Federal Trade Commission v. Baltimore Paint & Color Works* (C. C. A. 4) 41 F. (2d) 474.

⁵ "Enforcement of orders. If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its orders

* * * Federal Trade Commission Act, sec. 5; 15 U. S. C. A. sec. 45, par. 5.

affirmance of the Commission's order although there was no suggestion of any violation of the "cease and desist" order, and when it appeared that the petitioner in fact had desisted from the objectionable practices long prior to the issuance of the "cease and desist" order.

The necessary conclusion from the decisions of this circuit, and we believe from a proper construction of section 5, is that a general order of affirmance is not equivalent to a decree of enforcement; and that a decree of enforcement should be of the general nature and form of a decree of injunction, definitely fixing the duties of the party against whom the "cease and desist" order has been issued.

Nothing that has been said in this opinion is intended to question, or restrict, the wide discretion of the circuit court of appeals to determine in one proceeding the various questions which section 5 authorizes the aggrieved party and the Commission to present to the circuit court of appeals.

In *Q. R. S. Music Co. v. Federal Trade Commission*,⁶ the petitioner asked this court to set aside an order of the Federal Trade Commission. The Federal Trade Commission asked for an order of enforcement. This court disposed of all the issues presented and made the following order: "Petitioner's petition is denied. The application of respondent for an enforcement order is granted. The clerk will enter an order identical with the one entered by the Commission." The legal effect of denial of petitioner's petition was to affirm the order of the Commission. This court did not consider such affirmance the equivalent of an enforcement decree, but, on the contrary, felt that it was necessary not only to formally grant the application for an enforcement order, but to specifically direct the clerk to enter an original order of this court identical with the one entered by the Commission.

We conclude that the entry of general affirmance by this court in cause No. 5426 was not in legal effect an enforcement decree of this court embodying the prohibitions of the "cease and desist" order of the Commission and enjoining the petitioner from violating the injunctive order of this court.

The motion of the respondent herein, Fairyfoot Products Co., to dismiss the petition of the Federal Trade Commission for rule to show cause is sustained, and the petition is dismissed.

⁶ 12 F. (2d) 730 (C. C. A. 7).

BIDDLE PURCHASING COMPANY ET AL. v. FEDERAL
TRADE COMMISSION¹

No. 205

(Circuit Court of Appeals, Second Circuit. May 2, 1938)

ANTI-TRUST LAWS AND SHERMAN ANTI-TRUST ACT—COLLECTIVE SCOPE OF FORMER.

Anti-trust laws regulate monopolistic practices which are repugnant to decent business morality, which are injurious to competitors and to consumers, and which are economically wasteful, but which do not jeopardize to an appreciable degree the very existence of competition (Sherman Anti-Trust Act, 15 U. S. C. A. secs. 1-7, 15 note).

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—RECEIPT, ABSENT SERVICE RENDERED BY RECIPIENT—INHIBITION'S VALIDITY, ABSENT COMPETITIVE INJURY OR DESTRUCTION.

Injury to or destruction of competition required to make price discrimination illegal was unnecessary to render illegal receipt of brokerage by one who had rendered no services (15 U. S. C. A. sec. 13 (a, c)).

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—PAYMENT BY SELLER TO BUYER, HIS AGENT, ETC., OR CONTROLLED INTERMEDIARY, ABSENT SERVICE RENDERED.

The statute relating to payment or acceptance of commissions, brokerage, or other compensation prohibits payment of brokerage by seller to buyer or to his agent or representative or controlled intermediary except for services rendered (15 U. S. C. A. sec. 13 (c)).

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—RECEIPT, ABSENT SERVICE RENDERED—WHERE COMMISSIONS PAID TO AND PASSED ON BY BUYERS' BROKERAGE COMPANY BALANCED IN PART ONLY BY COMPANY'S CHARGED VALUE OF MARKETING SERVICE.

Where commissions received by brokerage company from sellers for disposing of their products were paid by brokerage company to buyers, for whom brokerage company furnished a combined marketing information and purchasing service, and buyers in about 86 percent. of transactions received as commissions no more than amount paid to company for market information service, payment of commissions to buyers violated statute prohibiting payment or receipt of commissions except for services rendered.

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—RECEIPT OR PAYMENT, ABSENT SERVICE RENDERED—CONSTRUCTION, IN GENERAL.

In construing statute, court was required, if possible, to accord significance and effect to every part thereof.

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—PAYMENT, ABSENT SERVICE RENDERED.

The portion of price discrimination statute describing persons to whom it was unlawful to pay brokerage fees except for services rendered was not separable into constituent parts and that clause therefore stood in its entirety or fell altogether.

¹ Reported in 96 F. (2d) 687. Certiorari denied Oct. 17, 1938. 305 U. S. 634.

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—RECEIPT, ABSENT SERVICE RENDERED—INTERMEDIARY'S BAN—PROPRIETY.

An intermediary in a commercial transaction is entitled to nothing more than appropriate compensation by one in whose interest he serves, and one acting in such capacity may not receive fees from seller when he is under contract and does in fact turn over fees to buyer.

TRADE REGULATION—DUE PROCESS.

The Fifth Amendment guaranteeing due process does not prohibit governmental regulation for public welfare, but merely demands that law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a real and substantial relation to objects sought to be obtained (U. S. C. A. Const. Amend. 5).

INTERSTATE COMMERCE—REGULATION—IN GENERAL.

[688] Congress, under power to regulate commerce, may enact all appropriate legislation for its protection and advancement and may adopt measures to promote its growth and insure its safety.

INTERSTATE COMMERCE—REGULATION—PROTECTION.

The power of Congress to regulate commerce may be exercised to protect interstate commerce from dangers which threaten it.

INTERSTATE COMMERCE—REGULATION—PROTECTION—PRACTICES CALCULATED TO OBSTRUCT OR BURDEN.

A practice threatening to obstruct or unduly burden freedom of interstate commerce is within regulatory powers of Congress under commerce clause and may be met by legislation (U. S. C. A. Const. art. 1, sec. 8, cl. 3).

INTERSTATE COMMERCE—REGULATION—FIFTH AMENDMENT.

The right of freedom or liberty of contract guaranteed by Fifth Amendment does not proscribe exercise by Congress of power to regulate commerce in derogation of that right.

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—PAYMENT OR RECEIPT, ABSENT SERVICE RENDERED—INHIBITION'S OBJECTIVE.

One of main objectives of statute prohibiting payment or receipt of commissions in sales transactions, except for services rendered, was to force price discriminations out into the open where they would be subject to scrutiny of those interested, particularly competing buyers.

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—PAYMENT OR RECEIPT, ABSENT SERVICE RENDERED—FIFTH AMENDMENT.

The statute prohibiting payment or receipt of commissions in sales transactions, except for services rendered, did not violate Fifth Amendment on ground that it deprived brokerage company and its customers of right to make ordinary contracts for disposition of property and services without due process of law.

DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT, SEC. 2—COMMISSIONS OR BROKERAGE—PAYMENT, ABSENT SERVICE RENDERED BY RECIPIENT—INHIBITION'S VALIDITY.

Congress was authorized to prohibit, on ground that it was unfair, practice of paying commissions in sales transactions to persons who had rendered no services in connection therewith.

(The syllabus, with substituted captions, is taken from 96 F. (2d) 687)

Petition by Biddle Purchasing Co. and others to review and set aside order of Commission entered against named petitioner and its officers and agents, directing them to cease and desist from practices found by Commission to violate section 2 (c) of Robinson-Patman Price Discrimination Act (15 U. S. C. A. sec. 13 (c)), denied, Circuit Judge Swan dissenting.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., and *Kaufman & Weitzner*, of New York City (*Mr. Raymond N. Beebe* and *Mr. Adrien F. Busick*, both of Washington, D. C., and *Mr. Samuel H. Kaufman*, of New York City, of counsel), for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., and *Mr. Allen C. Phelps*, special attorney, Federal Trade Commission, of Brush, Colo., for respondent.

Mr. Felix H. Levy, of New York City (*Mr. Felix H. Levy*, *Mr. J. G. L. Molloy*, *Mr. George B. Levy*, and *Mr. John D. Swartz*, all of New York City, of counsel), amici curiae.

Before MANTON, L. HAND, and SWAN, Circuit Judges.

MANTON, *Circuit Judge*:

Complaint was issued by the Federal Trade Commission, charging petitioners with violating the provisions of the Clayton Act as amended by § 2 (c) of the Robinson-Patman Act (15 U. S. C. A. § 13 (c)). Petitioner, Biddle Purchasing Co., is in the brokerage business as herein described. Some of the petitioners are buyers while others are sellers of commodities bought and sold in interstate commerce through the Biddle Co. as brokers. The sellers were charged with unlawfully paying brokerage fees to the Biddle Co. for the use of buyers of the commodities in interstate commerce.

The order appealed from provides that the Biddle Co., "its officers, representatives, agents and employees, in connection with the purchase or sale of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from: (1) Receiving or accepting any fee or commission, as brokerage or as an allowance in lieu thereof, from any seller of commodities, which fee or [689] commission is intended to be paid over to the purchaser of such commodities, or which is to be applied for the use and benefit of such purchaser; (2) Paying or granting to any purchaser of commodities any fee or commission received or accepted by said Biddle Purchasing Company, as brokerage or an allowance in lieu thereof, from the seller of such commodities."

The Commission found that those of the petitioners who were sellers violated § 2 (c) of the Robinson-Patman Act by paying brokerage fees to petitioner, Biddle Co., with knowledge of the fact that the fees were intended to be and were being paid over by said Biddle

Co. to its buyers; that the buyers were violating the statute by receiving and accepting brokerage fees paid by the sellers in connection with the purchase of commodities by said buyers, through the Biddle Co.; and that the latter was violating the statute by accepting such fees and transmitting them to the buyers.

Section 2 (c) of the Robinson-Patman Act provides that "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein, where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid."

Biddle Co.'s business method was to obtain subscribers to its combined market information and purchasing service charging therefor from \$25 to \$50 per month. It provides a trade information and purchasing service for wholesalers and jobbers throughout the country. It also is engaged in selling the products of numerous manufacturers, canners and packers to the concerns for whom it supplies market information and purchasing service. Biddle Co. has written contracts with the buyers. With the sellers oral contracts to dispose of their products were made under which the commissions were paid to Biddle which in turn paid them over to the buyer of the particular commodity. In about 86 percent of these transactions the buyers received back as commissions no more than the amount they had paid to the Biddle Co. for its market information service, but in 14 percent the commissions exceeded that sum and this excess was paid to the buyers. Large numbers of buyers subscribe to its service. It has sold for many sellers. The Biddle Co. is not controlled by or affiliated with either buyers or sellers through stock ownership, but is an independent corporation. This method of transacting business, with the remission of the selling commissions to the buyers, in effect, gives the buyer a discount on his purchase.

The regulation of competition results in a competitive etiquette, in standards of business conduct, in a plane of competition. Trusts were forbidden because they stifled competition and tended to create monopoly. The prohibitions of the Sherman Anti-Trust Act set a plane of monopolistic conduct rather than a plane of competition. Anti-trust laws regulate monopolistic practices which are repugnant to decent business morality, which are injurious to competitors and to consumers, which are economically wasteful but which do not jeopardize

to an appreciable degree the very existence of competition. Both types of practice must be included in the legal plane of competition; both are types of regulation which enforce each other; both are animated by a common objective notwithstanding the differences of their intermediate ends. Monopolistic purpose and intent (*Swift & Co. v. United States*, 196 U. S. 375) are illustrated by decisions as in *Standard Oil Company case* (221 U. S. 1) where the Oil Company was engaged in local price cutting and espionage, established bogus independents, and granted rebates to preferred customers and exacted rebates and preferences from railroads, all for the purpose of suppressing competition. And the American Tobacco Co. (see 221 U. S. 106) employed fighting brands for the same purpose. The United States International Harvester Co., D. C. (214 Fed. 987, appeal dismissed 248 U. S. 587; 274 U. S. 693) [690] closed the channel of trade to competitors by tying up all the main retail outlets with exclusive dealing contracts. It is reasonably clear that most of these methods violated the Sherman Anti-Trust Act only when they were a part of a scheme to stifle competition and to obtain control of an industry.

Resale price maintenance has received fuller consideration than any of the other selling devices challenged under the anti-trust laws. Agreements maintaining resale prices have been condemned as a restraint of trade. *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S. 373; *Straus v. Victor Talking Machine Co.*, 243 U. S. 490. And as an unfair method of competition under the Federal Trade Commission Act see: *F. T. C. v. Beech-Nut Packing Co.*, 257 U. S. 441; *J. W. Kobi Co. v. F. T. C.*, 23 F. (2d) 41 (C. C. A. 2). The injury, if any, resulting from price maintenance is suffered not by the competitors of the producer but by the retailer and the ultimate consumer. The courts draw the distinction between price maintenance by agreement and price maintenance by refusing to deal. *U. S. v. Colgate & Co.*, 250 U. S. 300; Cf. *Frey & Sons Inc. v. Cudahy Packing Co.*, 256 U. S. 208.

Thus the rules governing the maintenance of prices must be included in any discussion of unfair competition, although the problem is somewhat different from other trade practices. But the Clayton Act, 38 Stat. 730, singled out two practices for special treatment, price discrimination and exclusive dealing and other tying agreements. Section 2 forbids discriminations in price not based upon differences in grade, quality, quantity or cost of transportation which substantially lessen competition or tend to create a monopoly in any line of commerce. The section outlaws unfair discriminations which substantially lessen competition or lead to monopoly. It does not compel a one price sales policy. It does not forbid sales below cost in the absence of discrimination. *Porto Rican Amer. Tob. Co. v. American Tob. Co.*, 30 F. (2d) 234 (C. C. A. 2).

The amendment in § 2 (a) has for its purpose making discrimination in prices unlawful "where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them."

It is argued that § 2 (c), 15 U. S. C. A. § 13 (a), under which this proceeding is brought, is to be construed in the light of § 2 (a), and that so construed, the payment or receipt of the brokerage is illegal only when it has such effect upon competition as is provided in § 2 (a). The argument is that the receipt of brokerage here would be illegal only if it restricts competition or restrains trade or injures a competitor. But no complaint is made against Biddle Co. or the other petitioners for this reason. The complaint here is under the provisions of § 2 (c) and not § 2 (a) of the statute. The validity of the order entered is dependent entirely upon the legality of § 2 (c). Section 2 (c) contains no classification provision nor is there anything in it which would justify the conclusion that it would not be uniformly applied. It in no way supports the theory that the relative size of businesses coming within its purview or other differing plans of organization determine the question as to whether or not violations of the statute occur.

Petitioners say that if § 2 (c) is construed to prohibit the payment or receipt of brokerage irrespective of a finding of injurious effect on competition, then § 2 (c) deprives petitioners of their right to make usual and ordinary contracts for the disposition of property and services without due process of law contrary to the Fifth Amendment of the Constitution U. S. C. A. Const. Amend. 5. While the Biddle Co. was disassociated in ownership and management from either buyers or sellers, direct and indirect control can be exercised by buyers or sellers over a broker in transactions of purchase and sale by means other than participation in the broker's ownership and management. In the purchasing transactions which the Biddle Co. executes for its buyers, it is the agent and representative of the buyers and [691] is therefore to that extent subject to their control. The fact that the buyers do not own some or all of the stock of the Biddle Co. does not negative the fact that the Biddle Co. is under their control when so employed.

Biddle Co.'s vice-president testified that its entire income is derived from the monthly service charges.

"Everything we get in buying, we turn back to our clients. We are not dependent on sales. We are dependent on getting orders from people. They are important to us, because it is through the placing of their orders that we get the touch of the market that is so neces-

sary, but we have no immediate interest as regards immediate income from that source."

By the terms of the contract, the buyer "employs Biddle Purchasing Co. of New York to purchase such material as they may order from time to time within reasonable credit limits and agrees to pay Biddle Purchasing Co. for such services \$——."

Such is the contract of employment which makes the Biddle Company a purchasing agent for the buyers.

It is clear that the statute prohibits payment of brokerage by the seller to the buyer or his agent or representative or controlled intermediary except for services rendered. Congress intended to prohibit such payments as an unfair trade practice. The report of the House and Senate Conference Committee, submitted in referring the bill in its present form, interprets the section as having this meaning.¹ It is manifest that the words "except for services rendered in connection with the sale or purchase of goods" prohibits payments which were made here to the buyers.

It is argued that the Biddle Co. is a true intermediary and that under the statute it can represent and collect compensation from both buyer and seller. The Commission, on the other hand, argues that the statute does not permit such an arrangement. We need not decide that question since the evidence shows that Biddle Co. receives its compensation solely from the buyers. What it receives from the sellers is not retained by it but merely passed on to the buyers or credited to their account.

Congress must have intended that payments by sellers should not be made to buyers through any one acting as agent for the buyer. Significance and effect must, if possible, be accorded to every part of the act. *United States v. Lexington Mill & Elevator Co.*, 232 U. S. 399. In the last phrase of the section "either to the other party" etc., the description of the persons to whom it is unlawful to pay brokerage fees is not separable into constituent parts, and hence this clause stands in its entirety or falls altogether. It may not be said that payments to buyers are in any different category than those to agents or those who act for or under the control of the buyers. If buyers' agents or intermediaries are excepted for services rendered, so too are the buyers themselves. The intent of Congress must be recognized and

¹ This subsection permits the payment of compensation by a seller to his broker or agent for services actually rendered in his behalf; likewise by a buyer to his broker or agent for services in connection with the purchase of goods actually rendered in his behalf; but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance by the buyer direct to the seller, or by the seller direct to the buyer; and it prohibits its payment by either to an agent or intermediary acting in fact for or in behalf, or subject to the direct or indirect control, of the other. (H. Rep., 2951, 74th Cong., 2d sess.)

applied and this may best be given effect by a construction of the phrase "except for services rendered" that will harmonize with the remainder of the section. As the House and Senate Committees said, the intermediary is entitled to nothing more than "appropriate compensation by the one in whose interest he so serves," and one who acts in such capacity may not receive fees from the seller when he is under contract and does in fact turn over such fees to the buyer. Cf. *Lehigh Valley R. R. v. United States*, 243 U. S. 444; *Union Pac. R. Co., v. Updike Grain Co.*, 222 U. S. 215; *I. C. C. v. Peavey & Co.*, 222 U. S. 42. Indeed, the brokerage fees by the sellers to the Biddle Company could not be made in good faith as compensation for services rendered, since the fees are intend[692]ed for the buyers and are immediately transmitted to them.

The Fifth Amendment of the Constitution, U. S. C. A. Const. Amend. 5, does not prohibit governmental regulation for the public welfare. The guaranty of due process merely demands that the law shall not be unreasonable, arbitrary or capricious and that the means selected shall have a real and substantial relation to the objects sought to be obtained. *Nebia v. New York*, 291 U. S. 502. Congress has the power to regulate commerce and this gives it power to enact "all appropriate legislation for its protection and advancement * * * to adopt measures to promote its growth and insure its safety, protect, control, and restrain." U. S. C. A. Const. art. 1 § 8, cl. 3. *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548. It may be exercised to protect interstate commerce from dangers which threaten it. *Ky. Whip & Collar Co. v. Ill. Central R. R. Co.*, 299 U. S. 334; *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37. A practice which threatens to obstruct or unduly burden the freedom of interstate commerce is within the regulatory powers of Congress under the commerce clause. If Congress decides the fact of danger, it may meet it by legislation. *Stafford v. Wallace*, 258 U. S. 495.

The right of freedom or liberty of contract guaranteed by the Fifth Amendment to the Federal Constitution does not proscribe the exercise by Congress of its power to regulate commerce in derogation of that right. *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420. As said in *Nebia v. New York*, *supra*: "Legislation concerning sales of goods, and incidentally affecting prices, have repeatedly been held valid. In this class fall laws forbidding unfair competition by the charging of lower prices in one locality than those exacted in another, by giving trade inducements to purchasers, and by other forms of price discrimination. The public policy with respect to free competition has engendered state and federal statutes prohibiting monopolies, which have been upheld."

Congress may have had in mind that one of the principal evils inherent in the payment of brokerage fees by the seller to the buyer directly or through an intermediary, is the fact that this practice makes it possible for the seller to discriminate in price without seeming to do so. If a price discount is given as a brokerage payment to a controlled intermediary, it may be and often is concealed from other customers of the seller. One of the main objectives of § 2 (c) was to force price discriminations out into the open where they would be subject to the scrutiny of those interested, particularly competing buyers. See: *Trunz Pork Stores v. Wallace*, 70 F. (2d) 688 (C. C. A. 2). The order entered is responsive to and justified by the findings of the Commission and satisfies the requirements of due process.

Petitioners refer to *Fairmont Creamery Co. v. Minn.* (274 U. S. 1), which recognizes the distinction between prohibition and regulation. The rule of that case is not inconsistent with the principle here announced. Section 2 (c) was clearly intended to restore equality of opportunity in business by strengthening the anti-trust laws through protecting trade and commerce against unfair practices and unlawful price discrimination. The power of Congress to define this trade practice and declare it to be unfair cannot be doubted. *F. T. C. v. Keppel & Bro.*, 291 U. S. 304.

Petition denied.

SWAN, *Circuit Judge*, dissenting:

For reasons which may be briefly stated, I am unable to concur in the opinion of the court.

For an agreed monthly subscription price the Biddle Purchasing Company supplies a market informational and purchasing service to some 2,400 subscribers (wholesalers and distributors). The Biddle Company keeps in touch with about 5,000 producers and gets prices and other market information which it transmits to its subscribers. When a subscriber desires to make a purchase he informs Biddle Company of his need, and the price he wants to pay, and Biddle Company sends the order to one of the producers who ships and bills the goods direct to the subscriber. The seller pays Biddle Company a brokerage commission on the sale and [693] this is credited to the subscriber in reduction of the subscription price agreed to be paid for Biddle Company's service. About 14 percent of the subscribers receive cash remittances after their subscriptions have been completely paid for by the crediting of commissions.

The Commission has found that Biddle Company does not act for the sellers but only for its subscribers. In my opinion this finding

can not be sustained. Biddle Company performs a regular brokerage service for the sellers and receives the same fee as they pay other brokers for a similar service. The fact that in many instances Biddle Company selects the seller, since the subscriber frequently does not designate from whom to buy, shows clearly that Biddle Company performs a service for the seller. It performs a further service in bringing the seller's products and prices to the attention of the subscribers, even though no sale immediately results. Biddle Company also performs a service for the buyer by supplying market information in addition to the purchasing service when an order is placed. Unless the statute forbids it, there could be no objection to the Biddle Company getting the customary brokerage from the seller and also a fee from the buyer, since the parties know that it is to be compensated by both. In other words, if Biddle Company kept the commissions paid by the sellers, the statute would not forbid it. It would be within the exception "for services rendered." Section 1 (c) of the Robinson-Patman Price Discrimination Act (49 Stat. 1526, 15 U. S. C. A. § 13 (c)), though ungrammatically phrased, expresses the intention to forbid a seller from paying a brokerage fee to a buyer or his agent unless the payee renders some service to the seller. Its object is to prevent unfair competitive conditions which are created when a buyer gets a lower price than competitors in the guise of a commission paid to the buyer or to some agent or dummy. In my opinion it was not intended to eliminate such a business as the Biddle Company does for 86 percent of its subscribers. Their goods cost them as much as their competitors would pay for the same goods. In addition, they pay something to Biddle Company for the service it renders them. In effect the arrangement is that the Biddle Company will charge for its informational and purchasing service the difference between what it collects from sellers as brokerage on orders placed by the subscriber, and the monthly subscription price. This means that different subscribers pay different sums for the Biddle service and the less they order through the Biddle Company the more they pay for informational and purchasing service, but I see nothing in the statute forbidding that. Only when the Biddle Company pays over brokerage fees in excess of the subscriber's subscription price does the buyer get a discriminatory rebate which gives him an advantage over a competitor who does not take the Biddle service. It seems to me that the statute should be construed to forbid Biddle Company's method of doing business only with respect to the 14 percent of its customers who really get a price reduction on the goods through the commissions paid Biddle Company by the sellers. Such a construction will save a

legitimate and useful business which has existed for half a century, and one which I do not believe Congress intended to outlaw by the statute in question.

I think the order of the Commission should be vacated except in so far as it forbids the Biddle Company from paying over to a subscriber any excess of commissions above the subscription price of the service.

FEDERAL TRADE COMMISSION v. GOODYEAR TIRE &
RUBBER COMPANY ¹

No. 756.

(Supreme Court. Argued April 25, 1938. Decided May 16, 1938)

PRICE DISCRIMINATION—CLAYTON ACT, SEC. 2—ROBINSON-PATMAN AMENDING ACT—WHERE ILLEGALITY CLEAR UNDER SUBSEQUENT AMENDING PROVISIONS AND SUBSEQUENT VOLUNTARY ABANDONMENT AND CONTRACT CANCELLATION—WHETHER THEREAFTER CEASE AND DESIST ORDER UNDER ORIGINAL PROVISIONS MOOT ON APPEAL.

A proceeding to review "cease and desist" order of the Federal Trade Commission against manufacturer's discrimination in prices between purchasers in violation of the Clayton Act did not become moot when, because Clayton Act had been so amended as to make such discrimination clearly illegal, manufacturer voluntarily abandoned such discrimination and canceled contracts made pursuant thereto; and hence circuit court of appeals should proceed to determine validity of order under original statute. (Clayton Act, Secs. 2, 11, 15 U. S. C. A., Secs. 13, 21; Robinson-Patman Price Discrimination Act, Secs. 1, 2, 15 U. S. C. A., Secs. 13, 21a).

PRICE DISCRIMINATION—CLAYTON ACT, SEC. 2—ROBINSON-PATMAN AMENDING ACT—PRIOR ORDERS OF COMMISSION—EFFECT.

The statute amending the Clayton Act manifests intent that orders of the Federal Trade Commission entered before its passage should remain in effect.

PRICE DISCRIMINATION—CLAYTON ACT, SEC. 2—ROBINSON-PATMAN AMENDING ACT—PRIOR ORDERS OF COMMISSION—WHERE THERETOFORE PROHIBITED DISCRIMINATION CLEARLY ILLEGAL UNDER AMENDING PROVISIONS SUBSEQUENT THERETO AND TO APPEAL OF ORDER.

A "cease and desist" order by Federal Trade Commission against manufacturer's sale of tires at discriminatory prices in violation of Clayton Act was not affected when, while proceeding to review such order was pending, Clayton Act was so amended as to make such discrimination clearly illegal.

(The syllabus, with substituted captions, is taken from 58 S. Ct. 863)

On petition by Goodyear Tire & Rubber Company to review order of Commission directing petitioner to cease and desist from alleged

¹The case is reported in 304 U. S. 257 and 58 S. Ct. 863. Decision of court below, remanded to circuit court of appeals for a determination on the merits, is reported in 92 F. (2d) 677.

discrimination in prices of tires, and certiorari by Commission to review decree of Circuit Court of Appeals for Sixth Circuit, 92 F. (2d) 677, setting aside order and remanding case without direction that complaint be dismissed and without prejudice to filing of supplemental complaint, reversed and remanded to circuit court of appeals for a determination of the merits.

Honorable Homer S. Cummings, Attorney General, and *Mr. Hugh B. Cox*, of Washington, D. C., with whom *Solicitor General Jackson*, *Attorney General Arnold*, and *Mr. Robert L. Stern*, *Mr. W. T. Kelley*, and *Mr. PGad B. Morehouse* were on the brief, for petitioner.

Mr. William B. Cockley and *Mr. Grover Higgins* on brief for respondent.

PER CURIAM.

In September, 1933, the Federal Trade Commission charged respondent, The Goodyear Tire & Rubber Company, with the violation of Section 2 of the Clayton Act (15 U. S. C. 13) in selling tires, tubes, etc., to Sears, Roebuck & Company at discriminatory prices. Respondent, invoking the first proviso in Section 2,¹ contended that its contracts with Sears, Roebuck & Company for sales involving lower net prices than those charged to independent dealers were made because of the great difference in the quantities sold. After hearing, the Commission ruled that it did not consider a difference in [864] price to be on account of quantity unless it was based on a difference in cost and was reasonably related to and approximately no more than that difference. In March 1936, the Commission issued an order requiring respondent to desist from discriminations in prices as described.

Pending the hearing in the circuit court of appeals of respondent's petition for review, the Congress amended Section 2 of the Clayton Act. Act of June 19, 1936, c. 592, 49 Stat. 1526, 15 U. S. C. A. § 13. The first proviso was amended to read as follows:

"Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered."

Thereupon, respondent informed the circuit court of appeals that in view of this provision respondent had ceased to manufacture tires for Sears, Roebuck & Company under the terms of its existing

¹ That proviso, in the original Act, was as follows:

"Provided, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodities sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition."

contract; that, to dispose of the stock on hand, the parties had made a new price arrangement designed to conform to the new law; and that within the year all transactions between re[259]spondent and Sears, Roebuck & Company ceased and obligations were terminated by mutual releases. 6 Cir., 92 F. (2d) 677, 679.

Considering that there was no controversy between the parties as to the illegal character of respondent's practices under the amended act, the circuit court of appeals concluded that the case had become moot. In that view the court set aside the order of the Commission and remanded the case "but without direction to the Commission to dismiss the complaint and without prejudice to its filing a supplemental complaint in the original proceeding if under Section 2 of the amendatory act this may now be done" as to which the court expressed no opinion. *Id.*, p. 681.

Both the Commission and the respondent contended below, and contend here, that the case has not become moot. While they disagree in their reasoning, they come to the same conclusion upon this point, and both ask that the case be remanded to the circuit court of appeals with directions to determine it upon the merits. We think that their conclusion is correct and that the remand should be made.

Section 11 of the Clayton Act (15 U. S. C. A. § 21) provides that whenever the Commission has reason to believe that any person is violating or has violated the provisions of the act, and upon hearing so finds, the Commission shall issue an order requiring such person to cease and desist from such violations. In case of failure to obey its order, the Commission may apply to the circuit court of appeals for enforcement. And anyone required to cease and desist from a violation charged may seek review in the circuit court of appeals, praying that the order be set aside. The provisions of the act of June 19, 1936, show clearly that the orders of the Commission entered before its passage are to remain in effect. Section 2 of that act provides that nothing therein contained shall "affect [260] rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 2 of said act of October 15, 1914, [Section 13 of this title] prior to the effective date of this amendatory act [June 15, 1936]."

Discontinuance of the practice which the Commission found to constitute a violation of the act did not render the controversy moot. *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 309, 310; *Southern Pacific Company v. Interstate Commerce Commission*, 219 U. S. 433, 452; *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498, 514-516; *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261; *Guarantee Veterinary Co. v. Federal Trade Commission*, 285

Fed. 853, 859, 860; *Chamber of Commerce v. Federal Trade Commission*, 13 F. (2d) 673, 686, 687. The Commission, reciting its findings and the conclusion that respondent had violated the act, required respondent to cease and desist from the particular discriminations which the order described. That is a continuing order. Its efficacy, if valid, was not affected by the subsequent passage or the provisions of the amendatory act. As a continuing or[865]der, the Commission may take proceedings for its enforcement if it is disobeyed. But under the statute respondent was entitled to seek review of the order and to have it set aside if found to be invalid. The question which both parties sought to have the circuit court of appeals decide was whether respondent's conduct was a violation of the original statute. Upon the conclusion that it was such a violation, the Commission based its order. Neither the transactions subsequent to that order nor the passage of the amendatory act deprived the respondent of its right to challenge the order and to have its validity determined or the Commission of its right to have its order maintained if validly made.

The decree of the circuit court of appeals is reversed and the cause is remanded to that court for a determination of the merits.

It is so ordered.

Mr. Justice STONE, Mr. Justice CARDOZO, and Mr. Justice REED took no part in the consideration and decision of this case.

FEDERAL TRADE COMMISSION v. STANDARD
EDUCATION SOCIETY ET AL.¹

(Circuit Court of Appeals, Second Circuit. May 20, 1938.)

No. 14517

Final decree on mandate of Supreme Court directing instant Circuit Court of Appeals to proceed in conformity with opinion of said Supreme Court in 302 U. S. 112, resettling terms of the Commission's cease and desist order on December 24, 1931, in Docket 1574, 16 F. T. C. 1, as below set forth, and requiring respondents in said Commission proceeding, and as in court's final decree below set forth, to cease and desist from various practices therein specified, in connection with offer and sale in commerce or in the District of Columbia of books or sets of books, and remitting to the Commission proceeding in question as Special Master to hear and report to court whether respondents have complied with provisions thereof to cease and desist, as affirmed, or as modified and affirmed, and ordering that the cause await return of report of Special Master for any further proceedings³ that may be necessary in the premises.

¹ Not reported in Federal Reporter. Court, in decision on June 13, 1938, 97 F. (2d) 513, declined to modify its said decree.

Decree on mandate resettling, as therein set forth, cease and desist order of Commission, requiring compliance therewith as below set out, etc.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, and *Mr. James W. Nichol*, Special Attorney, all of Washington, D. C., for Commission.

Mr. Henry Ward Beer, of New York City, for respondents.

Before L. HAND, SWAN and CHASE, Circuit Judges.

FINAL DECREE

This cause, having been taken to the Supreme Court of the United States on writ of certiorari, to review that part of the decree of this Court, entered in said cause on December 21, 1936, modifying in certain respects the order entered by the Federal Trade Commission, Petitioner herein, on December 24, 1931, requiring the respondents to cease and desist from certain alleged unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914 (38 Stat. 717, 720; 15 U. S. C. A., Sec. 45).

And the Supreme Court of the United States, on November 8, 1937, having rendered its opinion thereon, reversing in part the decree of this Court; and having issued its mandate directing this Court to proceed in conformity with the opinion of said Supreme Court;

And this Court, having, on December 10, 1937, made and entered an order herein in the following words, to-wit:

"It is ordered, That said mandate be filed and the decision of said Supreme Court of the United States be made the decision of this court", without setting forth the terms of the Commission's order to cease and desist as the same was thus modified and affirmed;

And Henry Ward Beer, attorney for respondents, having filed herein his written motion for an order resettling said order by setting forth the terms of the cease and desist order of the Federal Trade Commission as so modified and affirmed by this Court, upon its own motion and under the mandate of the Supreme Court of the United States;

And the Federal Trade Commission having appeared to said motion, upon oral argument thereof and by written brief, and the parties hereto having submitted said motion to this Court for decision and final action thereon;

Now, therefore, upon consideration of said motion to resettle said order of this Court, and of said mandate and opinion of said Supreme Court of the United States, this Court now hereby orders, adjudges and decrees that its said order herein of December 10, 1937, be, and the same hereby is resettled to read as follows, to wit:

It is hereby ordered, adjudged and decreed that said order to cease and desist, entered by the Federal Trade Commission, Petitioner herein, under date of December 24, 1931, be and the same hereby is affirmed, with the exception of Paragraph 10 thereof; and that said Paragraph 10 thereof be modified and affirmed to read as follows:

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

(1) Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers at a specially reduced price when such is not the fact.

And it is hereby further ordered, adjudged and decreed that the respondents, Standard Education Society, a corporation; Standard Encyclopedia Corporation; H. M. Stanford; W. H. Ward; and A. J. Greener, and each of them, their officers, agents, representatives and employees, in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States or in the District of Columbia, cease and desist from—

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

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

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

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

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

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

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

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

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

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

(1) Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers at a specially reduced price, when such is not the fact.

It is further ordered that the proceeding be and hereby is remitted to the Federal Trade Commission as Special Master to hear and report to this Court whether respondents have complied with the provisions of said order to cease and desist which are herein affirmed or modified and affirmed; and

It is hereby further ordered that the cause await in this court the return of that report of the Special Master for any further proceedings that may be necessary in the premises.

TABLE OF COMMODITIES¹

DESIST ORDERS

	Page
Alcoholic beverages.....	97, 374, 859, 960, 1246
Aluminum castings.....	1254
Antifreeze products.....	614
"Aspirub" medicinal preparation.....	1147
Atomizer.....	740
Automatic vibro shavers.....	515
Automobile supplies and devices.....	200, 592
Automotive compounds, chemical.....	1209
Baby chicks.....	953
Baby pants.....	1070
Bacteria, nitrogen fixing.....	296, 303, 312, 320
Bakery products.....	1118
Balls, golf.....	824
Bandages.....	134
Barber shop supplies.....	877
Bathroom scales.....	410
Beauty shop supplies.....	877
Bibs, infant.....	1070
"Biotone" pharmaceutical preparation.....	983
Bird foods, remedies and accessories.....	263
"Black Seal" furs.....	87
Bleach creams.....	752
Bookkeeping system.....	1223
Books, reference.....	635, 939
"Breatheasy" medicinal preparation.....	740
Bridge sets.....	1058
Builders' and building materials and supplies.....	142
"Camel's Hair" coats.....	42
Cameras.....	328, 344, 410, 515, 534
Candy.....	30, 122, 255, 352, 384, 402, 432, 449, 467, 477, 555, 583, 720, 786, 922, 994, 1005, 1077, 1118
Cards, sales promotion and trade.....	216
Castings, aluminum.....	1254
Cement.....	142
"Certificates of Merit".....	1209, 1234
Chalk crayons.....	604
Champagnes.....	960
Chance devices.....	216
Chemical automotive compounds.....	1209
Chemicals.....	930

¹ Covering cease and desist orders and at p. 1533, stipulations embraced in instant volume.

DESIST ORDERS

	Page
Chewing gum.....	272
Chicks, baby.....	953
Citrus fruits.....	23
Clocks.....	15, 328, 344, 410, 515, 534, 565
Clothing, men's.....	233, 852
Coats.....	42, 87, 911
Cloth, women's.....	42
Fur.....	87
Coin-operated vending machines.....	720
Colors, water and tempera.....	604
Compacts.....	344
Confectionery.....	720
Correspondence courses in:	
Forensic ballistics.....	226
Radio and television.....	1138
Vocational training.....	1277
Cosmetics.....	1, 50, 59, 441, 635, 752, 1027, 1260
"Irradiated".....	1
Cotton, absorbent.....	134
Crayons, chalk and wax.....	604
Cream, mustard oil.....	930
Creams, facial.....	441, 635, 752, 1260
"Crepe".....	460, 911, 1186
Crib sheets.....	1070
DePew's Famous Eye Prescription, Dr.....	1200
"Dermolav Liquid" and "Compound" hair and scalp preparations.....	902
Devices, automobile motor-testing.....	592
Diamonds and diamond rings.....	574, 767, 895
Dishes.....	1058
"Dr. Brehm's" bird foods and remedies.....	263
Dresses.....	911
Drugs.....	581
"Effective Speech Series" books.....	635
Electrical supplies.....	200
Encyclopedia.....	939
"Excel" medicinal preparations.....	546
Extracts.....	930
Fabrics.....	911, 1179
Face powder, "irradiated".....	1
Feminine hygiene preparations and devices.....	814
Fireworks.....	1104
First-aid products.....	134
Food flavors and products.....	486, 930, 1027
Foods, bird.....	263
Forensic ballistics, correspondence course.....	226
Fountain pens and sets.....	328, 565, 1036
"French Seal" furs.....	87
Fruits, citrus.....	23
Furs.....	87
"Gabriel's Mange Formula".....	366
Garments.....	701
Gasoline saver.....	1209

DESIST ORDERS

	Page-
Gauge, vacuum, for auto-testing devices.....	592
Gauze.....	134
Gins.....	374, 960, 1246
Golf balls.....	824
Grill sets.....	1058
Groceries.....	486
Gum, chewing.....	272
Hair preparations.....	635, 902
Handkerchiefs, packaged.....	1193
Hardware supplies.....	200
Hardware supplies.....	713
Hollow ware, silver-plated.....	284, 328, 524, 624, 1095
Hosiery.....	87
"Hudson Seal" furs.....	1209
"Hypower" motor compression seal.....	1209
"Hytense" gasoline power intensifier and saver.....	666
Ice cream powder.....	1070
Infant bibs.....	296, 303, 312, 320
Inoculants, legume.....	767
Jewelry.....	344
Knives, hunting.....	1013
"Korjena" reducing preparation.....	1172
"Lavoptik" eye preparation.....	296, 303, 312, 320
Legume inoculants.....	624
Lingerie.....	97, 374, 859, 960, 1246
Liquors.....	114
Loin cloth and suspensory combination.....	216
Lottery devices.....	200
Machine supplies.....	720
Machines, coin-operated vending.....	366
Mange cures.....	930
"Mapleo" flavoring extract.....	107
Maps.....	68, 760
Mattresses.....	244
"Mazon" proprietary preparation.....	244, 546, 690, 740, 1130, 1147, 1172, 1179
Medicinal preparations.....	200
Mill supplies.....	423
Mineral waters.....	1058
Mixers.....	939
"Modern American Encyclopedia".....	1209
Motor compression seal.....	592
Motor-testing devices, automobile.....	1158
Musical instruments.....	930
Mustard Oil Cream, Dr. Gordon's.....	624
Napkins.....	740
"Nebulizer".....	296, 303, 312, 320
Nitrogen fixing bacteria.....	328, 410
Novelty merchandise.....	78
Nursery stock.....	922
Nuts, salted.....	1179
"On-The-Nose" medicinal preparation for animals.....	777
Overcoats.....	1070
Pants, baby.....	

DESIST ORDERS

	Page
Peanuts	720, 869
Salted	869
Pen and pencil sets	534, 1045
Pencils	1036
Pens, fountain	1036
Perches, bird	263
Perfumes	799, 806, 1086
Pharmaceutical preparations	546, 581, 983
Pianos	1158
Pillows	460
Plumbing supplies	200
Poultry	953
Powder, ice cream	666
Proprietary preparations. <i>See</i> Medicinal preparations.	
“Pure Dye”	911, 1186
Radio, correspondence courses in	1138
Radios	328, 410, 534, 565, 656, 1058
Radio supplies	200
Rayon fabrics	1186
Razors	534, 565, 1045
Electric	1045
Safety	534
Reducing preparation	1013
Reference books	939
Remedies, bird	263
Ribbons	394
Rice	968
Rings, diamond	574, 767, 895
Robes	911
“Rootbeer” flavoring extract	930
Rubber specialties	1070
Safety razors	534
Sales promotion cards	216
Sanitary specialties	1070
“Sano-See” eye preparations	1200
“Satin”	911, 1186
“Satin Amorosa”	1186
Scales, bathroom	410
Scalp preparations	902
School supplies	604
“Scotch whisky”	859
“Seal Crepe”	911
“Sealine” furs	87
“Seals of Approval”	1209, 1234
“Serval-System” for bookkeeping	1223
Shavers, automatic vibro	515
Sheets, crib	1070
“Sheffield Silverware”	713
Shirts, men’s	624
“Silks”	460, 911, 1052, 1186
Silver-plated hollow ware	713

STIPULATIONS		Page
Skin cream and food, "irradiated"-----		1
Skin remedy-----		244
Soap and soap products-----	244, 360, 682,	930
Solid Comfort Foot Soap, Dr. Gordon's-----		930
Spirituous beverages-----	97, 374, 859, 960,	1246
Sponges-----		1279
Steam supplies-----		200
Suits-----		777, 852
Supplies:		
Beauty and barber shop-----		877
Plumbing-----		200
School-----		604
Surgical-dressing products-----		134
Suspensory and loin cloth combination-----		114
Tablecloths-----		624
"Taffeta"-----		460
"T. B. Compound" medicinal preparation-----		690
Television, correspondence courses in-----		1138
Tempera colors-----		604
Toilet articles and preparations-----	1, 59, 1027,	1086
Toilet water-----		799, 806
Topcoats-----		777
Toys-----		328
Trade cards-----		216
"Turtle Oil" creams-----		441
Undergarments, ladies'-----		1052
"University Forum Series" books-----		635
Vacuum cleaners-----		565
Vacuum gauge for auto-testing devices-----		592
"Va-Jel" feminine hygiene preparation-----		814
Vending machines, coin-operated-----		720
Vocational training, correspondence courses in-----		1277
"Walnuto" flavoring extract-----		930
Watches-----		767
Wrist-----		344
Water colors-----		604
Waterproof specialties-----		1070
Wax crayons-----		604
Wearing apparel-----	460, 701,	911
Whiskies-----	97, 374, 859, 960,	1246
Wines-----		960
Wool-----		42
"Wrinkle Creme"-----		441

STIPULATIONS¹

"Aberdeen Woolen"-----	<i>1421</i> (02033)
"Accessory Foods"-----	<i>1455</i> (02086)
"Accotile"-----	1319 (2122)

¹ Page references to stipulations of the special board are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number, e. g., "01" "02", etc.

STIPULATIONS

	Page
"Acetate".....	1363 (2197)
Acknowledgment cards.....	1314 (2111)
"Acoustipulp" building material.....	1442 (02063)
Adlerika medicinal preparation.....	1374
"Airflow Arch-Ezurs" foot device.....	1433
"All Wool".....	1343 (2165), 1421 (02033)
"Angelico Root" medicinal preparation.....	1458
"Anti-Fat Tablets".....	1439 (02057)
Antiseptics.....	1357 (2188), 1392 (01989), 1454 (02082), 1460 (02091), 1492 (02140)
"Angor Lam".....	1349
"Aphrodisiacs" medicinal preparation.....	1472
Apple butter.....	1309 (2103)
"Ar-Be" tablets.....	1370 (01954)
"Arch-Ezurs, Airflow" foot device.....	1433
Arc welder.....	1422 (02035), 1445 (02068)
Armall ointment.....	1377 (01967)
"Arrid" deodorant.....	1372 (01958)
Automobiles.....	1492 (02141)
Automobile tires, used.....	1471 (02105)
"Avocado Night Emollient".....	1485 (02129)
Baby chicks.....	1356 (2186)
"Baby Touch Hair Remover".....	1432 (02048)
"Badger" beer product.....	1312 (2108)
Ball bearings.....	1345 (2168)
"Balmwort Tablets".....	1406
Bandages.....	1395, 1471 (02106)
"Sterilastic".....	1395
Band instruments.....	1327 (2135)
"Barbados Molasses, Extra Fancy".....	1351
Bath cabinet.....	1469
Bath preparation.....	1443 (02065)
Battery charging devices.....	1449
Bearings, ball.....	1345 (2168)
Bee Cell Supporter.....	1390 (01984)
Beer product.....	1312 (2108)
"Belfast" ginger ale.....	1366 (2202)
Belts:	
Electric.....	1340 (2160)
"Lewis Reducing".....	1450 (02077)
"Mystery Secret Money Pocket".....	1446 (02070)
Beverages.....	1366 (2202), 1419 (02028), 1470 (02104)
"Bile Stimulant".....	1463
Bladder preparation.....	1334
Blades, razor.....	1320 (2123), 1321
"Blondex" shampoo, etc.....	1400 (02002)
"Blood Alterative".....	1333
"Blood Disease Formula".....	1381 (01974)
Blouses.....	1366 (2200)
"Bongo" medicinal preparation.....	1347 (2172)

STIPULATIONS

	Page
Books and booklets.....	1333 (2146), 1344 (2166), 1346, 1361, 1369 (01953), 1424, 1450 (02075)
Boxes, electric fare.....	1312 (2107)
"Bradley's Face Wash, Mrs.", etc.....	1452
"Bramford" soap.....	1335 (2151)
"Brandreth's Pills" medicinal preparation.....	1482 (02119)
Brassieres, elastic and rubber.....	1415 (02020)
Bread.....	1484 (02124)
Breakfast food.....	1491 (01034)
Breeder frogs.....	1373 (01959)
Brushes.....	1416
Brooders, electric.....	1315 (2113)
"Buescher" band instruments.....	1327 (2135)
Building materials.....	1322 (2126), 1441 (02062), 1442 (02063)
Union pads.....	1471 (02106)
Burial vaults.....	1345 (2169)
"Business Administration" correspondence courses.....	1361
"Business Detective System" correspondence courses.....	1322 (2125)
"Bust Developing Cream".....	1439 (02057)
Cabinet, bath.....	1469
"Cadomene Tablets".....	1406
Caffeine tablets.....	1393 (01991)
Calling cards.....	1333 (2147)
Callous pads.....	1471 (02106)
"Calmas French Face Conditioner".....	1462
"Calocide" medicinal preparation.....	1390 (01985)
Candy products.....	1339 (2159), 1347 (2171)
Can openers.....	1329 (2139)
Caps.....	1331, 1336 (2152, 2153)
Cards:	
Acknowledgment.....	1314 (2111)
Calling.....	1333 (2146)
Playing and Christmas greeting.....	1481
Sales stimulator.....	1403 (02006)
"Casca Royal Pills".....	1406
"Caulk's" dental cements.....	1367
"Ceiling Tile".....	1322 (2126)
"Celanese".....	1363 (2197)
"Cellu" cotton products.....	1324 (2130)
Cements, dental.....	1367
Cereal concentrate.....	1423 (02036)
Cereal food.....	1332
"Char-Tex" antiseptic solution.....	1460 (02091)
"Chemacol Processed Coal".....	1489 (02136)
"Chemo-Vac" brush.....	1416
"Chick Mash Pellets, Nutrena".....	1412
Chicks, baby.....	1356 (2186)
Chin strap.....	1436
China.....	1334 (2148)
Christmas greeting cards.....	1481
Cleanser for false teeth.....	1401 (02003)

STIPULATIONS	Page
Clippers, portable hair.....	1340 (2161)
Clocks, electric revolving.....	1326 (2133)
Clothing, men's.....	1421 (02033), 1461, 1487 (02132)
Coal, "Chemacol Processed".....	1489 (02136)
Coats, women's.....	1316, 1323 (2127)
"Cod Liver Oil Extract Tablets, McCoy's".....	1391 (01986)
Coffee.....	1415 (02021)
Coil cleaning machines.....	1440 (02060)
Colloidal product.....	1363 (2196)
Cologne.....	1317 (2118)
"Comet Welder".....	1381 (01973)
Comforters.....	1353 (2180)
"Complete Accountancy" correspondence courses.....	1361
Confections, frozen.....	1338 (2157)
"Conkey's Nikala Worm Tablets" and other poultry remedies.....	1355 (2184)
Converter.....	1422 (02035)
Corn pads and plasters.....	1447 (02072), 1471 (02106)
Correspondence courses in—	
Business administration.....	1361
Business Detective System.....	1322 (2125)
Complete accountancy.....	1361
Correction of stammering and stuttering.....	1487 (02131)
Crime detection.....	1370 (01955)
Fingerprinting.....	1480 (0823)
Natural therapeutics.....	1429
Secretarial science.....	1361
Secret service.....	1370 (01955)
Sign painting and lettering.....	1388 (01979)
Correspondence school lessons.....	1333 (2146)
Corsets.....	1328 (2138), 1329 (2140)
"Corticelli" hosiery.....	1330 (2142)
Cosmetics.....	1328 (2137), 1369 (01952), 1376 (01965), 1385, 1399 (02000), 1430 (02046), 1432 (02049), 1438, 1441 (02061), 1443 (02066), 1452, 1462, 1464, 1467, 1479, 1480 (02117), 1485 (02127, 02129), 1486.
Cotton goods and products.....	1324 (2130), 1342
Cough drops.....	1483 (02123)
"Countess D'Arian Creme Polish for Brittle Nails", and other products.....	1356 (2185)
Coupons, silverware.....	1313 (2110)
Courses of instruction:	
In general. (See Correspondence courses.)	
Personal power, magnetism, etc.....	1445 (02067)
Cream:	
Bleaching.....	1467, 1479
Facial.....	1369 (01952), 1376 (01965), 1399 (02000), 1430 (02046), 1432 (02049), 1433, 1443 (02066), 1452, 1462, 1467, 1479, 1485 (02129), 1491 (02138). 1459
Scar.....	1365, 1366 (2200)
"Crepe".....	1370 (01955)
Crime detection correspondence course.....	1310
Cups, electric hot.....	1353 (2180)
Cushions.....	1353 (2180)

STIPULATIONS

	Page
Damp-proofing materials.....	1309 (2104)
"Davis Formula No. 7895" medicinal preparation.....	1475 (02109)
"Deep Pore Cleanser" cosmetic.....	1323 (2137)
"Deep Root" plant or seed treatment.....	1326 (2134)
"Delettrez Eyelash Grower".....	1417 (02024)
Dental cements.....	1367
Deodorant.....	1372 (01958), 1467, 1485 (02127)
"Dew Instant" and "Ultra" deodorants.....	1485 (02127)
Diamond rings.....	1415 (02019)
Diapers.....	1324 (2130)
Dinnerware.....	1334 (2148)
Dishes.....	1491 (02139)
Disinfectant.....	1357 (2188)
"Dixie-Rub" medicinal preparations.....	1451
"D. M. C. Vegetable Pills".....	1371
Dog medicine.....	1400 (02001), 1420 (02029)
Dope, gasoline.....	1425
"Down".....	1353 (2180)
Dresses.....	1313 (2109), 1366 (2200)
Children's.....	1313 (2109)
Drink concentrate, soft.....	1475 (02110)
"Dry-Zero Pliable Slab", etc.....	1482 (02120)
"Dundee Overcoating".....	1421 (02033)
Duplicating machines.....	1334 (2149)
"Durkee's Certified Mayonnaise".....	1398
"Dur-O-Flow" house paint.....	1325 (2131)
Egyptian lisle hose.....	1409
Elastic girdles and brassieres.....	1415 (02020)
"Electric":	
Brush.....	1416
Razor.....	1358 (2189)
Suspensory.....	1380 (01971)
"Electrocure Belt".....	1340 (2160)
Embroidering materials, stamped.....	1397 (01997)
Enamels.....	1309 (2104)
"Engraved" stationery, etc.....	1314 (2111), 1333 (2147)
"Essence of Life Face Cream".....	1376 (01965)
"Estate Heatrola" stove.....	1388 (01980)
Eternal Tint Oil Shampoo.....	1476
Exterminator, termite.....	1436 (02052)
Eyelash grower.....	1417 (02024)
Fabrics:	
Plush and pile.....	1349, 1352 (2177)
Tie.....	1357 (2187)
Woolen.....	1359 (2191)
"F. A. Buescher" band instruments.....	1327 (2135)
Face mask.....	1443 (02066)
False teeth.....	1379
False teeth cleanser.....	1401 (02003)
Fare boxes, electric.....	1312 (2107)
"Fashioned" stockings.....	1409
Feed concentrate, stock.....	1430 (02045)

STIPULATIONS		Page
Feed, stock and poultry.....	1401 (02004),	1412
Feminine hygiene preparations and products.....	1380 (01972),	
	1465 (02099), 1472, 1474	
"Fernet-Branca" medicinal preparation.....	1440 (02059)	
"Ferro-China Bisleri" medicinal preparation.....		1378
"F. H. V. Tablets" medicinal preparation.....	1347 (2172)	
"Findley's Eye Bath", etc.....	1475 (02111)	
Finger nail polish, remover and conditioner.....	1356 (2185)	
Fingerprinting correspondence courses.....	1480 (0823)	
Firearms.....	1489 (02134)	
"Fir-Tex Building Board", etc.....	1470 (02103)	
"Fitch's Dandruff Remover Shampoo".....	1423 (02037)	
Flavoring products.....	1313 (2110)	
Flavors, food.....	1321, 1490	
"Flintkote and Richardson Roofing".....	1425 (02039)	
"Flo" medicinal preparation.....	1397 (01996)	
Flooring material and products.....	1309 (2104), 1319 (2122)	
Floor wax.....		1318
"Florentine Rejuvenating Mold" device.....		1488
"Florsheim" razor blades.....		1320
Flue cleaner.....	1393 (01990)	
Food, breakfast.....	1491 (01034)	
Food flavors.....	1321, 1490	
Food preparation and products.....	1347 (2172), 1454 (02084),	
	1456, 1457, 1484 (02126)	
Food supplement.....	1403 (02007), 1410 (02015)	
Food tablet.....	1373 (01961)	
Foods, accessory.....	1455 (02086)	
Foot device.....		1433
Foot preparations.....	1471 (02106)	
Foot troubles, books on.....	1369 (01953)	
"Forhan's Tooth Paste, Dr.".....	1391 (01987)	
Fork and spoon set.....	1313 (2110)	
"Formula X-1", etc.....	1480 (02117)	
"Fortune Hair Grower and Straightener".....		1468
Fountain pens.....	1359 (2192)	
Frogs, breeder.....	1373 (01959)	
Frozen confections.....	1338 (2157)	
"Fudge warmers", electric.....		1310
Fuel.....	1489 (02136)	
"Full Shrunk" shirts.....	1315 (2114)	
"Fur".....	1349, 1352 (2177)	
Furniture.....		1362
Furs.....	1332 (2144)	
Gasoline.....	1399 (01999), 1420 (02030)	
Gasoline dope.....		1435
"Gall-Flo Improved" and "Laxative Tablets".....	1425 (02040)	
"Garlic Tablets" medicinal preparation.....	1421 (02031)	
Germicide.....	1357 (2188)	
"Giant Type" chicks.....	1356 (2186)	
Ginger ale.....	1366 (2202)	
Girdles, elastic and rubber.....	1415 (02020)	

STIPULATIONS

	Page
"Glasgow Worsted".....	1421 (02033)
Glass.....	1334 (2148)
"Godsend Hearing Aid and Amplifier".....	1427
"Gold" or "gold leaf".....	1344 (2166), 1346, 1352 (2176)
"Gold-Plated".....	1352 (2176)
"Gold" sign letters and numbers.....	1422 (02034), 1488, 1489 (02135)
"G. P. L. Tablets" medicinal preparation.....	1347 (2172)
Graham automobiles.....	1492 (02141)
"Grainalfa Food Tonic".....	1347 (2172)
Greeting cards, Christmas.....	1481
Guns.....	1358 (2190)
"Hair-A-Gain" hair preparation.....	1455 (02085)
Hair clippers, portable.....	1340 (2161)
Hair growing device.....	1484 (02125)
Hair preparations, tonics and treatments.....	1380 (01970), 1389 (01981), 1400 (02002), 1408, 1430 (02046), 1442 (02064), 1448, 1455 (02085), 1460 (02093), 1466, 1467, 1476, 1479, 1490
Hair removing device.....	1432 (02048)
"Hamilton's Oral Antiseptic, Dr.".....	1392 (01989)
"H-A Relief Tablets".....	1390 (01983)
"Harris Tweeds" coats.....	1323 (2127)
"Health" garments.....	1323 (2138)
Hearing aid device.....	1427
Heater, water.....	1465 (02098)
"Heatrola, Estate" stove.....	1388 (01980)
"Hen-Roib" medicinal preparation.....	1453 (02080)
"Henshire" coats and suits.....	1316
"Highland Twist".....	1421 (02033)
"Hindu Bleach Cream", etc.....	1479
"Histein" medicinal preparation.....	1419 (02027)
Hollow-ware.....	1352 (2176)
"Horlick's Malted Milk".....	1484 (02126)
Hose, Egyptian lisle.....	1409
Hosiery.....	1317 (2116), 1330 (2142), 1344 (2167), 1350, 1352 (2178), 1355 (2183), 1461
Ladies'.....	1317 (2116), 1355 (2183)
Men's.....	1344 (2167), 1352 (2178), 1461
"Hot cups", electric.....	1310
Household supplies.....	1432 (02049)
"Hudson Seal".....	1332 (2144), 1349, 1352 (2177)
Hypnotism, booklets on.....	1450 (02075)
"Ice-Mint" medicinal preparation.....	1426
"Icho-No-Tomo" medicinal preparation.....	1410 (02014)
"I. G. Antiseptic".....	1492 (02140)
"Imported" fabrics.....	1323 (2127)
"Imp" soot remover and flue cleaner.....	1393 (01990)
Incense.....	1479
"Indian River Tonic", Scalf's.....	1394 (01993)
Inoculants, seed.....	1326 (2134)
Instruments, band.....	1327 (2135)
Insulation material.....	1375, 1441 (02062), 1470 (02103), 1482 (02120)
"Iodent" toothpaste.....	1454 (02083)

STIPULATIONS		Page
"Jeris" hair tonic.....	1460	(02093)
Jewelry.....	1319 (2121), 1337	(2155)
"Johns-Manville Asbestos Cement Shingles", etc.....	1441	(02062)
"Karasol" hair preparation.....		1466
"Kel-Inca A" and "B" medicinal preparation.....		1459
Kellogg's All Bran cereal.....		1382
Kidney preparation.....		1384
"Kitchen-Made" candy.....	1347	(2171)
Knitted outerwear.....	1319	(2120)
"Kurlifir".....	1352	(2177)
"Laco Shampoo".....	1389	(01981)
"Lamb".....		1349
"Latham's Compound, Dr.", medicinal preparation.....	1330	(2141)
"LeJay Electric Arc Welder".....	1445	(02068)
Lesson papers, mimeograph.....		1361
Lessons, correspondence school.....	1333	(2146)
Letters, window and sign.....	1422 (02034), 1488, 1489	(02135)
"Lewis Reducing Belt".....	1450	(02077)
"Lifebuoy Soap".....	1478	(02114)
"Life Time Guarantee" fountain pens.....	1359	(2192)
"Lime and Lemon Cleansing Emollient".....	1485	(02129)
Lingerie.....		1409
"Linit" starch.....	1443	(02065)
"Linotile".....	1319	(2122)
"Linseed" putty.....	1335	(2150)
"Litening" gasoline.....	1420	(02030)
"Live" medicinal preparations.....	1347	(2172)
Locator of metals, hidden treasures, etc.....	1376	(01964)
Lotion, hand.....		1490
Lubricating product.....	1341, 1343	(2164)
"Lubritex" lubricating product.....		1341
Lucky goods.....		1467
"Luden's Menthol Cough Drops".....	1483	(02123)
"Lux Electric Water Heater".....	1465	(02098)
"Lux Flakes" and "Toilet Soap".....	1478	(02114)
Machines:		
Coil cleaning.....	1440	(02060)
Duplicating.....	1334	(2149)
Massage.....	1340	(2161)
"Made in England" fabrics.....	1323	(2127)
"Magic" can openers.....	1329	(2139)
"Malena Ointment" and "Pills" medicinal preparations.....	1485	(02128)
Malted Milk, Horlick's.....	1484	(02126)
"Malt-O-Meal" breakfast food.....	1491	(01034)
"Marvello" face cream and powder.....	1399	(02000)
Mashes, poultry.....		1412
Massage device.....	1477	(0341)
Massage machines.....	1340	(2161)
"Maté Del Morro" tea.....	1419	(02028)
Matrimonial pamphlets.....		1428
Mayonnaise.....		1398
"McCoy's Cod Liver Oil Extract Tablets".....	1391	(01986)

STIPULATIONS

	Page
"Medi-Band", etc., medicinal preparations.....	1471 (02106)
Medicinal preparations.....	1314
(2112), 1330 (2141), 1337 (2154), 1347 (2172), 1357 (2188), 1370	
(01954) 1371, 1372 (01957), 1374, 1377 (01966, 01967), 1378,	
1383-1385, 1390 (01983, 01985), 1392 (01988), 1394 (01992,	
01993), 1396, 1397 (01996), 1400 (02001), 1405, 1406, 1410	
(02014), 1411, 1414, 1415 (02022), 1417 (02024), 1418, 1419	
(02027), 1420 (02029), 1421 (02031), 1425 (02040), 1426, 1431,	
1436 (02054), 1437 (02055, 0332), 1439 (02057), 1440 (02059),	
1446 (02069), 1447 (02071), 1450 (02076), 1451, 1453 (02080,	
02081), 1458, 1459, 1463, 1465 (02099), 1467, 1471 (02106), 1472,	
1475 (02109, 02111), 1478 (02115), 1479, 1482 (02119), 1483	
(02121, 02122), 1485 (02128), 1490	
"Melton".....	1421 (02033)
"Melvite" food preparation.....	1454 (02084)
Merchandise.....	1363 (2197)
"Metal Cloth".....	1363 (2197)
"Metallation" insulation material.....	1375
Metal locator.....	1376 (01964)
"Millers Herb Extract and Laxative".....	1377 (01966)
"Mintone" medicinal preparation.....	1447 (02071)
"Min-Vitamin" medicinal preparation.....	1463
Molasses.....	1351
"Moldette" face mask.....	1443 (02066)
"Montecatini Crystals" medicinal preparation.....	1483 (02122)
Monuments.....	1323 (2128)
Motor oil.....	1355 (2182)
Mushroom spawn.....	1404
Mustar-Spice medicinal preparation.....	1372 (01957)
"Mystery Secret Money Pocket Belt".....	1446 (02070)
Natural therapeutics correspondence course.....	1429
"Naturalube" motor oil.....	1355 (2182)
Neckwear, men's.....	1461
"Neo-Vim Tonic" medicinal preparation.....	1453 (02081)
"Neu-Life" medicinal preparation.....	1450 (02076)
"Nikala Worm Tablets", Conkey's.....	1355 (2184)
"Nitro" shotguns.....	1358 (2190)
Non-allergic cosmetics.....	1323 (2137)
"Non-Wilt" shirt collars.....	1315 (2114)
"No Wheez Cough Syrup", etc.....	1431
"No-Wilt" shirt collars.....	1325 (2132)
"NR Tablets" medicinal preparation.....	1415 (02022)
"Nujol" medicinal preparation.....	1394 (01992)
Numbers, sign.....	1489 (02135)
"Nutrena Chick Mash Pellets", etc.....	1412
Office equipment.....	1424
"Office Valuation Equipment Book".....	1424
Oil burners.....	1389 (01982)
Oil, motor.....	1355 (2182), 1399 (01999)
"Oil of Garlic" food product.....	1456
Ointments.....	1330 (2141), 1377 (01967), 1396
"Oster" clipper.....	1340 (2161)

STIPULATIONS

	Page
Outerwear, knitted.....	1319 (2120)
Overcoats, men's.....	1354
"Packard Lektro-Shaver".....	1364
Pads, corn, etc.....	1447 (02072), 1471 (02106)
Paints and paint products.....	1309 (2104), 1325 (2131), 1373 (01960)
"Palmer Method" skin treatment.....	1417 (02025)
Pamphlets.....	1369 (01953), 1428
Matrimonial.....	1428
Pants, men's.....	1461
"Papaya Skin Tone".....	1485 (02129)
Paragon Hair Coloring.....	1476
"Part Wool".....	1327 (2136)
Patent medicines.....	1337 (2154)
"Peeke's Medicine".....	1337 (2154)
"Penol Emulsion" medicinal preparation.....	1377 (01966)
Pens, fountain.....	1359 (2192)
Perfumes.....	1332 (2145)
"Perio-Pills" medicinal preparation.....	1465 (02099)
"Peroka Tablets" medicinal preparation.....	1347 (2172)
"Persian Lime Foundation Emollient".....	1485 (02129)
Persian rugs.....	1368
"Petersime Electro-Thermo Bath Cabinet".....	1469
"Pheno-Isolin" medicinal preparation.....	1357 (2188)
"Phoscaloids" colloidal product.....	1363 (2196)
Pile fabrics.....	1349, 1352 (2177)
Plant stimulators.....	1326 (2134)
Plasters, corn.....	1447 (02072)
"Plateless Engraved" stationery, etc.....	1314 (2111)
"Plateless engraving".....	1333 (2147)
Playing cards.....	1481
Plush fabrics.....	1342, 1349
Pneumatic rifles.....	1489 (02134)
"Poisonivi" medicinal preparation.....	1437 (02055)
"Poisonok" medicinal preparation.....	1437 (02055)
Polish, finger nail.....	1356 (2185)
Popcorn.....	1339 (2158)
Poultry feeds and mashes.....	1401 (02004), 1412
Poultry medicines and remedies.....	1355 (2184), 1402
"Poultry Worm Powder", Conkey's.....	1355 (2184)
Powder:	
Face.....	1399 (02000), 1441 (02061)
Tooth.....	1313 (2110)
"Pow-O-Lin" medicinal preparation.....	1377 (01966)
"Prescription 1739" medicinal preparation.....	1384
"Pride of Wisconsin, The," beer product.....	1312 (2108)
"Princess Elizabeth" dresses.....	1313 (2109)
"Prosager" massage device.....	1477 (0341)
"Pro-Vita" food supplement.....	1403 (02007)
"Pulvex Worm Capsules".....	1400 (02001)
"Pure dye".....	1311, 1365
"Pure Kelp Tablets".....	1347 (2172)
"Pure linseed" putty.....	1335 (2150)

STIPULATIONS

	Page
"Pure silk".....	1352 (2178)
Putty.....	1335 (2150)
Pylon "C" and "F" lubricating products.....	1343 (2164)
"Pyreagos Tooth Powder".....	1460 (02092)
Radio metal locator.....	1376 (01964)
"Rainbo Bread".....	1484 (02124)
"Rancee Hair Grower", etc.....	1479
"Rayon".....	1363 (2197)
"Rayon and silk".....	1350
Rayon goods.....	1342
Razor blades.....	1320 (2123), 1321
Razors, safety.....	1358 (2189), 1364
Electric.....	1364
Rectifier bulb, "Wonder".....	1449
"Red Arrow Nose and Throat Drops", etc.....	1475 (02111)
Reducing preparations.....	1347 (2172), 1410 (02015), 1414, 1439 (02057), 1450 (02077), 1455 (02086)
"Re-Du" medicinal preparation.....	1414
Remedies, poultry.....	1355 (2184)
Revolving clocks, electric.....	1326 (2133)
"Rex Hunters Condition Powders" for dogs.....	1420 (02029)
Reyna Contour Cream, etc.....	1443 (02066)
"Rheumalgia Balm" medicinal preparation.....	1463
Rifles, pneumatic.....	1489 (02134)
Rings.....	1491 (02139)
"Roban C24 Cleansing Cream", etc.....	1348
Roofing materials.....	1309 (2104), 1425 (02039), 1441 (02062)
"Root's Elepizone" medicinal preparation.....	1337 (2154)
Royal Portable Typewriters.....	1477 (02113)
Rubber products.....	1338 (2156), 1415 (02020)
Rugs.....	1368
Saddle soap.....	1335 (2151)
Safety razors.....	1358 (2189), 1364
Electric.....	1364
Salad dressing.....	1398
Sales stimulator cards.....	1403 (02006)
"Sanacoustic Tile".....	1322 (2126)
"Sanford's Sheen Shampoo".....	1324 (2129)
"Sapolio Powder" and "Toilet Soap".....	1441 (02061)
"Sasa Hair Tonic and Shampoo".....	1442 (02064)
"Satin".....	1311, 1363 (2197), 1365
"Satinmesh" cosmetic.....	1464
"Savoy" coffee.....	1415 (02021)
"Saxet Nos. 1, 2", etc., medicinal preparations.....	1463
"Scalf's Indian River Tonic".....	1394 (01993)
Scalp cleansing preparations and treatments.....	1408, 1421 (02032)
Scar cream, Kel-Inca.....	1459
"Scientific Massage Machine".....	1340 (2161)
"Seal".....	1349
"Secretarial science" correspondence courses.....	1361
Secret Service correspondence course.....	1370 (01955)

STIPULATIONS		Page
Seed inoculants.....		1326 (2134)
"Serosol" medicinal preparation.....		1392 (01988)
Shampoo.....	1324 (2129), 1400 (02002), 1423 (02037)	
"Shampoo, Laco".....		1339 (01981)
Shavers, electric dry.....		1360
Shingles.....	1425 (02039), 1441 (02062)	
Shirts.....	1315 (2114), 1325 (2132), 1409, 1461	
Shotguns.....		1358 (2190)
"Shur Shot" ointment.....		1446 (02069)
Sign letters and numbers.....	1488, 1489 (02135)	
Sign painting and lettering correspondence course.....		1388 (01979)
"Silk".....	1342, 1344 (2167), 1350, 1352 (2178), 1363 (2197), 1366 (2201), 1409	
"Silver" sign letters and numbers.....	1422 (02034), 1488, 1489 (02135)	
Silverware.....	1334 (2148), 1403 (02006)	
Plated.....		1403 (02006)
Silverware coupons.....		1313 (2110)
"Si-Noze" medicinal preparation.....		1436 (02054)
"Skelly Aromax Gas and Oil".....		1399 (01999)
Skin creams, preparations and treatments.....	1369 (01952), 1376 (01965), 1417 (02025), 1446 (02069), 1447 (02071), 1451, 1462, 1464, 1467, 1478 (02115), 1479, 1480 (02117), 1485 (02128, 02129), 1490, 1491 (02138)	
"Skol" antiseptic.....		1454 (02082)
"Slick" razor.....		1358 (2189)
"Smith's" dental cements.....		1367
"Snuuggle Down" for comforters, etc.....		1353 (2180)
Soaps.....	1335 (2151), 1441 (02061), 1478 (02114)	
Saddle.....		1335 (2151)
Sofskin Creme.....		1369 (01952)
Soft drink concentrate.....		1475 (02110)
Soldering tool.....		1381 (01973)
Soot remover.....		1393 (01990)
"Special 'D' Herbal Tonic".....		1384
Spoon and fork set.....		1313 (2110)
Sportswear.....		1324 (2130)
"S. S. White" dental cements.....		1367
Stammering and stuttering, correspondence course in correction of.....		1487 (02131)
Stamped embroidering materials.....		1397 (01997)
Starch.....		1443 (02065)
"Starchless" shirt collars.....		1325 (2132)
"Star Relief Compound," etc., medicinal preparations.....		1465 (02099)
Stationery.....	1314 (2111), 1333 (2147)	
"Step-Up" soft drink concentrate.....		1475 (02110)
"Stera-Kleen" false teeth cleanser.....		1401 (02003)
"Sterilastic Bandages".....		1395
"Sterilized" products.....		1324 (2130)
Stimulators, plant.....		1326 (2134)
Stock feed and concentrates.....	1401 (02004), 1430 (02045)	
Stomach remedy.....		1314 (2112)
Stoves.....	1388 (01980), 1389 (01982)	
"Heatrola".....		1388 (01980)
"Strasska" toothpaste.....		1439 (02058)

STIPULATIONS

	Page
Suits:	
Men's.....	1343 (2165), 1354
Women's.....	1316, 1323 (2127), 1366 (2201)
"Sulpherb tablets".....	1406
"Sunclyme Lime and Lemon Cleansing Emollient", and other cosmetics.....	1485 (02129)
"Sun Glow Tablets" medicinal preparation.....	1418
"Sungold".....	1352 (2176)
"Sun-Up" beverage.....	1470 (02104)
"Superstiles" electric fare boxes.....	1312 (2107)
Supplies, household.....	1432 (02049)
Supporter.....	1390 (01984)
"Surete" feminine hygiene preparation.....	1380 (01972)
Surgical dressings.....	1395
Suspensory, electric.....	1380 (01971)
"Su-Thol Tablets".....	1406
Sweaters.....	1327 (2136)
"S-X Tablets".....	1405
"Syntha-Mixer" stock feed concentrate.....	1430 (02045)
Tableware.....	1436 (02053)
Tea, South American.....	1419 (02028)
Teeth, false.....	1379
"Temlok De Luxe Tiles".....	1319 (2122)
"Temwood Tile".....	1319 (2122)
Termite exterminator.....	1436 (02052)
Text books.....	1333 (2146)
"Theradiet" food supplement.....	1410 (02015)
"Thydro-X" gasoline dope.....	1435
Tie fabrics.....	1357 (2187)
Ties.....	1409
"Tile".....	1319 (2122), 1322 (2126)
"Tina-Cide" medicinal preparation.....	1478 (02115)
"Tintz Blonde Liquid Shampoo", etc.....	1466
Tires, used automobile.....	1471 (02105)
"Tissue Building Cream".....	1479
Toilet articles and preparations.....	1438, 1490, 1491 (02138)
Toilet waters.....	1317 (2118)
Tombstones.....	1323 (2128)
Tools.....	1353 (2179)
Tooth paste and powder.....	1313 (2110), 1347 (2172), 1391 (01987), 1439 (02058), 1454 (02083), 1460 (02092)
Topcoats, men's.....	1343 (2165)
"Toxite" poultry medicine.....	1402
Treasure locator.....	1376 (01964)
"Trindl Arc Welder and Converter".....	1422 (02035)
Trophies.....	1352 (2176)
"Tryco" ointment.....	1396
"Turtle Oil Wrinkle Cream".....	1479
"Tussy Flozor", etc., cosmetics.....	1430 (02046)
Typewriters.....	1477 (02113)
Undergarments, women's.....	1311, 1365
Underwear.....	1324 (2130)

STIPULATIONS

	Page
"Undrus Liquid" hair preparation.....	1380 (01970)
"Vaccinol" termite exterminator.....	1436 (02052)
"Vanilla" food flavor.....	1321
Varnishes.....	1309 (2104)
"Vaseline Hair Tonic".....	1448
Vaults, burial.....	1345 (2169)
"Vegeminerals" food product.....	1456
"Vegethin Tea and Tablets" reducing preparations.....	1347 (2172)
"Veta-Roni" food product.....	1457
"Vibratherm" device.....	1407
Vimm food tablet.....	1373 (01961)
"Vitab Cereal Concentrate".....	1423 (02036)
"Vitamin A Concentrate".....	1475 (02109)
Vitamin E Capsules.....	1472
"Vitam Perles".....	1370 (01954)
"Vita-Rich" weight building preparation.....	1466
"Vitolectic Oil" medicinal preparation.....	1347 (2172)
Wainscoting products.....	1319 (2122)
Wall cleaner.....	1416
Warmers, electric fudge.....	1310
Watches.....	1337 (2155), 1415 (02019)
Water heater.....	1465 (02098)
Waterproofing materials.....	1309 (2104)
Wax, floor.....	1318
Wearing apparel.....	1409
Weight building preparation.....	1466
Welders and welding devices.....	1381 (01973), 1422 (02035), 1445 (02068)
"White's Cream Vermifuge".....	1433 (02121)
"White's Specific Face Cream".....	1491 (02138)
"Wide-O-Wake Tablets".....	1393 (01991)
"Wiggins SOS" scalp cleansing preparation.....	1421 (02032)
Window washers.....	1400 (0551)
"Wisconsin" beer product.....	1312 (2108)
"Wizard Coil Cleaning Machines".....	1440 (02060)
"Wolfe's Compound" stomach remedy.....	1314 (2112)
"Wolray".....	1350
"Wonder Battery Charger" and "Rectifier Bulb".....	1449
"Wool" and "woolen".....	1327 (2136), 1343 (2165), 1350, 1421 (02033)
Wollen fabrics.....	1359 (2191)
"World's Tonic".....	1411
Worm capsules.....	1400 (02001)
"Worsted".....	1421 (02033)
"Woven by hand".....	1357 (2187)
"Wulmix".....	1350
"Xervac" hair growing device.....	1484 (02125)
"Xilator" skin treatment device.....	1480 (02117)
"Yerba Maté" tea.....	1419 (02028)
"Youth Creme".....	1486
"Zubrant Tooth Powder".....	1347 (2172)
"Zubrite" medicinal preparation.....	1347 (2172)

INDEX¹

DESIST ORDERS

Accounting audits of member records, etc., to check price and other agreements. *See* Combining or conspiring.

Advertising falsely or misleadingly:

As to—

	Page
Agents or representatives—	
Earnings or profits.....	410, 1209
Terms and conditions.....	1095
Ailments, generally.....	983
Business status, advantages or connections—	
Buildings or plant.....	1234
Through depictions.....	1234
Connections and affiliations.....	1138
American Birth Control League.....	814
Consultant advisory board.....	1234
Correspondence school being—	
University or extension university.....	1277
Correspondence school operating—	
Employment agency.....	1138
Laboratory.....	1138
Dealer being—	
Broker.....	767
Distiller.....	960
Grower.....	78
Importer.....	877
Manufacturer.....	328,
384, 394, 614, 852, 877, 1013, 1058, 1086, 1095,	1193
Manufacturing agent.....	30
Dealer owning or operating—	
Factories.....	1193
Foreign and western offices.....	877
Laboratory.....	814, 1013, 1179, 1234
By depictions.....	1234
Government connection—	
Foreign.....	701
Identity of branch or affiliate.....	953
Individual being president of corporation.....	1013
Location.....	23
Manufacturer being—	
Maker of all products dealt in.....	87
Personnel and staff.....	1234
Private business being cooperative.....	877

¹ Covering practices included in cease and desist orders, and stipulations, at p. 1566, in instant volume. For index by commodities involved rather than practices *see* Table of Commodities, preceding.

DESIST ORDERS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Page

Qualities, properties or results of product.....	1,
114, 244, 263, 366, 423, 546, 646, 690, 740, 752, 814, 877,	
902, 983, 1013, 1070, 1095, 1130, 1147, 1172, 1179, 1193, 1200,	
1209, 1260	
Quality of product.....	68, 767, 877, 1158
Safety of product.....	614, 646, 740, 814, 902, 1013, 1200
Scientific or relevant facts.....	983, 1138, 1147
Services rendered.....	939, 1138
Source or origin of product—	
Maker.....	263, 1260
Place.....	23, 701, 1086
By depictions.....	701
Special or limited offers or selection.....	877, 939, 1036, 1138
Standards conformance.....	614
Federal Trade Commission.....	895
Success, use or standing of product or service.....	244,
690, 814, 1027, 1172, 1234	
Terms and conditions.....	1095, 1138
Testimonials.....	423
Tests.....	1209, 1234
Clinics.....	244
Undertakings, in general.....	939, 1138
Unique nature, situation or status of product.....	114,
244, 740, 752, 1200, 1234, 1260	
Value of product.....	767, 1027, 1036

Advertising, supplying misleading, for retailer's use. *See* Aiding, assisting, etc.

Advisory Board, claiming falsely. *See* Advertising falsely, etc.; Misrepresenting business status, etc.

Affiliated business, identity of, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.

Agents or representatives, securing falsely or misleadingly. *See* Advertising falsely, etc.; Securing agents, etc.

Aiding, assisting or abetting misrepresentation or unfair act or practice:

Through—

Preparing and issuing, improperly, "certificates of merit" or "seals of approval".....	1209, 1234
Selling lottery or chance merchandising devices.....	216
Supplying false and misleading tags and labels.....	1186
Supplying misleading advertising for retailer's use.....	68

Ailments, generally, misrepresenting as to. *See* Advertising falsely, etc.

American Birth Control League, claiming indorsements of and connection with, falsely or misleadingly. *See* Advertising falsely, etc.; Claiming or using, etc.; Misrepresenting business status, etc.

American Medical Association, claiming indorsements of, falsely or misleadingly. *See* Advertising falsely, etc.; Claiming or using, etc.

Appropriating trade names of products of competitors..... 877

Approval or indorsement, claiming or using falsely or misleadingly. *See* Advertising falsely, etc.; Claiming or using, etc.

DESIST ORDERS

Assistance of dealer, promising falsely. <i>See</i> Offering deceptive, etc.	
Assuming or using misleading trade or corporate name:	
As to—	Page
Correspondence school being university or extension university..	1277
Dealer being—	
Distiller.....	960
Manufacturer..... 328, 384, 394, 614, 852, 1058, 1095,	1193
Tailor.....	777
Dealer owning or operating laboratory.....	814, 1234
History.....	1
Indorsement, sponsorship or approval—	
"Colonial Dames".....	1260
Nature of manufacture of product.....	713
Private business being cooperative.....	877
Quality of product.....	713
Rectifier being distiller..... 97, 374,	1246
Seller being doctor.....	690
Source or origin of product—	
Maker.....	1260
Audits, accounting, of member records, etc., to check price and other agreements. <i>See</i> Combining or conspiring.	
Bankrupt stock, offering falsely as, and bargains. <i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.; Offering deceptive, etc.	
Boycotting:	
Competitors' sources of supply—	
To control and limit retail distribution and practice.....	142
Concerns—	
To control and enforce distributive price and practice generally..	1104
Branch business, identity of, misrepresenting as to. <i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.	
Brands, using falsely or misleadingly. <i>See</i> Misbranding or mislabeling.	
Brokerage payments or acceptance, discriminating in price through. <i>See</i> Discriminating in price, etc.	
Broker, dealer representing self falsely as. <i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.	
Building or construction, limiting direct purchase for, to control and limit retail distribution and practice. <i>See</i> Combining or conspiring.	
Buildings, misrepresenting size, ownership or operation of. <i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.	
Business status, advantages or connections, misrepresenting. <i>See</i> Advertising falsely, etc.; Misrepresenting business status, etc.	
Carload lots, limiting distribution to, by railroads, to control and limit retail distribution and practice. <i>See</i> Combining or conspiring.	
Cartons of competitor, simulating. <i>See</i> Simulating.	
Certificates:	
Offering, falsely, Commission's, of standards conformance. <i>See</i> Offering deceptive, etc.	
"Of Merit", using improperly and misleadingly in offer and sale of product as scientifically tested, etc. <i>See</i> Advertising falsely, etc.;	
Aiding, assisting, etc.; Misrepresenting business status, etc.	
Representing, falsely, conformance with Commission. <i>See</i> Advertising falsely, etc.	

DESIST ORDERS

"Certification", claiming falsely. *See* Misbranding or mislabeling.
 Chain stores, listing as eligible for special discounts, to control and enforce distributive price and practice, generally. *See* Combining or conspiring.
 Chance or lottery schemes in merchandising, using. *See* Using lottery schemes, etc.

Claiming or using indorsements or testimonials falsely or misleadingly:

As to or from—	Page
American Birth Control League.....	814
American Medical Association.....	50, 814
"Colonial Dames".....	1260
Commission.....	574
Community's well-known men.....	233
Doctors.....	244, 423, 690, 752, 814, 1013
Government.....	107, 441
Local bankers and businessmen.....	1223
Specialists.....	1172
Users, in general.....	423, 720

Classification, discriminating in price through. *See* Discriminating in price, etc.

Coat of arms, using foreign, improperly and misleadingly. *See* Advertising falsely, etc.; Misrepresenting business status, etc.

C. O. D. charges, misrepresenting as to. *See* Offering deceptive, etc.

Coercing and intimidating:

Competitors—	
To—	
Adopt uniform prices through threatening infringement suits on basis minor patented part.....	592
Manufacturers and producers—	
To—	
Cut off competitors' sources of supply and control and limit retail distribution and practice.....	142
Manufacturers and wholesalers—	
To—	
Fix and maintain uniform prices favoring trade association seller of imprint product.....	824
Grant discriminating payments and discounts to trade association seller of imprint product.....	824
Make advertising and promotional allowances to trade association seller of imprint product, not made available on proportionally equal terms to other customer competitors..	824
Refrain from rebates, discounts, royalties or refunds to non-members.....	824

Combining or conspiring:

To—	
Control and enforce distributive price and practice generally—	
Through—	
Agreeing to, and maintaining, undertakings and combinations unlawfully to restrict and eliminate competitors.....	1104
Cutting off supplies of some.....	1104
Designating concerns eligible or not eligible as jobbers for manufacturer purchasing.....	1104

DESIST ORDERS

Combining or conspiring—Continued.

To—Continued.

Control and enforce distribution price, etc.—Continued.

Through—Continued.

	Page
Effecting and procuring jobber and association promises of support and enforcement.....	1104
Fixing special discounts for minimum quantity purchasers from members.....	1104
Fixing uniform jobber and retailer prices and discounts..	1104
Listing as chain stores eligible for special discounts, concerns.....	1104
Organizing and holding jobber meetings to induce, influence and coerce conformance.....	1104
Control and limit retail distribution and practice—	
Through—	
Boycotting and threatening with boycott manufacturer sellers to "irregular" dealers.....	142
Circulating among manufacturers—	
Lists of recognized dealers.....	142
Reports <i>re</i> status, methods, etc., of dealer competitors.....	142
Circulating among members—	
Information <i>re</i> sales or prospective sales to "irregular" or non-recognized buyers or dealers.....	142
Cutting off—	
Sales to consumers, contractors, United States Government, State or political subdivisions, "irregular" dealers or retailers.....	142
Supplies of competitors or non-recognized dealers..	142
Denying pool car shipments to other than "recognized" dealers.....	142
Eliminating brokers from distribution and sale.....	142
Fixing, in dealers' communities, uniform prices.....	142
Intimidating manufacturers' agents to prevent dealing with unrecognized buyers.....	142
Limiting, concertedly, distribution to railroads in car-load lots.....	142
Limiting sale and distribution material for public and private building and construction to members and dealers at profit prices.....	142
Meeting for interchange of information, plans, etc., in pursuance of.....	142
Preventing manufacturers' direct purchase raw materials.....	142
Soliciting and acting on reports <i>re</i> shipments to unrecognized concerns.....	142
Threatening withdrawal of patronage for sales not through "regular" channels.....	142
Fix prices and hinder competition—	
Through—	
Agreeing on maintenance by manufacturers of uniform wholesale prices to be exacted as between member dealer purchasers and non-member dealer purchasers..	824

DESIST ORDERS

Combining or conspiring—Continued.

To—Continued.

Fix prices and hinder competition—Continued.

Through—Continued.

Page

Checking records and invoices to ascertain compliance with prices fixed, etc.....	968
Discriminating unlawfully through—	
Advertising and promotional allowances made to buyer trade association controlling product imprint and not available on proportionally equal terms to customer competitors of members.....	824
Payments or discounts to buyer trade association or members for imprint privilege on product....	824
Exchanging, as and through clearing house, information as to prices, terms and discounts agreed on....	604
Fixing and agreeing on, and maintaining—	
Uniform prices, terms and discounts.....	604
Uniform resale price schedules.....	604
Fixing and enforcing member processing quotas.....	968
Fixing basic formula and other prices, and publishing and distributing among members, and observing and maintaining same in purchase and sale.....	968
Fixing resale prices for non-member retailers, and inducing, coercing and compelling observance thereof..	824
License agreements or contracts negotiated through threatening infringement suits on basis minor patented part.....	592
Requiring and coercing manufacturer and wholesaler customers to refrain from rebates, discounts, royalties or refunds to non-member retailer purchasers.....	824
Requiring, inducing and coercing payment by manufacturers and wholesalers for buyer trade association imprint on product.....	824

Limit output and enhance prices—

Through—

Disposing, concertedly and as agreed, of on-hand supplies from product's dominant exchange for purchase and sale.....	1279
Limiting, concertedly and as agreed, purchasing to product's dominant exchange for purchase and sale..	1279
Refusing, concertedly and as agreed, to buy or sell in or through product's dominant exchange for purchase and sale, and through selling from one to another...	1279
Withholding, concertedly, and as agreed, supplies from product's dominant exchange for purchase and sale..	1279

Monopolize market—

Through—

Fixing, in concert with market's dominant association, discounts effectively available to association members only, and securing payment thereof.....	968
---	-----

Commission, claiming approval of falsely. *See* Advertising falsely, etc.;

Claiming or using, etc.; Misrepresenting product, etc.

DESIST ORDERS

- Competitive products, misrepresenting as to. *See Advertising falsely, etc.; Disparaging, etc.*
- Competitor:
- Cartons, etc., of, simulating. *See Simulating.*
 - Disparaging or misrepresenting. *See Disparaging, etc.*
- Composition of product, misrepresenting as to. *See Advertising falsely, etc.; Misbranding or mislabeling.*
- Conditions and terms, misrepresenting as to. *See Offering deceptive, etc.*
- Construction or building, limiting direct purchase for, to control and limit retail distribution and practice. *See Combining or conspiring.*
- Consultant advisory board, claiming falsely. *See Advertising falsely, etc.; Misrepresenting business status, etc.*
- Co-operative, falsely representing business as. *See Advertising falsely, etc.; Misrepresenting business status, etc.*
- Corporate names, using misleading. *See Assuming or using, etc.; Using misleading, etc.*
- Coupons, misrepresenting value in merchandising deals. *See Advertising falsely, etc.; Offering deceptive, etc.*
- Credit:
- Expansion plan, misrepresenting to prospect. *See Offering deceptive, etc.*
 - Rating, misrepresenting as to. *See Misrepresenting business status, etc.*
- Customers, cutting off competitors' access to. *See Cutting off competitors' access, etc.*
- Cutting off competitors' access to customers or market: Page
- To control and limit retail distribution and practice..... 142
- Cutting off competitors' sources of supply:
- To—
 - Control and enforce distributive price and practice generally---- 1104
 - Control and limit retail distribution and practice..... 142
- Cutting off output, to limit supplies and enhance prices. *See Combining or conspiring.*
- Dealer:
- Assistance, promising falsely. *See Offering deceptive, etc.*
 - Representing self falsely as—
 - Broker. *See Advertising falsely, etc.; Misrepresenting business status, etc.*
 - Grower. *See Advertising falsely, etc.; Misrepresenting business status, etc.*
 - Importer. *See Advertising falsely, etc.; Misrepresenting business status, etc.*
 - Manufacturer. *See Advertising falsely, etc.; Misrepresenting business status, etc.*
 - Tailor. *See Assuming or using, etc.; Misrepresenting business status, etc.*
- Departments, misrepresenting ownership or operation of. *See Advertising falsely, etc.; Misrepresenting business status, etc.*
- Direct purchase, preventing, to control and limit retail distribution and practice. *See Combining or conspiring.*

DESIST ORDERS

Discounts:

Coercing, concertedly, withholding of, by manufacturers and wholesalers. *See* Coercing and intimidating; Combining or conspiring.

Establishing as effectively available to trade association only, or members, to monopolize market. *See* Combining or conspiring.

Discriminating in price:

In violation of Section 2—

Through—

	Page
Brokerage payments or acceptance.....	200, 486.
Charges and price differentials, generally.....	296, 303, 312, 320
Customer classification.....	303, 312, 320
Differing quantity discounts.....	666
Inducing, concertedly, and receiving—	
Advertising and promotional allowances, not made available to sellers' other customer competitors, to promote imprint product of association and members.....	824
Payments or discounts for purchase trade association's product imprint.....	824
Knowingly inducing and receiving payments, discounts and allowances not made available on proportionally equal terms to other customers and competitors, on basis member dealers' imprint product.....	824

Disparaging or misrepresenting competitors or their products:

Competitors—

As to—

Businesses and owners as rackets and racketeers and makers of fake trade-ins.....	877
Equipment as "gyp".....	877

Products—

As to—

Qualities.....	877
Safety.....	134

Disposing, concertedly, of on-hand supplies from product's dominant exchange for purchase and sale, to limit output and enhance prices. *See* Combining or conspiring.

Distiller, rectifier representing self falsely as. *See* Advertising falsely, etc.; Assuming or using, etc., Misbranding or mislabeling; Misrepresenting business status, etc.

Distress stock, offering falsely as, and bargains. *See* Advertising falsely, etc.; Misrepresenting business status, etc.; Offering deceptive, etc.

Distributive price and practice, combining to control and enforce, generally. *See* Combining or conspiring.

Doctor:

 Claiming falsely to be. *See* Assuming or using, etc.; Misrepresenting business status, etc.

 Claiming indorsements, approval or testimonial of, falsely. *See* Advertising falsely, etc.; Claiming or using, etc.

Domestic product, representing falsely as imported. *See* Advertising falsely, etc.; Misbranding or mislabeling.

Earnings or profits, of agents or representatives or product, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting product, etc.;

 Securing agents, etc.

DESIST ORDERS

- Employer, seller representing self falsely as. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Employment agency, claiming falsely to own and operate. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Employment, misrepresenting as to. *See* Advertising falsely, etc.
- Exchange conditions, misrepresenting as to. *See* Offering deceptive, etc.
- Exchange, cutting off supplies from product's dominant for purchase and sale, to limit output and enhance prices. *See* Combining or conspiring.
- Exclusive territory, promising falsely. *See* Offering deceptive, etc.
- Expansion plan, credit, misrepresenting to prospect. *See* Offering deceptive, etc.
- Extension university, representing falsely or misleadingly as, by correspondence school. *See* Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.
- Facilities, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Failing to disclose, deceptively, as old, product of old composition, or new appearance, as old. *See* Misrepresenting product, etc.
- Federal Trade Commission:
- Claiming approval of falsely. *See* Claiming or using, etc.; Misrepresenting product, etc.
 - Representing falsely conformance to standards of. *See* Advertising falsely, etc.; Offering deceptive, etc.
- Foreign:
- Branches, claiming falsely. *See* Misbranding or mislabeling; Misrepresenting business status, etc.
 - Government connection, claiming falsely. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
 - Origin, claiming falsely through depictions. *See* Advertising falsely, etc.
- Formula, using price, as price fixing basis. *See* Combining or conspiring.
- Free product, misrepresenting as to. *See* Advertising falsely, etc.; Offering deceptive, etc.
- Government:
- Claiming connection, sponsorship or approval of, falsely. *See* Advertising falsely, etc.; Claiming or using, etc.; Misbranding or mislabeling.
 - Construction, limiting direct purchase for, to control and limit retail distribution and practice. *See* Combining or conspiring.
 - Indorsement or approval, misrepresenting. *See* Claiming or using, etc.; Misbranding or mislabeling; Misrepresenting product, etc.
 - Purchasing, limiting direct, to control and limit retail distribution and practice. *See* Combining or conspiring.
- Grower, dealer representing self falsely as. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Guarantees, misrepresenting as to. *See* Misrepresenting product, etc.; Offering deceptive, etc.
- "Gyp" equipment, accusing competitors of using. *See* Advertising falsely, etc.; Disparaging, etc.
- Harmlessness of product, misrepresenting as to. *See* Advertising falsely, etc.

DESIST ORDERS

History of product, misrepresenting as to. <i>See Advertising falsely, etc.; Assuming or using, etc.; Using misleading trade name, etc.</i>	
Identity, misrepresenting as to, of branch or affiliated business. <i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>	
Imported, representing domestic product falsely as. <i>See Misbranding or mislabeling.</i>	
Importer, dealer representing self falsely as. <i>See Advertising falsely, etc.; Misrepresenting business status, etc.</i>	
Imprint, making trade association's basis of coerced and induced price fixing, enhancement and discrimination. <i>See Combining or conspiring; Discriminating in price.</i>	
Indorsements, claiming or using, falsely or misleadingly. <i>See Advertising falsely, etc.; Claiming indorsements, etc.</i>	
Infringement suits, threatening competitors with, to restrain trade improperly. <i>See Coercing and intimidating; Combining or conspiring.</i>	
Instalment privilege, holding out falsely. <i>See Offering deceptive, etc.</i>	
Interest in product offered, misrepresenting. <i>See Misrepresenting business status, etc.</i>	
Intimidating. <i>See Coercing and intimidating.</i>	
Invoices, accounting audits and checks of members', etc., to restrain competition. <i>See Combining or conspiring.</i>	
Jobber prices, fixing uniform. <i>See Combining or conspiring.</i>	
Jobs, misrepresenting as to. <i>See Advertising falsely, etc.</i>	
Labels:	
Competitors', simulating. <i>See Simulating.</i>	
Supplying misleading. <i>See Aiding, etc.</i>	
Using falsely or misleadingly. <i>See Misbranding or mislabeling.</i>	
Laboratory, claiming falsely to own and operate. <i>See Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.</i>	
Limited offers, misrepresenting as to. <i>See Advertising falsely, etc.; Offering deceptive, etc.</i>	
Limiting, concertedly, purchasing to product's dominant exchange for purchase and sale, to control output and enhance prices. <i>See Combining or conspiring.</i>	
Local:	
Indorsement, holding out falsely. <i>See Claiming or using, etc.; Misrepresenting product, etc.</i>	
Representation, holding out falsely. <i>See Misrepresenting business status, etc.</i>	
Lottery or chance merchandising devices, selling. <i>See Aiding, abetting, etc.</i>	
Lottery schemes in merchandising, using. <i>See Using lottery, etc.</i>	
Made-to-order, misrepresenting ready-made, as. <i>See Misrepresenting product, etc.</i>	
Maintaining resale prices -----	Page 581
Through—	
Fixing resale prices for non-member retailers, and inducing, coercing and compelling observance thereof -----	824
Maker of product, misrepresenting as to. <i>See Advertising falsely, etc.; Misbranding or mislabeling.</i>	

DESIST ORDERS

Manufacture of product, nature of, misrepresenting as to. *See* Advertising falsely, etc.; Misbranding or mislabeling; Misrepresenting product, etc.

Manufacturer, dealer representing self falsely as. *See* Advertising falsely, etc.; Misrepresenting business status, etc.

Market, cutting off competitors' access to. *See* Cutting off competitors' access, etc.

Misbranding or mislabeling:

As to—

	Page
"Certification"—	
Government or official.....	441
Composition.....	42, 441, 911, 1013, 1052, 1147, 1186
Through depictions.....	42
Dealer being—	
Distiller.....	960
Manufacturer.....	614, 852, 1013
Dealer owning or operating laboratory.....	1013
Domestic product being imported.....	1, 59, 799, 806, 1086
Foreign branches.....	59
Government—	
Certification.....	441
Connection or sponsorship.....	107
History of product.....	930, 1013, 1147
Individual being president of corporation.....	1013
Indorsement, sponsorship or approval—	
"Colonial Dames".....	1260
Doctors.....	1013
Location.....	23
Nature of—	
Manufacture of product.....	713, 930
Product.....	1, 859, 1013
Prices.....	68, 360, 682, 1036, 1086, 1153
Proprietorship being corporation.....	1013
Qualities, properties or results of product or service.....	1, 441, 690, 1013, 1147
Quality.....	68, 713
Quantity.....	23
Rectifier being distiller.....	97, 374, 1246
Safety of product.....	614, 1013
Scientific or relevant facts.....	1147
Source or origin of product—	
Maker.....	30, 859, 1260
Place.....	1, 23, 59, 799, 806, 859, 1086
Through depiction.....	1
Standards conformance.....	614
Success, use or standing of product.....	690
Misrepresenting business status, advantages or connections:	
As to—	
Buildings or plant.....	1234
Through depictions.....	1234
Commercial organization as professional or business sorority.....	635

DESIST ORDERS

Misrepresenting business status, advantages or connections—Continued.

As to—Continued.	Page
Connections and affiliations.....	1138
Connection with—	
American Birth Control League.....	814
American Medical Association.....	814
Consultant advisory board.....	1234
Correspondence school being university or extension university....	1277
Correspondence school operating—	
Employment agency.....	1138
Laboratory.....	1138
Credit rating.....	720
Dealer being—	
Broker.....	767
Distiller.....	960
Grower—	
Through depictions.....	78
Importer.....	877
Manufacturer.....	284, 323,
384, 394, 614, 720, 852, 877, 1013, 1058, 1086, 1095, 1193	
Manufacturing agent.....	30
Tailor.....	777
Dealer owning or operating laboratory.....	814, 1013, 1179, 1234
By depictions.....	1234
Foreign and western branches or offices.....	59, 877
Government connection—	
Foreign.....	701
Identity of branch or affiliated business.....	953
Individual being president of corporation.....	1013
Local representation in contemplation.....	233
Location.....	23
Manufacturer being maker of all products dealt in.....	87
Personnel and staff.....	1234
Private business being cooperative.....	877
Proprietorship being corporation.....	1013
Rectifier being distiller.....	97, 374, 1246
Seller being—	
Doctor.....	690
Employer.....	720, 1138
Technician and scientist.....	1234
Size and facilities, operations or departments.....	1138, 1234
Stock—	
Bankrupt and distress bargains.....	767
Turnover and quality.....	284
Success or standing.....	1234
Testing and scientific laboratory, personnel and operations....	1209, 1234
True interest in product offered.....	720
Unique nature or situation.....	1193, 1234
Misrepresenting prices:	
As to—	
Coverage or merchandise included.....	233, 939
Exaggerated fictitious being regular.....	68,
360, 632, 767, 877, 939, 1027, 1036, 1086, 1158	

DESIST ORDERS

Misrepresenting prices—Continued.	
As to—Continued.	Page
Nature, as being cost.....	877
Regular being special reduced.....	939
Misrepresenting product or service. <i>See also</i> Offering deceptive, etc.	
As to—	
Certification.....	574
Commission standards conformance.....	574
Composition.....	233
Earnings.....	720
Government—	
Guarantees.....	441
Use.....	441
Indorsements or approval—	
Commission.....	574
Community's well-known men.....	233
Government.....	441
Local bankers and businessmen.....	1223
Nature.....	635
Manufacture.....	284, 777
Ready-made as made-to-order.....	233
Old, made-over, second-hand, or obsolete being new.....	760, 939
Opportunities in.....	720, 1223
Qualities, properties or results.....	635
Quality.....	284
Ready-made as made-to-order.....	777
Services.....	939
Source or origin—	
Maker.....	284
Success, use or standing.....	720, 1223, 1234
Monopoly, acting in concert in pursuance of. <i>See</i> Combining or conspiring.	
Names, using unfairly, in general. <i>See</i> Advertising falsely, etc.; Assuming or using, etc.; Misbranding or mislabeling; Misrepresenting business status, etc.; and, <i>in general</i> , Unfair methods of competition, etc.	
Nationally known products:	
Offering at below market prices, to injure and deceive. <i>See</i> Offering deceptive, etc.	
Representing own falsely as equivalent of. <i>See</i> Advertising falsely, etc.	
Nature of product or manufacture thereof, misrepresenting as to. <i>See</i> Advertising falsely, etc.; Misbranding or mislabeling; Misrepresenting product, etc.; Using misleading trade name, etc.	
New, falsely representing old or obsolete product as. <i>See</i> Advertising falsely, etc.; Misrepresenting product, etc.	
Obsolete or old product, representing as new or up-to-date. <i>See</i> Advertising falsely, etc.; Misrepresenting product, etc.	

DESIST ORDERS

Offering deceptive inducements to purchase:

See also Misrepresenting prices, and, in general, Unfair methods of competition, etc.

Through—

	Page
Representing or offering, falsely or misleadingly—	
“Bankrupt” or “distress” stock as bargain.....	767
Coupon value in merchandising deals.....	1027
Federal Trade Commission certificates of conformance.....	895
Free product or service.....	635
Conditioned on certain purchasing.....	284
Paid for in money or service.....	328, 410, 1095
Price of which included in charge otherwise demanded....	877,
	939, 1027
Guarantees.....	284, 441, 574, 720, 767
Jobs and employment.....	1138
Nationally-known, not stocked, products of sale-refusing manufacturers, at below market prices, to injure and deceive.....	877
New product as repossessed.....	1158
Own writings, obligations or receipts as official U. S. Bonded Warehouse.....	97
Regular prices as special reduced.....	939
Sample, order or offer conformance.....	233, 284, 777, 877
Special or limited offers or selection.....	233, 877, 1036, 1138
On pretext—	
Introductory and advertising.....	233
Prospect's special standing or selection.....	939
Terms and conditions—	
Additional product—	
Preconditioned on certain purchasing.....	284
Without extra charge.....	233
Cash and selling requirements.....	1223
Credit expansion plan.....	720
Dealer assistance.....	720
Deferred payment.....	1138
Delivery, for inspection, etc.....	233
Exchanges and charges.....	284
Exclusive territory.....	720, 1223
Guarantee bond.....	720
Instalment payment privilege.....	233
Postage on C. O. D. shipments.....	284
Repurchase or reimbursement.....	720
Selling assistance.....	1223
Shipping charges absorbed.....	233
Special price plan.....	1223
Undertakings, in general.....	635, 1138

DESIST ORDERS

- Offers, selling by, not conformed to. *See* Offering deceptive, etc.
- Old or obsolete product, representing as new or up-to-date. *See* Advertising falsely, etc.; Misrepresenting product, etc.
- Operations, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Opportunities in product, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting product, etc.
- Orders, selling by, not conformed to. *See* Offering deceptive, etc.
- Origin of product, misrepresenting as to. *See* Advertising falsely, etc.; Assuming or using, etc.; Misbranding or mislabeling; Misrepresenting product, etc.
- Output, limiting, concerted, to enhance prices. *See* Combining or conspiring.
- Passing off. *See* Simulating, and, *in general*, Unfair methods of competition, etc.
- Patented part, using minor, to cover price fixing license agreements or action. *See* Coercing and intimidating; Combining or conspiring.
- Patented products, offering well-known at below market prices, to injure and deceive. *See* Offering deceptive, etc.
- Patronage, withdrawing or threatening to withdraw, to control and limit retail distribution and practice. *See* Combining or conspiring.
- Personnel, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Plant, misrepresenting size, ownership or operation of. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Pool car shipments, limiting to "recognized" dealers, to control and limit retail distribution and practice. *See* Combining or conspiring.
- Postage, misrepresenting as to. *See* Offering deceptive, etc.
- Price formula, using, as price fixing basis. *See* Combining or conspiring.
- Prices:
- Combining to control. *See* Combining or conspiring.
 - Discriminating in. *See* Discriminating in price, etc.
 - Fixing uniform. *See* Combining or conspiring.
 - Misrepresenting as to. *See* Advertising falsely, etc.; Misbranding or mislabeling; Misrepresenting prices.
- Processing quotas, fixing, for members, to fix prices and hinder competition. *See* Combining or conspiring.
- Profits or earnings of product, misrepresenting as to. *See* Misrepresenting product, etc.
- Public construction, limiting direct purchase for, to control and limit retail distribution and practice. *See* Combining or conspiring.
- Public purchasing, limiting direct, to control and limit retail distribution and practice. *See* Combining or conspiring.
- Qualities of product, misrepresenting as to. *See* Advertising falsely, etc.; Misbranding or mislabeling; Using misleading, etc.
- Quality of product, misrepresenting as to. *See* Advertising falsely, etc.; Misbranding or mislabeling.
- Quotas, processing, fixing for members, to fix prices and hinder competition. *See* Combining or conspiring.
- Rackets or racketeers, characterizing competitors falsely as. *See* Advertising falsely, etc.; Disparaging, etc.

DESIST ORDERS

- Railroads, limiting distribution to, to control and limit retail distribution and practice. *See* Combining or conspiring.
- Ready-made, misrepresenting as made-to-order. *See* Misrepresenting product, etc.
- Rebates, coercing, concertedly, withholding of, by manufacturers and wholesalers. *See* Coercing and intimidating; Combining or conspiring.
- Records, accounting audits and checks of members', etc. *See* Combining or conspiring.
- Rectifier representing self falsely as distiller. *See* Advertising falsely, etc.; Assuming or using, etc.; Misbranding or mislabeling; Misrepresenting business status, etc.
- Refunds, coercing, concertedly, withholding of, by manufacturers and wholesalers. *See* Coercing and intimidating; Combining or conspiring.
- Refusing, concertedly, to buy or sell in or through product's dominant exchange for purchase and sale, to limit output and enhance prices. *See* Combining or conspiring.
- Repossessed, offering new product as. *See* Advertising falsely, etc.; Offering deceptive, etc.
- Representatives or agents, securing falsely or misleadingly. *See* Advertising falsely, etc.; Securing agents, etc.
- Resale price schedules, fixing uniform. *See* Combining or conspiring.
- Resale prices, fixing coercively and concertedly. *See* Coercing and intimidating; Combining or conspiring.
- Retail distribution and practice, combining to control. *See* Combining or conspiring.
- Retail prices, fixing uniform. *See* Combining or conspiring.
- Royalties, coercing, concertedly, withholding of, by manufacturers and wholesalers. *See* Coercing and intimidating; Combining or conspiring.
- Safety of product:
 - Misrepresenting as to. *See* Advertising falsely, etc.
 - Misrepresenting as to, of competitors. *See* Advertising falsely, etc.; Disparaging, etc.
- Samples, selling by, not conformed to. *See* Offering deceptive, etc.
- Scientific or relevant facts, misrepresenting as to. *See* Advertising falsely, etc.
- "Seals of Approval", using improperly and misleadingly in offer and sale of product as scientifically tested, etc. *See* Advertising falsely, etc.; Aiding, etc.; Misrepresenting business status, etc.
- Securing agents or representatives falsely or misleadingly:

	Page
Through misrepresenting—	
Composition of product.....	1095
Earnings or profits.....	410, 1209
Opportunities in product.....	1223
Qualities of product.....	1095
Success, use of standing of product or seller.....	1223
Terms and conditions—	
Cash and selling requirements.....	1223
Exclusive territory.....	1223
Free sample outfits.....	1095
Selling assistance.....	1223
Special price plan.....	1223

DESIST ORDERS

- Seller, representing self falsely as employer. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Shipping charge absorption, holding out falsely. *See* Offering deceptive, etc.
- Simulating:
- Cartons, labels, slogans, etc. of competitor.....
 - Products of competitors.....
 - Trade names of competitors' products.....
- Size, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Slogans of competitor, simulating. *See* Simulating.
- Sorority, representing commercial organization falsely as professional or business. *See* Misrepresenting business status, etc.
- Source of product, misrepresenting as to. *See* Advertising falsely, etc.; Misbranding or mislabeling.
- Specialists, claiming indorsements or approval of, falsely. *See* Advertising falsely, etc.; Claiming or using, etc.
- Special offers, misrepresenting as to. *See* Advertising falsely, etc.; Offering deceptive, etc.
- Staff, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Standing of product, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting product, etc.
- Stock, bankrupt or distress, offering falsely as. *See* Advertising falsely, etc.; Misrepresenting business status, etc.; Offering deceptive, etc.
- Stock turn-over and quality, misrepresenting as to. *See* Misrepresenting business status, etc.
- Substituting products on order. *See* Offering deceptive, etc.
- Success of product, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting product, etc.
- Supplies, cutting off, to limit output and enhance prices. *See* Combining or conspiring.
- Tags, supplying misleading. *See* Aiding, etc.
- Tailor, dealer representing self falsely as. *See* Misrepresenting business status, etc.
- Terms and conditions, misrepresenting as to. *See* Offering deceptive, etc.
- Territory, exclusive, promising falsely. *See* Offering deceptive, etc.
- Testimonials, claiming or using falsely or misleadingly. *See* Claiming or using, etc.
- Tests, using improperly and misleadingly in offer and sale of product as scientifically tested. *See* Advertising falsely, etc.; Aiding, etc.; Misrepresenting business status, etc.
- Threatening, falsely, infringement suits to restrain trade and competition. *See* Coercing and intimidating; Combining or conspiring.
- Trade association:
- Concerted action of, to fix prices or monopolize market. *See* Combining or conspiring.
 - Control of product imprint or emblem as basis for concerted, coerced and induced price fixing, enhancement and discrimination. *See* Combining or conspiring; Discriminating in price.
- Trade coupons, misrepresenting value in merchandising deals. *See* Advertising falsely, etc.; Offering deceptive, etc.

DESIST ORDERS

- "Trade-ins", accusing competitors of fake. *See* Advertising falsely, etc.;
 Disparaging, etc.
- Trade-marked products, well-known:
 Offering at below market prices, to injure and deceive. *See* Offering
 deceptive, etc.
- Representing own falsely as equivalent of. *See* Advertising falsely,
 etc.
- Trade mark imprint, making trade association's basis of coerced and in-
 duced price fixing, enhancement and discrimination. *See* Combining or
 conspiring; Discriminating in price.
- Trade names, appropriating or simulating, of products of competitors.
See Appropriating, etc.; Simulating.
- Trade or corporate names, using misleading. *See* Assuming or using, etc.;
- Using misleading trade, etc.
- Unfair methods of competition condemned in this volume. *See*—
 Advertising falsely or misleadingly.
- Aiding, assisting or abetting misrepresentation or unfair act or prac-
 tice.
- Appropriating trade names of products of competitors.
- Assuming or using misleading trade or corporate name.
- Boycotting.
- Claiming or using indorsements or testimonials falsely or misleadingly.
- Coercing and intimidating.
- Combining or conspiring.
- Cutting off competitors' access to customers or market.
- Cutting off competitors' sources of supply.
- Discriminating in price.
- Disparaging or misrepresenting competitors or their products.
- Maintaining resale prices.
- Misbranding or mislabeling.
- Misrepresenting business status, advantages or connections.
- Misrepresenting prices.
- Misrepresenting product or service.
- Offering deceptive inducements to purchase.
- Securing agents or representatives falsely or misleadingly.
- Simulating.
- Using misleading trade name, mark or brand.
- Using or selling lottery scheme or device in merchandising.
- Unique nature or advantages, claiming falsely for product. *See* Advertis-
 ing falsely, etc.
- United States Bonded Warehouse Receipts, falsely representing own writ-
 ings, obligations or receipts as official. *See* Offering deceptive, etc.
- United States connection, etc., in general. *See* Government.
- University, representing self falsely or misleadingly as, by correspondence
 school. *See* Advertising falsely, etc.; Assuming or using, etc.; Misrep-
 resenting business status, etc.

STIPULATIONS

- Up-to-date, falsely representing old or obsolete product as. *See Advertising falsely, etc.; Misrepresenting product, etc.*
- Use of product, misrepresenting as to. *See Advertising falsely, etc.; Misrepresenting product, etc.*
- Using misleading trade name, mark or brand:
- | As to— | Page ¹ |
|--|---|
| Composition of product..... | 930 |
| History of product..... | 1 |
| Indorsement, sponsorship or approval— | |
| "Colonial Dames"..... | 1260 |
| Nature of product..... | 1, 87, 930 |
| Qualities, properties or results of product..... | 1, 1147 |
| Source or origin of product— | |
| Maker..... | 263, 877, 1260 |
| Using or selling lottery scheme or device in merchandising: <i>See also, Aiding, etc.</i> | 15, 30, 122, 255, 272, 328, 344, 352, 384, 402, 410, 432, 449, 467, 477, 515, 524, 534, 555, 565, 583, 624, 656, 786, 869, 922, 994, 1005, 1045, 1058, 1077, 1118 |
| Warehouse receipts, U. S. bonded, falsely representing own writings, obligations or receipts as. <i>See Offering deceptive, etc.</i> | |
| Well-known men, claiming falsely indorsement of, in prospect's community. <i>See Claiming or using, etc.; Misrepresenting product, etc.</i> | |
| Well-known products: | |
| Offering at below market prices, to injure and deceive. <i>See Offering deceptive, etc.</i> | |
| Representing own falsely as equivalent of. <i>See Advertising falsely, etc.</i> | |
| "White lists", circulating, to control and limit retail distribution and practice. <i>See Combining or conspiring.</i> | |
| Withdrawal of patronage, to control and limit retail distribution and practice. <i>See Combining or conspiring.</i> | |
| Withholding, concertedly, supplies from product's dominant exchange for purchase and sale, to limit output and enhance prices. <i>See Combining or conspiring.</i> | |

STIPULATIONS ¹

Advertising falsely or misleadingly:

As to—

Agents or representatives—

Earnings or profits.....	1334 (2149), 1341, 1385, 1401 (0551), 1403 (02006), 1416, 1422 (02035), 1424, 1427, 1435, 1436 (02053), 1446 (02070), 1447 (02072), 1461, 1465 (02098), 1467, 1487 (02132), 1488
Opportunities.....	1403 (02006), 1432 (02049), 1447 (02072), 1467, 1481, 1488, 1490
Terms and conditions.....	1393 (01991), 1409, 1416, 1424, 1432 (02049), 1436 (02053), 1446 (02070), 1467, 1487 (02132), 1488

¹ Page references to stipulations of the special board are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number of the stipulation, e. g., "01", "02", etc.

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

	Page
Ailments, generally-----	1340 (2161),
1347 (2172), 1370 (01954), 1380 (01971), 1381 (01974), 1383,	
1385, 1392 (01988), 1394 (01992), 1400 (02001), 1406, 1408, 1410	
(02015), 1411, 1415 (02022), 1421 (02032), 1423 (02036, 02037),	
1425 (02040), 1433, 1437 (0332), 1443, 1453 (02080), 1455 (02086),	
1458, 1460 (02093), 1462, 1463, 1465 (02099), 1472, 1475 (02109),	
1477 (0341), 1482 (02119), 1483 (02121, 02123), 1484 (02124),	
1487 (02131), 1491 (02138), 1492 (02140)	
Business status, advantages or connections—	
Agencies-----	1374
Board of consulting engineers-----	1309 (2104)
Branch and foreign offices-----	1368
Buildings or plant-----	1361
By depiction-----	1361
Buying power-----	1432 (02049)
Connections, generally-----	1480 (0823)
Dealer being—	
Factory distributor-----	1362
Growers' raw material association-----	1354
Importer-----	1415 (02019), 1419 (02028), 1461
Laboratory group to test, approve or certify-----	1309 (2104)
Manufacturer-----	1317 (2116),
1319 (2121), 1325 (2131), 1334 (2149), 1336 (2153), 1338	
(2156), 1342, 1355 (2183), 1359 (2191), 1373 (01960), 1397	
(01997), 1461, 1465 (02098)	
Research maintenance organization or "Foundation"--	1309
(2104), 1373 (01961)	
Smelting concern-----	1337 (2155)
Dealer owning or operating—	
Foreign mills-----	1359 (2191)
Laboratories-----	1341,
1347 (2172), 1377 (01966, 01967), 1380 (01972), 1383, 1390	
(01983), 1392 (01988), 1403 (02007), 1436 (02054), 1438,	
1450 (02076), 1455 (02085), 1459, 1467, 1472, 1474	
Medical clinic-----	1384
Direct dealing savings-----	1325 (2131)
Factory representative-----	1461
Foreign branches-----	1438
History-----	1309 (2104), 1337 (2154), 1354,
1393, 1410 (02015), 1411, 1436 (02052), 1471 (02105), 1490	
Identity-----	1354
Individual being corporation-----	1389 (01982), 1459, 1480 (0823)
Manufacturer being manufacturer of all products dealt in--	1445
(02068)	
Marketing arrangements for customers of seller-----	1397 (01997)
Nature of product or business-----	1309 (2104), 1354
Operations-----	1361

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Business status, advantages or connections—Continued.		Page
Personnel, staff or associates.....	1309 (2104), 1328 (2138), 1329 (2140), 1330 (2141), 1410 (02015), 1411, 1429	
Private business being—		
College.....		1361
"Standard" Institute.....		1429
Qualifications.....		1463
Seller being employer.....	1322 (2125), 1397 (01997)	
Size.....		1411
Success or standing.....	1361, 1480 (0823)	
Unique nature, qualifications or situation.....	1337 (2154), 1340 (2161), 1361, 1379, 1399, (01999), 1424, 1438 (02052), 1490	
Certificate or seal of approval.....		1435, 1449
Certification of product.....	1394 (01993), 1398	
Commission proceedings.....		1310
Comparative—		
Costs or statistics.....		1312 (2107)
Merits.....		1412, 1415 (02021), 1416, 1422 (02035), 1425 (02039), 1427, 1430 (02045), 1440 (02059), 1441 (02062), 1442 (02063), 1447 (02072), 1449, 1457, 1470 (02103), 1475 (02109), 1480 (02117), 1482 (02119, 02120), 1489 (02134)
Competitors or their products.....	1310, 1312 (2107), 1337 (2154), 1388 (01980), 1389 (01982), 1391 (01986), 1412, 1415 (02021), 1416, 1420 (02030), 1422 (02035), 1425 (02039), 1427, 1429, 1430 (02045), 1433, 1440 (02059), 1441 (02062), 1442 (02063), 1447 (02072), 1449, 1457, 1475 (02109), 1480 (02117), 1482 (02119, 02120), 1489 (02134)	
Composition of product.....	1309 (2103), 1311, 1319 (2122), 1322 (2126), 1335 (2150), 1341, 1342, 1343 (2165), 1344 (2166, 2167), 1346, 1347 (2172), 1352 (2176, 2178), 1353 (2180), 1363 (2196, 2197), 1365, 1366 (2200, 2201), 1371, 1374, 1378 (01965), 1377 (01967), 1383, 1384, 1385, 1389 (01981), 1390 (01983), 1392 (01988), 1394 (01993), 1400 (02002), 1401 (02004), 1403 (02007), 1409, 1412, 1415 (02020), 1418, 1420 (02030), 1421 (02031, 02033), 1422 (02034), 1423 (02036), 1426, 1430 (02045, 02046), 1431, 1432 (02049), 1438, 1439 (02058), 1447 (02072), 1454 (02082, 02084), 1455 (02086), 1458, 1457, 1460 (02092), 1462, 1468, 1470 (02103), 1474, 1475 (02111), 1478 (02114), 1485 (02129), 1488, 1489 (02135)	
Coupon values.....		1313 (2110)
Direct dealing savings.....		1325 (2131)
"Direct to you" selling.....	1445 (02068), 1461, 1465 (02098)	
Domestic product being imported.....	1317 (2118), 1332 (2145), 1366 (2202), 1378, 1415 (02020), 1419 (02028), 1421 (02033), 1462	
By depiction.....		1366 (2202)
Earnings or profits.....	1315 (2113), 1329 (2139), 1334 (2149), 1341, 1369 (01953), 1385, 1388 (01979), 1397 (01997), 1400 (0551), 1404, 1416, 1422 (02035), 1424, 1427, 1429, 1435, 1440 (02060), 1446 (02070), 1447 (02072), 1449, 1461, 1465 (02098), 1467, 1480 (0823), 1487 (02132), 1488	

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Federal Trade Commission proceedings. See Commission proceedings *supra*.

Free—	Page
Materials or supplies.....	1404
Product...1370 (01955), 1371, 1373 (01959), 1339 (01981), 1390 (01983), 1436 (02053), 1462, 1465 (02098), 1439 (02135)	
Price of which included in charges or services otherwise demanded...1313 (2110), 1318, 1321, 1334 (2148), 1382, 1385, 1388 (01979), 1393 (01991), 1397 (01997), 1400 (02002), 1403 (02006), 1416, 1421 (02033), 1432 (02049), 1436 (02053), 1438, 1443, (02066), 1446 (02070), 1447 (02072), 1461, 1467, 1487 (02132), 1488, 1490, 1491 (02139), 1492 (02141)	
Sales outfit.....	1409
Tests.....	1436 (02054)
Trial offer.....	1435, 1450 (02077)
"From factory to you".....	1325 (2131)
Government—	
Approval.....	1442 (02063), 1490, 1492 (02141)
Public Works Administration.....	1429
Jobs and employment.....	1361
Representations.....	1488
Standards conformance.....	1409, 1460 (02093)
Use.....	1437 (02055)
Guarantees, adjustments, refunds or reimbursements... 1359 (2192), 1370 (01955), 1371, 1373 (01961), 1376 (01964), 1382, 1383, 1397, (01997), 1400 (02001), 1401 (02004), 1402, 1404, 1407, 1414, 1416, 1421 (02032), 1423 (02037), 1424, 1427, 1430 (02045), 1432 (02049), 1433, 1435, 1440 (02059), 1442, (02064), 1446 (02070), 1447 (02072), 1449, 1450 (02077), 1453 (02080), 1462, 1465 (02098), 1472, 1478 (02115), 1479, 1486, 1487	
History of product.... 1328 (2138), 1330 (2141), 1341, 1343 (2164), 1347 (2172), 1356 (2186), 1373 (01961), 1376 (01965), 1377 (01967), 1380 (01971), 1381 (01973, 01974), 1383, 1385, 1391 (01987), 1393 (01991), 1403 (02006, 02007), 1410 (02015), 1411, 1417 (02025), 1430 (02045), 1431, 1433, 1436 (02054), 1439 (02058), 1442 (02064), 1446 (02069), 1449, 1450 (02075, 02077), 1451, 1454 (02082, 02084), 1456, 1459, 1462, 1464, 1466, 1472, 1474, 1475 (02109). 1476, 1481, 1485 (02127), 1490, 1492 (02140, 02141)	
Individual attention.....	1333 (2146)
Indorsements or approval—	
American Medical Association.....	1457, 1491 (01034)
"Automotive Test Laboratories of America".....	1422 (02035), 1435, 1449
Barbers.....	1421 (02032)
Beauticians.....	1369 (01952), 1421 (02032)
British royal family.....	1313 (2109)
By depictions.....	1313 (2109)

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

Indorsements or approval—Continued.

	Page
Chemists.....	1378
Dental profession..... 1391 (01987), 1439 (02058)	
Dermatologists.....	1376 (01965)
Druggists.....	1378, 1421 (02032)
Foreign governments.....	1368
Government or government officials.... 1419 (02028), 1442 (02063), 1490, 1492 (02141)	
Hospitals.....	1478 (02115)
Medical profession.... 1371, 1378, 1397 (01996), 1419 (02028), 1454 (02084), 1456, 1465 (02099), 1470 (02104), 1472, 1474	
National Home Study Council.....	1370 (01955)
Nurses.....	1371, 1397 (01996)
Poultrymen.....	1412
President.....	1419 (02028)
Public Works Administration.....	1429
Science Institute.....	1398
Specialists.....	1378
Users, in general.....	1401 (02004)
Insurance savings.....	1312 (2107)
Jobs or employment.....	1322 (2125), 1361, 1370 (01955), 1397 (01997), 1429, 1480 (0823)
Nature of—	
Manufacture or preparation of product..... 1314 (2111), 1328 (2137, 2138), 1330 (2141), 1333 (2147), 1344 (2166), 1346, 1352 (2176), 1357 (2187), 1380 (01971), 1383, 1385, 1398, 1399 (01999), 1409, 1420 (02030), 1425 (02039), 1460 (02092), 1461, 1470 (02103), 1478 (02114), 1482 (02120), 1489 (02136)	
By depiction.....	1347 (2171), 1357 (2187)
Product.... 1309 (2103), 1314 (2111), 1319 (2122), 1322 (2126), 1326 (2134), 1332 (2144), 1333 (2146, 2147), 1341, 1344 (2166), 1346, 1347 (2171), 1353 (2180), 1358 (2189), 1362, 1369 (01952), 1370 (01955), 1371, 1372 (01957), 1380 (01972), 1381 (01973, 01974), 1383, 1385, 1394 (01992), 1400 (02002), 1409, 1411, 1416, 1429, 1436 (02053), 1438, 1439 (02058), 1445 (02067), 1449, 1451, 1452, 1453 (02081), 1455 (02086), 1458, 1459, 1462, 1463, 1464, 1465 (02098, 02099), 1466, 1470 (02103, 02104), 1471 (02106), 1474, 1477 (0341), 1479, 1480 (02117), 1483 (02122), 1485 (02129), 1486, 1490	
Opportunities in product or service.....	1361, 1369 (01953), 1370 (01955), 1373 (01959), 1404, 1428, 1436 (02053), 1443 (02066), 1447 (02072), 1449, 1467, 1480 (0823), 1481, 1487 (02132), 1488.
Patents.....	1449
Premiums.....	1451
Price offer—	
By depiction.....	1334 (2149)

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

	Page
Prices-----	1313
(2110), 1321, 1323 (2128), 1326 (2133), 1334 (2148), 1358 (2189), 1361, 1362, 1371, 1373 (01960), 1376 (01964), 1389 (01982), 1404, 1409, 1432 (02049), 1433, 1436 (02053), 1445 (02067), 1449, 1450 (02077), 1463, 1471 (02105), 1472, 1477 (02113), 1487 (02132), 1490, 1492 (02141)	
Public Works Administration approval-----	1429
Qualities, properties, or results of product-----	1314
(2112), 1315 (2113), 1326 (2134), 1328 (2137, 2138), 1330 (2141), 1333 (2146), 1339 (2158), 1340 (2160, 2161), 1341, 1343 (2164), 1345 (2169), 1347 (2172), 1355 (2182, 2184), 1356 (2185, 2186), 1357 (2188), 1359 (2192), 1361, 1369 (01952, 01953), 1370 (01954, 01955), 1371, 1372 (01957, 01958), 1373 (01961), 1374, 1375, 1376 (01964, 01965), 1377 (01966, 01967), 1378, 1379, 1380 (01970-01972), 1381 (01973, 01974), 1382, 1383, 1384, 1385, 1388 (01980), 1389 (01981, 01982), 1390 (01983-01985), 1391 (01986, 01987), 1392 (01988, 01989), 1393 (01990, 01991), 1394 (01992, 01993), 1395, 1396, 1397 (01996), 1398, 1399 (01999, 02000), 1400 (02001, 02002), 1401 (02003, 02004), 1402, 1403 (02007), 1405, 1406, 1407, 1408, 1409, 1410 (02014, 02015), 1411, 1412, 1414, 1415 (02020-02022), 1416, 1417 (02024, 02025), 1418, 1419 (02027, 02028), 1420 (02029, 02030), 1421 (02031, 02032), 1422 (02035), 1423 (02036, 02037), 1425 (02039, 02040), 1426, 1427, 1428, 1429, 1430 (02045, 02046), 1431, 1432 (02048, 02049), 1433, 1435, 1436, (02052, 02054), 1437 (02055, 0332), 1438, 1439 (02057, 02058), 1440 (02059), 1441 (02061, 02062), 1442 (02063, 02064), 1443 (02065, 02066), 1445 (02067, 02068), 1446 (02069, 02070), 1447 (02071, 02072), 1448, 1449, 1450 (02075-02077), 1451, 1452, 1453 (02080, 02081), 1454 (02082-02084), 1455 (02085, 02086), 1456, 1457, 1458, 1459, 1460 (02091-02093), 1462, 1463, 1464, 1465 (02099), 1466, 1467, 1469, 1470 (02103, 02104), 1471 (02106), 1472, 1474, 1475 (02109-02111), 1476, 1477 (0341, 02113), 1478 (02114, 02115), 1479, 1480 (02117, 0823), 1482 (02119, 02120), 1483 (02121-02123), 1484 (02124-02126), 1485 (02127-02129), 1486, 1487 (02131), 1488, 1489 (02134-02136), 1490, 1491 (01034, 02138), 1492 (02140, 02141)	
Quality-----	1359 (2192), 1379, 1409, 1472, 1475 (02109)
Quantity-----	1436 (02053)
Ready-made as made to order or "tailored"-----	1461
Replacements-----	1471 (02105)
Safety of product-----	1371,
1374, 1381 (01974), 1383, 1385, 1392 (01988), 1394 (01993), 1405, 1410 (02015), 1412, 1414, 1415 (02020), 1431, 1439 (02057), 1462, 1465 (02099), 1471 (02106), 1472, 1474, 1475 (02111), 1476, 1482 (02119), 1483 (02121), 1485 (02127), 1491 (02138), 1492 (02140)	
"Sample" products-----	1362, 1467
"Scholarship" offers-----	1361

STIPULATIONS

Advertising falsely or misleadingly—Continued.

As to—Continued.

	Page
Scientific or relevant facts.....	1312
(2107), 1326 (2134), 1340 (2161), 1341, 1343 (2164), 1347 (2172), 1370 (01954, 01955), 1373 (01959), 1375, 1379, 1380 (01971), 1381 (01974), 1383, 1385, 1391 (01986), 1392 (01988), 1394 (01992), 1400 (02001), 1404, 1408, 1408, 1410 (02015), 1411, 1415 (02021, 02022), 1421 (02032), 1423 (02036, 02037), 1425 (02040), 1427, 1428, 1429, 1430 (02045), 1433, 1436 (02052), 1437 (0332), 1448, 1453 (02080), 1455 (02086), 1456, 1458, 1459, 1460 (02092, 02093), 1462, 1463, 1465 (02099), 1472, 1474, 1475 (02109, 02111), 1477 (0341), 1478 (02114), 1480 (0823), 1482 (02119), 1483 (02121, 02123), 1484 (02124), 1485 (02129), 1487 (02131), 1488, 1491 (02138), 1492 (02140).	
Services rendered.....	1379, 1477 (02113)
Source or origin of product—	
Maker.....	1327 (2135), 1358 (2189), 1362, 1415 (02019), 1450 (02075)
Old as new or recent.....	1367
Place.....	1312 (2108), 1313 (2109), 1317 (2118), 1332 (2145), 1341, 1378, 1415 (02019, 02020), 1419 (02028), 1421 (02033), 1461, 1462
By depictions.....	1312 (2108), 1313 (2109), 1366 (2202)
Special, limited or introductory offers.....	1323 (2128), 1361, 1371, 1373 (01959), 1376 (01964), 1397 (01997), 1415 (02020), 1418, 1433, 1436 (02053), 1445 (02067), 1450 (02077), 1462, 1463, 1471 (02105), 1480 (0823), 1489 (02135)
Standards conformance—	
Federal Food and Drug Act.....	1383
Government.....	1409, 1460 (02093)
U. S. Pharmacopoeia.....	1371, 1462
Success, use or standing of product, in general.....	1330 (2141), 1347 (2172), 1374, 1377 (01966, 01967), 1378, 1381 (01973, 01974), 1383, 1391 (01987), 1393 (01990), 1397 (01996), 1405, 1411, 1412, 1419 (02027, 02028), 1421 (02032), 1425 (02040), 1426, 1428, 1431, 1432 (02048), 1437 (02055), 1439 (02057, 02058), 1440 (02059), 1442 (02064), 1443 (02065), 1450 (02075, 02077), 1459, 1460 (02092), 1462, 1465 (02099), 1467, 1474, 1480 (0823), 1482 (02119), 1490
American Medical Association.....	1457
Clinics.....	1384
Government.....	1437 (02055)
Hollywood stars.....	1462
Hospitals.....	1478 (02115)
Physicians.....	1472
Public Works Administration.....	1429
Terms and conditions.....	1361, 1404, 1409, 1436 (02053), 1477 (02113), 1487 (02132), 1488, 1490, 1492 (02141)
Testimonials or indorsements.....	1314 (2112), 1340 (2160), 1380 (01971), 1401 (02004), 1412

STIPULATIONS

	Page
Advertising falsely or misleadingly—Continued.	
As to—Continued.	
Tests or certification of product.....	1309 (2104), 1347 (2172), 1358 (2190), 1363 (2196), 1394 (01993), 1398, 1412, 1422 (02035), 1425 (02040), 1436 (02054), 1462, 1492 (02140)
Trade-ins.....	1492 (02141)
Type of product.....	1356 (2186)
Undertakings, in general.....	1334 (2149), 1361, 1428, 1429, 1480 (0823)
Unique nature or status of product.....	1340 (2161), 1343 (2164), 1363 (2196), 1369 (01952), 1370 (01955), 1374, 1376 (01965), 1377 (01967), 1378, 1381 (01973), 1383, 1388 (01980), 1389 (01981), 1393 (01990), 1398, 1402, 1403 (02006), 1410 (02015), 1411, 1412, 1414 (02018), 1415 (02022), 1416, 1418, 1419 (02027), 1422 (02035), 1427, 1430 (02045), 1431, 1433, 1436 (02052), 1439 (02058), 1440 (02059), 1441 (02062), 1442 (02063), 1445 (02067), 1446 (02069), 1447 (02072), 1450 (02075), 1451, 1454 (02082), 1459, 1460 (02092, 02093), 1467, 1470 (02103), 1472, 1475 (02111), 1476, 1477 (02113), 1481, 1482 (02119, 02120), 1483 (02123), 1484 (02126), 1439 (02134), 1490, 1492 (02141)
Value of product.....	1313 (2110), 1334 (2148), 1403 (02006), 1409, 1436 (02053), 1460 (02075), 1492 (02141)
World-wide purchasing.....	1461
Aiding, assisting or abetting misrepresentation or unfair act or practice:	
Through—	
Cooperating in false and misleading advertising.....	1345 (2169)
Appropriating:	
Labels of competitor's product.....	1316
Trade name, mark or label of competitor.....	1330 (2142)
Trade name of product of competitor.....	1320, 1321
Assuming or using misleading trade or corporate name:	
As to—	
Dealer being—	
Growers' raw material association.....	1354
Importer.....	1419 (02028)
Manufacturer... 1317 (2116), 1336 (2153), 1338 (2156), 1359 (2191)	
Research Foundation.....	1373 (01961)
Smelting concern.....	1337 (2155)
Dealer owning or operating—	
Laboratories.....	1341, 1377 (01966, 01967), 1380 (01972), 1383, 1392 (01988), 1403 (02007), 1436 (02054), 1438, 1455 (02085) 1459, 1467, 1474
Identity.....	1354
Nature of—	
Manufacture of product.....	1328 (2138), 1330 (2141)
Product.....	1381 (01973)
Personnel, staff or associates.....	1328 (2138), 1330 (2141)
Private business being—	
College.....	1361
"Standard" Institute.....	1429
Qualities, properties or results of product.....	1450 (02077)

STIPULATIONS

Claiming or using indorsements or testimonials falsely or misleadingly:

As to or from—	Page
American Medical Association.....	1457, 1491 (01034)
"Automotive Test Laboratories of America".....	1422 (02035), 1435, 1449
Barbers.....	1421 (02032)
Beauticians.....	1369 (01952), 1421 (02032)
British royal family.....	1313 (2109)
By depictions.....	1313 (2109)
Chemists.....	1378
Dental profession.....	1391 (01987), 1439 (02058)
Dermatologists.....	1376 (01965)
Druggists.....	1378, 1421 (02032)
Foreign governments.....	1368
Government or government officials.....	1419 (02028), 1442 (02063), 1490, 1492 (02141)
Hospitals.....	1478 (02115)
Medical profession.....	1371, 1378, 1397 (01996), 1419 (02028), 1454 (02084), 1456, 1465 (02099), 1470 (02104), 1472, 1474
National Home Study Council.....	1370 (01955)
Nurses.....	1371, 1397 (01996)
Poultrymen.....	1412
President.....	1419 (02028)
Public Works Administration.....	1429
Science Institute.....	1398
Specialists.....	1378
Underwriters' Laboratories.....	1310
Users in general.....	1314 (2112), 1340 (2160), 1380 (01971), 1401 (02004), 1412

Disparaging or misrepresenting competitors or their products:

Competitors—

As to—

Ethics or conduct.....	1429
Federal Trade Commission Act violation.....	1310
Ownership.....	1337 (2154)
Personnel or staff.....	1337 (2154)
Solvency or future.....	1310

Products—

As to—

Cost.....	1312 (2107)
History.....	1310
Prices.....	1389 (01982)
Qualities or properties.....	1310, 1312 (2107), 1340 (2161), 1388 (01980), 1391 (01986), 1412, 1415 (02021), 1416, 1420 (02030), 1422 (02036), 1425 (02039), 1427, 1430 (02045), 1433, 1440 (02059), 1441 (02062), 1442 (02063), 1447 (02072), 1449, 1457, 1470 (02103), 1475 (02109), 1480 (02117), 1482 (02119, 02120), 1489 (02134)
Quality.....	1310

STIPULATIONS

	Page
Maintaining resale prices:	
Through—	
Contracts and agreements with dealer customers.....	1360, 1364
Cutting off and taking measures to cut off supplies of price cutters.....	1360, 1364
Inducing dealer customer cooperation in reporting price cutters.....	1360, 1364
Pledging dealer customers not to sub-job or divert goods.....	1360
Refusing to sell to price cutters.....	1360, 1364
Utilizing serial numbers to identify and cut off price cutters..	1360, 1364
Misbranding or mislabeling:	
As to—	
Composition.....	1309 (2103),
1319 (2122), 1321, 1322 (2126), 1323 (2127), 1324 (2129, 2130),	
1327 (2136), 1335 (2150), 1342, 1343 (2165), 1344 (2167), 1349,	
1350, 1351, 1363 (2197), 1365, 1366 (2200, 2201)	
Dealer being—	
Importer.....	1415 (02019)
Manufacturer.....	1317 (2116), 1342
Dealer owning or operating—	
Laboratories.....	1341
Domestic product being imported.....	1323 (2127),
1332 (2145), 1366 (2202)	
By depiction.....	1366 (2202)
Government specifications conformance.....	1335 (2151)
History of product.....	1343 (2164)
Indorsements or approval—	
Underwriters' laboratories.....	1310
Nature of—	
Manufacture of product.....	1315 (2114),
1325 (2132), 1347 (2171), 1357 (2187)	
By depictions.....	1347 (2171), 1357 (2187)
Product.....	1309 (2103),
1319 (2122), 1321, 1322 (2126), 1324 (2129), 1325 (2132), 1347	
(2171), 1349, 1352 (2177), 1357 (2188), 1358 (2190)	
Prices.....	1313 (2110), 1319 (2120)
Qualities.....	1315 (2114),
1324 (2130), 1339 (2158), 1343 (2164), 1357 (2188)	
Scientific or relevant facts.....	1343 (2164)
Source or origin of product—	
Maker.....	1316, 1320, 1321, 1327 (2135), 1330 (2142)
By depictions.....	1330 (2142)
Place... 1312 (2108), 1323 (2127), 1332 (2145), 1351, 1366 (2202)	
By depictions.....	1312 (2108), 1366 (2202)
Tests.....	1358 (2190)
Trade mark registration.....	1316
Unique nature or status of product.....	1343 (2164)

STIPULATIONS

Misrepresenting business status, advantages or connections:

As to—	Page
Agencies.....	1374
Board of consulting engineers.....	1309 (2104)
Branch and foreign offices.....	1368
Buildings or plant.....	1361
By depiction.....	1361
Buying power.....	1432 (02049)
Connections, generally.....	1480 (0823)
Dealer being—	
Factory distributor.....	1362
Growers' raw material association.....	1354
Importer.....	1415 (02019), 1419 (02028), 1461
Laboratory group to test, approve or certify.....	1309 (2104)
Manufacturer.....	1317 (2116),
1319 (2121), 1325 (2131), 1334 (2149), 1336 (2153), 1338 (2156),	
1342, 1354, 1355 (2183), 1359 (2191), 1373 (01960), 1397 (01997),	
1461, 1465 (02098)	
Research maintenance organization or "Foundation".....	1309
(2104), 1373 (01961)	
Smelting concern.....	1337 (2155)
Dealer owning or operating—	
Foreign mills.....	1359 (2191)
Laboratories.....	1341,
1347 (2172), 1377 (01966, 01967), 1380 (01972), 1383, 1390	
(01983), 1392 (01988), 1403 (02007), 1436 (02054), 1438, 1450	
(02076), 1455 (02085), 1459, 1467, 1472, 1474	
Medical clinic.....	1334
Direct dealing savings.....	1325 (2131)
Factory representative.....	1461
Foreign branches.....	1438
History.....	1309 (2104), 1337 (2154), 1354, 1398, 1410 (02015), 1411,
1436 (02052), 1471 (02105), 1490	
Identity.....	1354
Individual being corporation.....	1389 (01982), 1459, 1480 (0823)
Manufacturer being manufacturer of all products dealt in.....	1445 (02068)
Marketing arrangements for customers of seller.....	1397 (01997)
Operations.....	1361
Personnel, staff or associates.....	1309 (2104),
1329 (2140), 1330 (2141), 1410 (02015), 1411, 1429	
Private business being—	
College.....	1361
"Standard" Institute.....	1429
Qualifications.....	1463
Seller being employer.....	1322 (2125), 1397 (01997)
Size.....	1411
Success or standing.....	1361, 1480 (0823)
Unique nature or status of product.....	1340 (2161),
1361, 1379, 1424, 1436 (02052), 1490	
Unique qualifications, status or situation.....	1337 (2154), 1399 (01999)
World wide purchasing.....	1461

STIPULATIONS

Misrepresenting prices:

As to—

Page

Being low and bargains.....	1432 (02049)
Competitive disadvantage.....	1339 (01982)
Coverage or additional charges not included, or additional equip- ment required.....	1361, 1436 (02053), 1449, 1477 (02113)
Dealer's being factory.....	1362, 1373 (01960)
Exaggerated fictitious being regular or usual.....	1313 (2110), 1319 (2120), 1321, 1323 (2128), 1326 (2133), 1334 (2148), 1358 (2189), 1409, 1436 (02053)
Price offer—	
By depictions.....	1334 (2149)
Prices and opportunities to seller customers.....	1404
Prices being special or half.....	1371
Regular being special reduced.....	1323 (2128), 1415 (02020), 1433, 1445 (02067), 1450 (02077), 1463, 1471 (02105), 1472
Savings carried.....	1487 (02132)
Seller's being lowest.....	1490
Trade-in allowances.....	1492 (02141)

Misrepresenting product or service:

As to—

Composition.....	1365
Old, worn or used being new or recent.....	1331, 1336 (2152, 2153), 1337 (2155), 1345 (2168), 1353 (2179), 1367

Offering deceptive inducements to purchase. *See also*, Misrepresenting prices, and, in general, Unfair methods of competition, etc.:

Through—

Representing or offering, falsely or misleadingly—	
Dealer's as factory prices.....	1362, 1373 (01960)

Free—

Products.....	1370 (01955), 1389 (01981), 1390 (01983), 1409, 1436 (02053), 1462
---------------	---

Price of which included in charges or services

otherwise demanded.....	1313 (2110), 1318, 1321, 1334 (2148), 1371, 1373 (01959), 1382, 1385, 1388 (01979), 1393 (01991), 1397 (01997), 1400 (02002), 1403 (02006), 1416, 1421 (02033), 1432 (02049), 1436 (02053), 1438, 1443 (02066), 1446 (02070), 1447 (02072), 1461, 1465 (02098), 1467, 1487 (02132), 1488, 1489 (02135), 1490, 1491 (02139), 1492 (02141).
-------------------------	--

Trial offer.....1435, 1450 (02077)

Guarantees, adjustments, refunds or reimbursements.....	1359 (2192), 1370 (01955), 1371, 1373 (01961), 1376 (01964), 1382, 1383, 1397 (01997), 1400 (02001), 1401 (02004), 1402, 1404, 1407, 1414 (02018), 1421 (02032), 1423 (02037), 1427, 1430 (02045), 1432 (02049), 1433, 1435, 1440 (02059), 1446 (02070), 1447 (02072), 1449, 1450 (02077), 1453 (02080), 1462, 1465 (02098), 1471 (02105), 1472, 1478 (02115), 1479, 1486, 1487 (02132)
---	---

Price offer—

By depictions.....	1334 (2149)
--------------------	-------------

STIPULATIONS

Offering deceptive inducements to purchase—Continued.

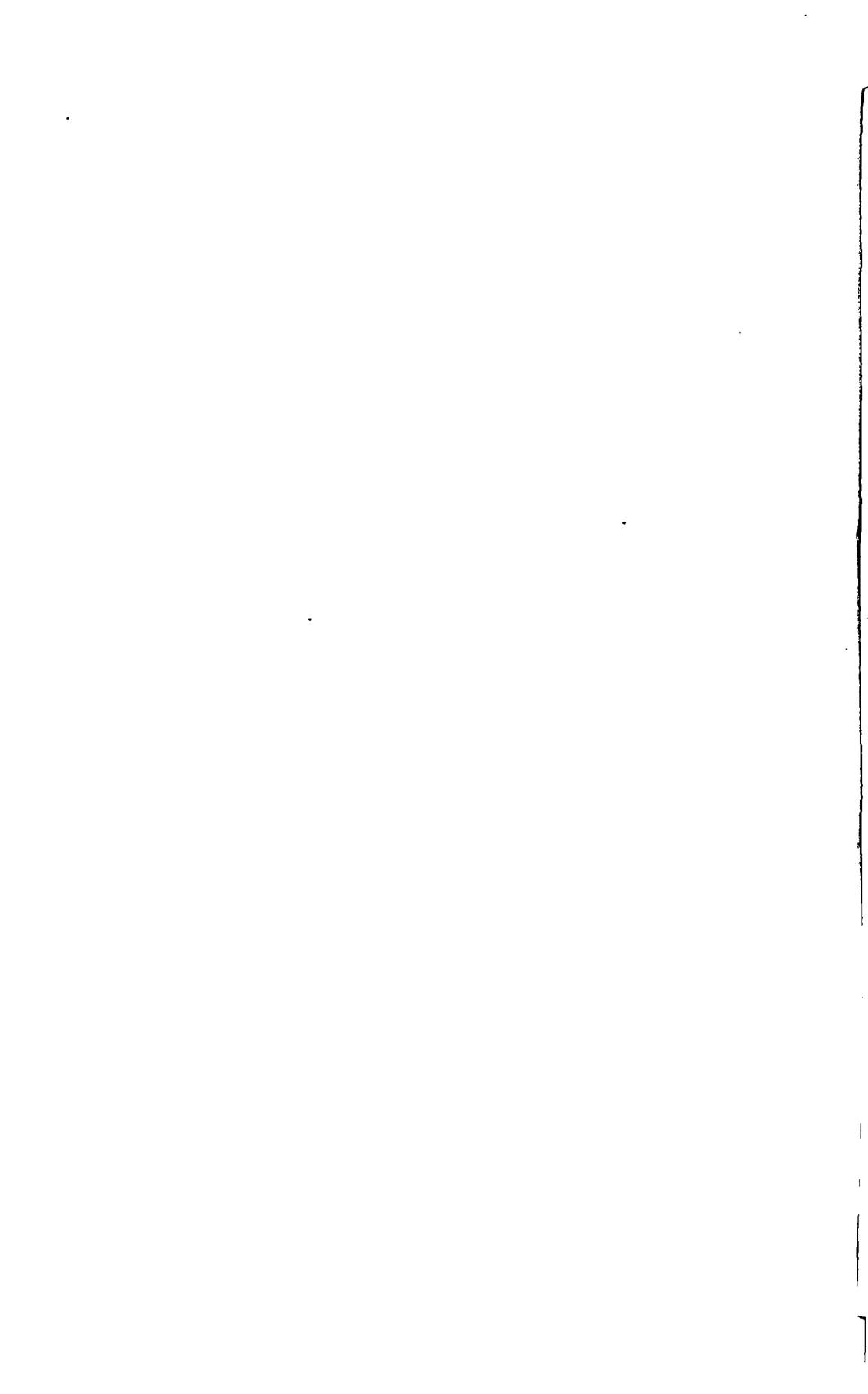
Through—Continued.

Representing or offering falsely or misleadingly—Continued.

	Page
Prices—	
Regular as special reduced, cut, confidential, etc.	1323 (2128), 1371, 1472
Special or half.....	1371
“Scholarship” offers—	
On pretext—	
Special or limited selection.....	1361
Special, limited or introductory offers.....	1323 (2128), 1371, 1373 (01959), 1376 (01964), 1397 (01997), 1415 (02020), 1416, 1433, 1436 (02053), 1445 (02067), 1450 (02077), 1462, 1463, 1471 (02105), 1480 (0823), 1489 (02135).
Terms and conditions, in general.....	1361, 1393 (01991), 1409, 1424, 1436 (02053), 1467
Free materials.....	1404
“Free” product.....	1487 (02132)
Instalment charges or plans.....	1477 (02113)
Material and equipment supplied.....	1488
“No risk”.....	1490
Trade-in values, valuations, “bonuses,” or allow- ances.....	1492 (02141)
Undertakings, in general.....	1334 (2149), 1361, 1428, 1429, 1480 (0823)
Securing agents or representatives falsely or misleadingly:	
Through misrepresenting—	
Earnings or profits.....	1334 (2149), 1341, 1385, 1400 (0551), 1403 (02006), 1416, 1422 (02035), 1424, 1427, 1435, 1446 (02070), 1447 (02072), 1461, 1465 (02098), 1467, 1487 (02132), 1488
Free goods.....	1432 (02049)
Opportunities in product or service.....	1403 (02006), 1432 (02049), 1436 (02053), 1447 (02072), 1467, 1481, 1487 (02132), 1488, 1490
Salary payment.....	1467
Sample distribution payment.....	1467
Terms and conditions.....	1467
Free—	
Articles for selves.....	1432 (02049)
Product.....	1393 (01991), 1446 (02070), 1487 (02132)
Sales outfit.....	1409
Guaranteed profits, sales, commissions or income.....	1416, 1436 (02053), 1446 (02070)
Material and equipment supplied.....	1488
Money advances or risk.....	1393 (01991), 1424
“No risk”.....	1490
Nothing to buy.....	1432 (02049)
Nothing to sell.....	1424
Risk.....	1409, 1424
Seller prices.....	1409

STIPULATIONS

	Page
Simulating:	
Labels of competitor's product.....	1316
Trade name, mark or label of competitor.....	1330 (2142), 1358 (2189)
Trade name of competitor's product.....	1316
Unfair methods of competition condemned in this volume. <i>See</i> —	
Advertising falsely or misleadingly.	
Aiding, assisting or abetting misrepresentation or unfair act or practice.	
Appropriating.	
Assuming or using misleading trade or corporate name.	
Claiming or using indorsements or testimonials falsely or misleadingly.	
Disparaging or misrepresenting competitors or their products.	
Maintaining resale prices.	
Misbranding or mislabeling.	
Misrepresenting business status, advantages or connections.	
Misrepresenting prices.	
Misrepresenting product, or service	
Offering deceptive inducements to purchase.	
Securing agents or representatives falsely or misleadingly.	
Simulating.	
Using lottery scheme in merchandising.	
Using misleading trade name, mark or brand.	
Using lottery scheme in merchandising.....	1318,
1326 (2133), 1338 (2157), 1339 (2159), 1358 (2189), 1403 (02006)	
Using misleading trade name, mark or brand:	
As to—	
Composition of product.....	1319
(2122), 1322 (2126), 1349, 1350, 1352 (2176), 1353 (2180), 1363	
(2197), 1371, 1385, 1432 (02049), 1475 (02111), 1479	
Domestic product being imported.....	1366 (2202), 1421 (02033)
History.....	1333
Nature of—	
Manufacture or preparation of product.....	1352 (2176), 1383
Product.....	1319
(2122), 1322 (2126), 1332 (2144), 1349, 1352 (2177), 1353	
(2180), 1381 (01973, 01974), 1383, 1416, 1429.	
Professional sponsorship of product.....	1383
Qualities, properties, or results of product.....	1328
(2138), 1385, 1392 (01989), 1393 (01991), 1395, 1416, 1417	
(02024), 1425, (02040), 1431, 1432 (02049), 1439 (02057), 1443	
(02066), 1445 (02068), 1450 (02077), 1455 (02085), 1462, 1463,	
1466, 1467, 1479, 1486	
Source or origin of product—	
Maker.....	1316, 1320, 1321,
1327 (2135), 1330 (2142), 1358 (2189), 1367, 1450 (02075)	
Old as new or recent.....	1367
Place... 1312 (2108), 1313 (2109), 1366 (2202), 1421 (02033), 1462	
By depictions.....	1313 (2109)
Success, use, or standing of product.....	1450 (02075)



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- Prepare reply.
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- Necessary action.
- Note and return.
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